Licensing Panel
Supplemental Agenda

Date: **Monday 6 September 2021**

Agenda - Part I

5. **The Man of Aran, 424-426 Alexandra Avenue, Harrow, Middlesex, HA2 9TW.** (Pages 3 - 134)
Report of the Interim Director, Environmental Services.

Agenda Item		Special Circumstances/Grounds for Urgency
5.	The Man of Aran, 424-426 Alexandra Avenue, Harrow, Middlesex, HA2 9TW.	This information was erroneously omitted at the time the agenda was published and circulated. Members are requested to consider this information, as a matter of urgency, to allow them to make an informed decision.

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IN THE MATTER OF THE MAN OF ARAN

HEARING NOTE

Application

1. Update premises licence plan (p 40 Agenda (current) and p 34 Agenda (varied)).

2. Update conditions (pp 38-39 Agenda (current) and pp 49-52 (varied)).

3. Hours as agreed with Police
   (1) Sale of alcohol on the premises
   Currently 10.30 – 23.00 (10.30-22.30 Sunday)
   Sunday to Thursday 10.00 – 00.00
   Friday & Saturday 10.00 – 01.00
   (2) Late night refreshment 23.00 to same terminal hour
   (3) Premises open to public same hours (now 10.30-23.20 & Sunday 10.30-22.50)

The premises

4. The premises were a public house. The applicant took over the premises on 17 May 2021. They are now undergoing a substantial refurbishment and upgrade (spending some £40k) to provide a fine dining restaurant and wine bar.

Representation

5. There are no representations from any of the responsible authorities. There is one representation from a resident of the block of flats which forms part of the building (although there are eight signatories – a petition or 'round robin letter'[1]). This refers to *late-night related disturbances, noises, nuisance behaviours, drunkenness, antisocial behaviours including more serious incidents where police and ambulance services have been involved … we have experienced late-night rock band until 12.20 am* (pp 43-45 Agenda).

Evidence

6. The matters referred to in the representation occurred before the Applicant took over the premises. The pub operated with a large open bar area which hosted DJ, live music and sports screen events. The Applicant's set up will be fundamentally different. And along with the new premises licence holder there is a different DPS, all new staff and up-to-date conditions on the licence.

[1] Harrow Statement of Licensing Policy paras 10.6-10.8.

7. All responsible authorities (RAs) were informed of the application and were able to make representations. None have done so. The police requested that as this is a new enterprise the hours applied for on Sunday to Thursday be reduced by an hour to terminate at 1200. A set of conditions was also requested to compliment those in the operating schedule (pp 47-50 Agenda). The hours and conditions have been agreed between the police and the Applicant

8. If an RA does not make a representation it is reasonable to conclude that the RA has no concerns relating to the application. The s.182 guidance underlines the weight that should be given to the views of the RAs:

   Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective (para 9.12).

9. There are no representations from any RAs and in particular Environmental Health which is the main source of advice in relation to the public nuisance licensing objective as made plain by the Government during the Report Stage of the Licensing Bill in the House of Lords:

   Judgment of the merits of an application against the licensing objectives should be left to the experts. The experts on crime and disorder … are the police … The experts on public nuisance are the local environmental health authority.[2]

10. Finally, the Committee will be familiar with the case of *Thwaites* and in particular para 63.[3]

11. The Committee is therefore respectfully invited to grant the application as applied for.

    Roy Light
    St John's Chambers

[2] HL Deb, vol.645, col.400, 27 February 2003.
[3] *Thwaites v Wirral Borough Magistrates' Court* [2008] EWHC 838 (Admin)



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PREMISES LICENCE SITE OPERATIONS MANUAL

Store Name: .....

Address: .....

.....

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Issued: .....

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FOREWORD

The Licensing Act 2003 came into force on the 24th November 2005, significantly changing the licensing regime for permissions to sell alcohol for consumption either on or off the premises and regulated entertainment. The Act also introduced a new late night refreshment regime. The penalties for failure to follow the rules have become far more stringent and the possibility of onerous conditions, suspension of the licence or indeed permanent revocation is a very likely possibility for those who operate a slack regime within their place of business. The cost of defending a licence in danger through poor management procedures is far greater than doing the job properly from the start.

Since enactment, many changes and amendments have altered and updated the Act to reflect both government initiatives and new case law as the Act is tested in the higher courts. This has required continued re-interpretation of specific areas of the Act as reflected in the written guidance produced by the government department responsible for alcohol licensing - until recently the Department for Culture Media and Sport (DCMS) but since 2010 the Home Office.

Changes occur as successive governments respond to political pressures and endeavour to keep the law current, relevant and fit for purpose - balancing the interests of the various sectors of the licensed trade, the authorities charged with the enforcement and day-to-day housekeeping required by statute against the communities which may be affected by the operation of licensed premises.

For retailers the provision of alcohol to their customers for consumption on or off their premises is a crucial part of their business; in many cases underpinning a viable business and without which the business may struggle to survive. Over the years government attitudes to the sale and availability of alcohol have differed. Until recently the culture has been favourable and permissive towards the retailer of alcohol but the last ten years has seen increased regulation with more attention paid to the views of local people and the police in both applications for, and in the running of, licensed premises.

Momentum continues to build towards a far more regulated and controlled market place. There is a growing view in government, and among those charged with running the licensing system, that the licensed retailer, via regulation, has a greater responsibility towards the local community. While a premise licence gives a retailer the right to sell alcohol to support a more profitable business they will be held accountable for the repercussions of irresponsible selling.

It is essential that businesses are properly run with effective due diligence procedures in place. This includes regular training and guidance for their staff, adequate written records of compliance with appropriate day-to-day in-store precautions. Responsible retailing is a basic but crucial requirement for all of those who are licensed to sell alcohol. This manual is designed to assist your business in ensuring that it is operating to the best standards.

The last five years have seen many statutes and regulations introduced. They cover the various processes of applying for a licence as well as the running of the licence once granted together with the consequences of breaches of the rules. Some of the most important are listed below.

This manual provides guidance for site operators to assist them in acquiring a firm footing with regard to alcohol sale compliance procedures. The manual should only be used by businesses who have acquired this Licensing Guidance Manual direct from RB Retail & Licensing Services Limited and have the received necessary instruction on how to use this manual.

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Information and guidance contained within this manual does not constitute legal or other professional advice.

It should be noted that this manual only takes account of matters connected with the Licensing Act 2003 up to the issue of this revision of this manual.

This manual should be used as a guide only and cannot replace legal advice.

Error and omission excepted.

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Introduction

- This Premises Licence Operation Manual contains instructions and guidance covering policies and procedures for various premises licence applications and the subsequent use of the premises for licensable activities.

- To assist staff training awareness a pamphlet called `Licensing Rules & Procedures' which mirrors section 3 is included.

- The Manual is for the use of staff who currently are or will be offering licensable activities. Uses include:

  - Making an application and/or variations for the premises licence.
  - Applying policies and procedures correctly and consistently.
  - Establishing and maintaining retail operations standards for the sale of alcohol and other licensable activities.
  - Referencing important information quickly and easily.
  - Providing guidance to staff as part of their on-going training and development.
  - Additionally, important and relevant licensing documents specific to your business, can be filed in this manual within section 8.

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SECTION 1: Licensing Applications

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S1.1 PREPARING A NEW LICENSING APPLICATION

To make an application for a premises licence or to subsequently vary it notices must be served on the Licensing Authority (generally the local authority) for the area in which the premises are located as well as on the responsible authorities.

At the same time the application must be advertised on the premises itself by way of blue A4 notices displayed on the boundary every 50 meters for the next 28 days from the day after service on the licensing authority.

The site notices must be on display 24/7 for the whole 28 day period and care should be taken to ensure that they are not obscured by shuttering at night or other obstructions at any time thereby offering a clear view to passers by.

An advertisement must also be placed in a local paper within the first ten working days of that 28-day period.

These notices are required under the Licensing Act 2003 in order that as many people as possible get to know about the application and those that object to it can make their views known by making representations, as they are known, to the licensing authority within the 28 day period.

Once the 28-day period is complete, if there are no representations, the licence must be granted as applied for.

Where representations have been made by any of the responsible authorities these can sometimes be dealt with by way of negotiation. For example, all parties may agree to a condition that can be applied to the new licence, removing the need for the hearing and allowing the grant of the licence.

There are three groups of people who can make representation:

- Responsible authorities e.g. police, trading standards etc.
- Other persons which includes people resident in the locality and local businesses / organisations .
- Any of the above can also request any of the following to speak on their behalf: Local Councillors, local representative, friend, Member of Parliament, Members of the Welsh Assembly local Ward or Parish Councillors.

Representations must be made on one or more of the four licensing objectives:

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

If representations have been received and agreement cannot be reached, a hearing must be held in the next 20 working days from the end of the period of notice.

The hearings are usually held in the Council Chamber or a committee room in the Council Offices.

At the hearing before the local authority Licensing Authority sub-committee there are usually three councillors supported by a legal advisor, often a solicitor or a barrister and another officer who is also responsible for the process and procedures of the committee. One of the councillors is nominated as chairperson for the meeting and there is a Licensing Officer from the Authority who will normally set out the application and is also responsible for checking that all the required documentation has been completed satisfactorily.

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Representatives from the police, Fire & Rescue Service and the other responsible authorities will not normally attend unless they are making representations. It is often the case that the interested parties who have made representations do not attend leaving their representations to be dealt with in writing by the Licensing Sub-Committee.

Representations at a hearing can be made, in person, or by a representative or spokesperson, often a ward councillor, but the representations can only be made on the initial written notification and other matters should not be raised or added to at the hearing.

Applications before the licensing committee may be put by the applicant who may be represented by a solicitor or a barrister presenting the documentation and the facts to the committee.

Depending on the representations received it may not be necessary for the proposed premises licence holder or proposed designated premises supervisor to attend as RB Retail & Licensing Services Limited can attend on their behalf but we will obviously liaise with the applicant on this point. However, it is good practice to have one or more present should questions arise that require local or specific knowledge.

The hearing takes the form of a discussion led committee meeting with a panel usually made up of three councillors who assess the application, listen to the representations and then decide whether to grant the licence as applied for, apply conditions or refuse it entirely, or to grant a part of the application (if more than one licensable activity is applied for).

Any decision reached can be appealed to the local Magistrates' Court if either the applicant or those opposing the application are aggrieved at the decision reached by the committee. The appeal must be lodged within 21 days of the date of the letter notifying the applicant of the committee's decision.

It should be noted however that the Magistrates' Court has power to award costs against a party to the appeal, usually the loser; although it may not be easy to secure costs against an authority even if the appeal is successful.

S1.2 APPLICATION FORM AND NOTICES

Since the introduction of the Police Reform & Social Responsibility Act 2011 which came into force on 25th April 2012 applicants must give greater consideration to the local area when setting out the steps they will take to promote the licensing objectives and to provide responsible authorities and the licensing authority with fuller information on which to make informed representations or determinations.

How will this change be made?

The application form must first be completed and served on the licensing department of your local authority plus a copy sent to the responsible authorities in your area.

The date of service of the notice then puts into motion the application process.

There is a 28 day period in which representations may be made in respect of the application.

During this period the site notice must also be displayed on the premises in accordance with the Licensing Regulations.

If there are representations the application can be expected to go to a committee hearing, although it will be prudent to seek to negotiate with those making the representations to reach agreement and thereby avoid the cost and delay of a hearing, if there are no representations the licence must be granted as applied for.

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The guidance for applicants and statutory guidance for licensing authorities has been amended to prompt licence applicants, when outlining the steps they will take to promote the licensing objectives, to provide contextual information to support the steps they intend to take and demonstrate an awareness of the local community in which the premises would be based. This may include contextual information on issues such as the local areas's social-demographic characteristics, specific local crime and disorder issues and an awareness of the local environment.

S1.3 LICENCE APPLICANTS TO GIVE GREATER CONSIDERATION TO LOCAL AREA

What is the policy aim?

As part of its commitment to re-balance the Licensing Act 2003 in favour of local communities, the Government is keen that licence applicants give greater consideration to the local area when making their application.

Currently, as part of the licence application process, applicants are required to set out in the operating schedule accompanying their application the steps they intend to take to promote the licensing objectives. Some licensing authorities have reported that this section of the application is often poorly completed, providing licensing authorities with very little information on which to make their determination.

What are the benefits to the local area?

The additional information will hopefully ensure that greater consideration is given to local issues when determining licence applications. The additional information will be of value to licensing authorities, responsible authorities and other parties who if dissatisfied are able to make representations with regard to licence applications to ensure the promotion of the licensing objectives in the local area.

How will licence applicants be required to demonstrate that they are considering the interests of the local community when setting out the steps they will take to promote the licensing objectives?

Applicants will be required to provide information as part of the licence application form on issues such as the local area's social-demographic characteristics, specific local crime and disorder issues and an awareness of the local environment which will be of benefit to the licensing authority when determining the application. Specific local issues, such as crime and disorder issues, are likely to influence the steps that applicants will need to take to promote the licensing objectives in their own premises and applicants will therefore be required to demonstrate an awareness of such issues when setting out why particular steps will be taken to promote the licensing objectives.

What information are licence applicants currently required to provide regarding the steps they will take to promote the licensing objectives?

When preparing an operating schedule applicants are required to set out the steps necessary, if any, for the promotion of the licensing objectives. In doing so, applicants are expected to have regard to the statement of licensing policy for their area and to be aware of the expectations of the licensing authority and responsible authorities in terms of the steps that are necessary to promote the licensing objectives.

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UNDERSTANDING THE LICENSING OBJECTIVES

All licence applications must comply with four objectives, namely:

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

The example below refers to both new and full variation premises licence applications.

CRIME AND DISORDER

A local authority, may take into account and recognise that certain criminal activity or associated problems may be taking place or have taken place either within specific premises or in the vicinity, despite the best efforts of the staff at the premises. In such circumstances, the council is empowered to take any necessary steps to remedy the problems. Its role is to promote the licensing objectives in the interests of the wider community rather than determine guilt or innocence of individuals. Such issues are for the courts of law.

Problems could include - anti social behaviour in the vicinity or past problems with the premises and or people involved/working in the business.

PUBLIC SAFETY

The council, as the licensing authority, should not take into account any issues that are dealt with in other legislation, such as public health, cleanliness or hygiene.

Problems covered include - overcrowding (leading to an increased risk of violence or to the safety of people in the premises); fire issues; anyone being hurt or having an accident in any premises.

The public safety objective is concerned with the physical safety of staff, visitors and customers using the relevant premises and not with public health.

As part of the application process, applicants must consider the impact of their premises in relation to the licensing objectives. They should consider implementing the measures listed below.

- The premises should comply with all statutory fire safety controls.
- The premises must comply with all food safety regulations.
- Provide disabled facilities and take reasonable steps to change their practices, policies or proceedures or provide a reasonable alternative method of making their services available to disabled people.

Health and safety issues such as:

- falls from height
- slips and trips
- manual handling
- slips on wet or food contaminated floors
- being struck by something (such as sharp knives or falling objects)
- machinery.

THE PREVENTION OF PUBLIC NUISANCE

The issues mainly relate to noise nuisance, light pollution, noxious smells and litter arising from licensable activities at the premises.

THE PROTECTION OF CHILDREN FROM HARM

This objective relates to the protection of children from moral, psychological and physical harm. This includes protecting them from early exposure whilst visiting this premises to:

- strong language
- sexual expletives
- adult entertainment
- drinking alcohol
- smoking
- drug taking
- gambling
- violence

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S1.4 New powers following the passing into law of the Police Reform & Social Responsibility Act 2011

Early Morning Alcohol Restriction Orders
Early Morning Alcohol Restriction Orders (EMRO) due to come into force in October 2012 will enable licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specific period between 12 midnight and 6 am, if they consider this appropriate for the promotion of the licensing objectives.

Late Night Levy - What is the late night levy?
The late night levy ('the levy') will enable licensing authorities to raise a contribution from late-opening alcohol suppliers towards policing the night-time economy. It will be a local power that licensing authorities can choose whether or not to exercise. It must cover the whole of the licensing authority's area. However, the licensing authority will also choose the period during which the levy applies every night, between midnight and 6 am and decide what exemptions and reductions should apply from a list set out in regulations. The levy if adopted is unlikely to come into force before June 2013.

- *Who will the late night levy affect?*
  If a licensing authority chooses to introduce the levy in their area, all licensed premises which are authorised to supply alcohol in the levy period will be affected. Premises that do not wish to operate in the levy period will be able to make a free minor variation to their licence before the levy is introduced.

Increase the weight licensing authorities will have to give to relevant representations and objection notices from the Police

- *What is a relevant representation?*

These are written representations, about the likely effect of the grant of an application for, or variation to, a premises licence or club premises certificate, on the promotion of the licensing objectives. Responsible authorities and interested parties, such as residents, make representations regarding licensing functions. To be considered relevant, representations must have regard to the potential impact of the licensing determination on the promotion of the licensing objectives.

THE FOUR LICENSING OBJECTIVES ARE:

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

For a representation to be relevant it must be centred around the likely effect of the application on the promotion of one or more of the four licensing objectives.

- *What is the policy aim?*

When determining an application for a premises licence, an application for a licence review or the granting of a personal licence, the licensing authority must have regard to relevant representations or objection notices (in the case of personal licence applications) from the police.

This act strengthens the weight that licensing authorities must give to police representations **(including those voiced by the police at a hearing)** and objection notices by amending the statutory guidance to require licensing authorities to accept all representations and notices and adopt all recommendations from the police, unless there is clear evidence that these are not relevant.

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Reducing the burden of proof on licensing authorities

- *What is burden of proof?*

When making decisions on new and existing licences, and fulfilling their licensing responsibilities, licensing authorities are currently required under the Licensing Act 2003 to demonstrate that these decisions are 'necessary' for the promotion of the licensing objectives (as above) in their local area.

The requirement to demonstrate that their actions are 'necessary' places a significant evidential burden on the licensing authority to prove that no lesser steps would suffice for the promotion of the licensing objectives in the local area. This is a consequence of statutory reference to actions having to be 'necessary' and which is therefore reflected in statutory guidance, and has become custom and practice. This guidance states that licensing authorities should ensure that any conditions that they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

- *What are the changes to be made in the new act?*

The wording has been amended throughout the Licensing Act 2003 to highlight the new evidential threshold which licensing authorities must meet when making licensing decisions by requiring that they make decisions which are 'appropriate' rather than necessary for the promotion of the licensing objectives. This will, for example, give licensing authorities greater power to tackle irresponsible premises.

Enable licensing authorities to suspend licences due to non-payment of fees

- *Purpose*

The government is committed to reducing the burden and bureaucracy of licensing and will strike the right balance between the requirements on businesses against the cost to the taxpayer and helping the police and other enforcement agencies address alcohol related crime and disorder. This policy will ensure that licensing authorities do not face additional costs as a result of licence holders not paying their annual fees.

- *What changes are made in the new Act?*

Licensing authorities will be able to suspend licences due to non-payment of fees therefore providing a much stronger incentive for businesses to pay their fee in a timely manner and save licensing authorities the time and cost of pursuing non-payment. This measure will not impact on responsible businesses that pay their licence fees on time.

There will be a grace period of 21 days for licence holders to pay their fee. The licence will be reinstated as soon as the fee is paid and the licensing authority must notify the licence holder when their licence has been reinstated.

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S1.5 PREMISES LICENCE CONDITIONS

Conditions can be added to your premises licence either voluntarily by way of your operating schedule when submitting a new application or full variation, or by negotiation or applied at the licensing sub-committee hearing.

Once on the licence conditions can only be removed by seeking a variation to the licence so if they are applied at the time of the grant you should consider whether they are so onerous as to require an appeal to be made to remove them.

S1.6 LICENSING COMMITTEE HEARING ETIQUETTE

If you are required to attend a committee hearing please accept the following guidance:

- Wear smart business attire if possible.
- When entering or leaving the committee room, do so as quietly as possible.
- Mobile phones must be switched OFF AT ALL TIMES, not just left on silent.
- Never walk across a committee room or in front of the committee whilst it is conducting business.
- Be ready to stand when the councillors enter or leave the committee room but be guided by your advisor as to whether it is necessary or not.
- Do not talk or make comments whilst the committee is dealing with business.
- Pay attention and listen carefully to what is being said.
- Answer all questions honestly and succinctly.
- Be ready to stand when addressing the Committee but be guided by your advisor as to whether it is necessary or not.
- When addressing individual committee members use the title Councillor and if possible their surname which is usually on display.
- Always look at the committee when answering questions, even when the questions are being asked by someone else and speak clearly.
- No eating or drinking is allowed in the committee room except for water made available to you.
- At the close of your business, please say 'thank you' to the committee.

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S1.7 THE PREMISES LICENCE

Your premises licence is in two parts :

The licence - part A

The summary - part B

It is a legal requirement that the summary part B or a certified copy - a copy made by a solicitor - is prominently displayed at the premises for customer inspection at all times when the premises are open.

It is also a legal requirement that the original licence certificate part A or a certified copy is kept at the premises, displayed clearly within the shop floor area and is available for inspection at any time upon request by a police constable or a local authority licensing officer.

Further, it has to be confirmed in writing by the licence holder who at the premises is responsible for the licence or the certified copy of it.

It is our recommendation that you obtain certified copies of your licence summary part B, and display these in the premises whilst keeping the master copies within section 8 of your licensing manual.

You will need to surrender your master licence and summary with your application to the licensing authority if you are making any variations, including changing the DPS.

Your premises licence does not have to be renewed but there is an annual licence fee that has to be paid to the issuing authority, on the anniversary of the date of issue. The premises licence lasts for the life of the business.

S1.8 PREMISES SCALE PLAN

Your premises plan normally drawn at a scale of 1:100 should be kept in section 8 of the manual for reference.

This is the approved plan and the layout should be adhered to as closely as possible.

Any proposed refit may have to be preceded by an application for a variation to the plans as they form part of your licence.

Please feel free to notify RB Retail & Licensing Services Limited of any changes required enclosing copies of both the existing and the new plan in order that we can advise on the action you should take.

Please also keep any amended plans in this manual.

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S1.9 DESIGNATED PREMISES SUPERVISOR (DPS)

For the site to sell alcohol there must be a designated premises supervisor (DPS) who must hold a personal licence. If the DPS ceases to carry out that role at your site or their personal licence is suspended or forfeited you are legally required to

STOP SELLING ALCOHOL IMMEDIATELY

until a replacement DPS is formally notified by way of variation to the Licensing Authority which issued your premises licence.

You can either notify RB Retail & Licensing Services Limited straight away or apply yourself with the details of the person you wish to replace the existing DPS and provide a signed DPS consent form from that person in order that the DPS variation can be applied for. The applicant must be a personal licence holder in order to be able to commence trading immediately having made the variation application. If the applicant is not, you can still complete the variation in their name but you cannot commence trading until the the applicant holds a personal licence.

If the applicant does not hold a personal licence he/she must be in possession of an accredited qualification such as the **APLH Award for Personal Licence Holders** in order to apply for a personal licence. A personal licence will not be issued without such a qualification. Please contact RB Retail & Licensing Services Limited for the next available APLH course dates in your area. Enclosed is the DPS consent form that needs to be completed and signed by the applicant in order for RB Retail & Licensing Services Limited to make the necessary variation application - if the applicant has a personal licence we will complete all the other documentation as necessary.

S1.10 DPS VARIATION

An application to vary the DPS is made to the licensing authority which issued your premises licence and is supported by payment of a fee plus the variation application form and the consent form signed by the proposed DPS, who must be a personal licence holder for the variation to take effect.

If the new DPS is not a personal licence holder alcohol sales cannot be made at the premises until the personal licence has been issued.

In order to vary the DPS the enclosed form (section S4.13) **MUST** be signed by the applicant otherwise the application will be rejected - it cannot be signed by a third party on the applicant's behalf.

The variation cannot take place unless and until the applicant has been granted a personal licence.

The application can be deemed to have immediate effect upon receipt by the licensing authority, providing the forms have been filled in correctly and the full payment made. It is always advisable to obtain a proof of posting should a query arise.

Sales of alcohol must be suspended if there is not a current DPS or that person is not a personal licence holder. It is not enough to have a Personal Licence Holder if there is not a DPS in place.

You do not need a DPS if you do not sell alcohol.

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S1.11 VARIATION GUIDANCE

• FULL VARIATIONS

Other than the re-issue of the plan as part of the summary with minor detail changes, or the inclusion of pre-agreed conditions many other variations are dealt with almost as though they were a new application.

Plans have to be provided marked to show the relevant requirements at a scale of 1:100. Any other scale must be agreed with the local authority licensing department in advance of an application being submitted.

The variation application form and payment based on the rateable value as with the full application must be sent with the plans to the licensing department of your local authority together with a copy of the blue A4 notice that you display on your premises for 28 days from the first day after receipt of this application by the local authority. The application also must be advertised in a newspaper circulating locally within 10 working days of the date of submission and proof of publication has to be sent to the licensing department.

The whole of the variation application pack must be copied to all the responsible authorities in the area in which the premises is situated, the list being available from the licensing department of your local authority.

Once the 28 days are up, if there have been no representations, you have the grant.

If there are representations the application is dealt with in exactly the same way as though it were a new application, as covered elsewhere in this manual.

• THE VARIATION

The meaning of the word 'variation' in this process covers changes made to your premises licence. This can be to change the hours you trade your licensable activity - alcohol sales or late night refreshment - or indeed changes to add a licensable activity or major change to the structure of your premises. Some can be made via a minor variation others will require a full variation application to be made.

• OPENING HOURS

Once a premises licence has been issued you should only trade the opening hours specified on it or within those opening hours - you potentially commit an offence if you trade for longer hours than those shown on the schedule of your licence. Interpretation can differ from local authority to local authority, please call RB Retail & Licensing Services Limited for further guidance.

The hours may be varied or extended by making an application to your licensing authority to vary them - contact RB Retail & Licensing Services Limited for further details.

• LICENSABLE HOURS

You must seek to vary your premises licence if you wish to extend your hours for any licensable activity. If you wish to trade fewer hours then you do not have to apply or advise the local authority.

• LICENSABLE ACTIVITIES

The premises licence specifies the licensable activities granted for the premises named which can include :

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Sale of alcohol for consumption either on, off or on and off the premises.

Provision of regulated entertainment, which includes performance of a play, exhibition of a film, indoor sporting event, boxing or wrestling, entertainment, performance of live music, playing of recorded music and performance of dance.

Provision of late night refreshment - only required if you trade hot food or drink between 23.00 hrs and 05.00 hrs.

The precise details, and in particular the hours of the licensable activities you are licensed to provide, are set out on your premises licence and summary. You commit a criminal offence if you allow licensable activities to occur on your premises either without a licence, outside of your permitted hours, or if you breach a licensing condition.

Should your circumstances alter and you wish to change these hours or licensable activities this is done by making an application to vary your licence - contact RB Retail & Licensing Services Limited for further details.

• CHANGES TO THE PREMISES LAYOUT OR STRUCTURE

If you wish to refit or change your premises, dependant on the amount of work you intend to carry out you may have to seek a variation before you start work or, under certain circumstances, even make an all new application.

If you supply RB Retail & Licensing Services Limited with a set of your proposed plans before you are committed to commencing any changes we will advise on the best route to take to secure the appropriate permissions for them.

These could vary from a simple submission of a plan for reissue as part of the licence summary to an all new application - it all depends on the size of the project and the impact on the licence.

• MINOR VARIATIONS

As of 29/07/09 it has been possible to make small changes to your premises licence or club premises certificate through the Minor Variation process. This process is cheaper, easier and quicker than the full variation process.

The test for whether a proposed variation is 'minor' is whether it could impact adversely on any of the four licensing objectives. (These are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm).

The expectation is that the process will be used for changes such as:

- small changes to the structure or layout of a premises
- the addition of authorisation for late night refreshment or regulated entertainment (such as live music, performance of plays or film exhibitions)
- reduce licensing hours
- revisions, removals and additions of conditions (this could include the removal or amendment of out of date, irrelevant or unenforceable conditions, or the addition of volunteered conditions).

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The Minor Variations process **cannot** be used to:

- add the retail or supply of alcohol to a licence
- extend licensing hours for the sale or supply of alcohol at any time between 11pm and 7am
- increase the amount of time on any day during which alcohol may be sold by retail or supplied
- extend the period for which the licence or certificate has effect
- transfer the licence or certificate from one premises to another, or vary substantially the premises to which it relates
- specify, in a premises licence, an individual as the premises supervisor
- add the sale by retail or supply of alcohol as an activity authorised by a licence or certificate; or
- dis-apply the mandatory conditions relating to a designated premises supervisor (there is a separate process by which community premises can apply for this).

A licensing authority upon receipt of an application for a minor variation needs to consider whether the application if granted will impact adversely on the four licensing objectives.

Generally if the authority thinks it may the application will not be accepted, the applicant will therefore have to submit a full variation / new application.

It is important to note that the notice period advertising this application is shorter than a full application at 10 working days and does not need to be advertised in a newspaper. There is no automatic right to a hearing should representations be received by the local authority as there is with full variations and new applications, however the licensing authority must take relevant representation into account before making their decision no more than 15 working days after receipt of the minor variation application.

Should you require assistance regarding variations please contact RB Retail & Licensing Services Limited.

S1.12 TRANSFER OF PREMISES LICENCE

The 2003 Act provides for any person who may apply for a premises licence, which includes a limited company, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police. The responsibility to notify the DPS is with the applicant.

Should the police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.

S1.13 WHEN A LICENCE LAPSES

Where the premises licence lapses (because of death, incapacity or insolvency of the holder etc.) contact RB Retail & Licensing Services Limited who will then seek legal advice on your behalf.

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S1.14 PERSONAL LICENCE

A "personal licence" means a licence which - (a) is granted by a licensing authority to an individual, and (b) authorises that individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence.

The licence is granted after an application is made to the local authority area that in which the applicant normally resides.

Should the applicant have a relevant conviction for an offence committed in the UK or abroad then the police can object to the application. The local authority licence sub-committee would convene a hearing to decide upon the application.

The licence once granted lasts indefinitely - lapsing either upon surrender by the holder, death of holder or revocation by the issuing authority or the courts.

A personal licence can be revoked should a licence/or other relevant offence be committed.

In order to be a Designated Premises Supervisor (DPS) an individual must hold a Personal Licence.

Should a Premises Licence holder who is not a Personal Licence holder wish to trade alcohol they must have at least one Personal Licence Holder who is normally in day-to -day charge of the premises who is also the DPS.

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SECTION 2: Operational Guidance

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S2.1 ALCOHOL STRENGTHS AND EFFECTS

• All members of staff should have a basic understanding of how alcoholic drinks such as wine are classified and labelled according to their strength, as well as the effect alcohol has on people	***a staff copy of the product guide should be made available at all times to aid staff in assisting customer selection and boosting their confidence in knowledge of the product - see section 5***
• The strength of an alcoholic drink is measured by its percentage (%) alcohol by volume (abv)	***abv is shown on labels as alc. %vol or just %vol***
• An alcohol-free drink is one with an abv of no more than 0.05%	***drinks just under 0.5% abv are not covered by licence control and may be freely sold - anyone can buy an alcohol free drink and they are not subject to licensing law***
• An intoxicating drink is one that contains more than 0.5% abv	***low-alcohol drinks are still intoxicating drinks and the licensing laws apply to their sale***
• A low alcohol drink is one that contains no more than 1.2%abv	***packaged drinks with an abv of more than 1.2% must be labelled with their abv***
• One unit of alcohol is 10 millilitres of alcohol (or 8 grams in weight)	***it takes about 1 hour for 1 unit of alcohol to be lost from the body***
• The speed of take up of alcohol in the body is effected by different things	• ***how much you drink*** • ***your weight*** • ***your sex*** • ***what you have eaten***

S2.2 LEGAL MATTERS / BEST PRACTICE

There are legal requirements covering licensable activities including the sale of alcohol that have serious penalties if not adhered to and this part of your business needs to be effectively controlled at all times.

It is imperative that should an alleged breach of the law occur you obtain legal advice **immediately** which RB Retail & Licensing Services Limited can arrange for you.

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Legal requirements

• The sale of alcohol can only be made from premises with the benefit of a premises licence, temporary event notice (TEN) or club certificate allowing that licensable activity	***even then sales can only be made if there is a personal licence holder named as the Designated Premises Supervisor (DPS) for those premises***
• Sales of alcohol can only be made by personal licence holders or those staff authorised to do so by a Personal Licences Holder/Designated Premises Supervisor	***records should be kept of all staff authorised to sell alcohol and details of their initial and ongoing refresher training***
• It is an offence for somebody under 18 to sell alcohol unless authorised by a personal licence holder, however best practice dictates that no under 18 should sell alcohol	
• The premises licence is granted in perpetuity unless the licence holder (if a person) dies or is made bankrupt or if a limited company which subsequently goes into liquidation, but it can be transferred to a new owner who can be a company, partnership or individual within a limited timeframe	***should the previous premises licence holder die or become insolvent the new owner should take <u>urgent immediate</u> legal advice.***
• The premises licence can cover several licensable activities	***the sale of alcohol and the provision of regulated entertainment & late night refreshment.***
• Are there any annual charges?	***there is an annual fee payable to the issuing authority on the anniversary of the initial grant which if not paid could lead to the suspension of your Premises Licence.***
• You do not need a licence to sell liqueur chocolates as long as they meet legal requirements	***it is an offence to sell liqueur chocolates to anybody under 16***
• All staff should read the training pamphlet, a copy of which is in this manual, in order to better understand their basic responsibilities	***a staff copy should be available at all times to help avoid underage and illegal sales and to provide support for staff***
• If your licence has the condition that you use door supervisors they must hold an SIA (Security Industry Authority) licence	***the same requirement applies to any security staff used - contact RB Retail & Licensing Services Limited for further details and training courses***

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• The concept of permitted hours no longer applies under the Licensing Act 2003.	***24 hour sales can be applied for within England and Wales for consumption on & off the premises***
• Each premises licence is issued individually based on the licensable activity applied for and the hours that that activity may be carried out.	***all staff should be aware of the terms and conditions on the licence summary including whether consumption is allowed on or off the premises***
• The detail of what activity is licensed, is to be found on the licence summary which must be displayed at the premises in such a manner that the public can inspect it at all times the premises are open.	***the A4 pages of the original summary should be displayed near the door or in the alcohol area in a prominent position allowing public scrutiny at all times***
• Premises Licences can be applied to permit consumption of alcohol on and/or off the premises	***ensure all staff are aware of the activities allowed including whether consumption is allowed on the premises or not, and if it is, any specific areas in which it is not***
• Where the condition only allows for consumption off the premises the licence does not permit the consumption of alcohol on the premises	***ensure all staff are aware of the activities that are allowed and not allowed***
• Anyone observed attempting to drink alcohol on premises where it is not allowed or in areas where it is not allowed must be stopped from doing so	***ensure staff are properly trained in how to deal with these situations, including removing customers from the premises and police involvement if necessary***

With the introduction of the Violent Crime Reduction Act 2006 which came into force on the 6.04.07 a new offence was created of 'persistently selling alcohol to children'

This offence would apply when the same premises sold alcohol to children three times or more in a three month period, this was later amended to two offences in a three month period from the same premises. The maximum penalty is a £20,000 fine and suspension of the premises licence for up to three months, there is no defence of due diligence.

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- It is an offence to sell alcohol to anyone under the age of 18.

variable punishment from fixed penalty notices up to a £5000 fine or a £20,000 fine if convicted of selling alcohol twice in a three month period

- It is also an offence for any person under the age of 18 to buy, or attempt to buy alcohol.

punishable by fixed penalty notices and £1000 fine

- All businesses selling alcohol should be adopting and operating either **Challenge 21** or **Challenge 25.** The customer must be asked for proof that they are over 18. Please speak to RB Retail & Licensing Services Limited regarding which scheme to adopt.

CHALLENGE 21 or CHALLENGE 25 - always ask for the appropriate proof of age.

- If you have any doubts about how old a customer is, you must ask for proof of age.

- ***passport***
- ***photo driving licence***
- ***PASS accredited ID card e.g.***
- ***Citizen Card***

- It is an offence for an adult to buy or attempt to buy alcohol for somebody under 18 (proxy purchasing).

be aware that an offence can be committed when an adult requests an identical product after a refusal of a sale to somebody under 18 as it may be a proxy purchase.

- Notices advising the offence of selling to an under 18 and selling to an adult purchasing alcohol on behalf of an under 18 (proxy purchasing) should be displayed throughout the premises.

ensure in-store signage is used effectively

- If proof of age is not provided you must refuse to serve the customer and make a note of this in the Refusals Book.

staff should check the refusals book at the commencement of each shift and ensure it is used for each refusal

- Challenge 21 or Challenge 25 requires all staff to seek evidence that customers who look under 21 or 25 (If unsure check with RB Retail & Licensing Services Limited) are aged over 18 or refuse the sale.

- Challenge 21 or 25
Builds in either a three or eight year buffer in judging customers ages and must be applied at all times - no id no sale.

disciplinary procedures should be instigated by the store management if Challenge 21 or 25 is not applied in all relevant cases

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• Other than age issues customers must also be refused service or even asked to leave the premises if they:	• ***appear to be intoxicated*** • ***are violent*** • ***are quarrelsome or disorderly***
• All members of staff have a responsibility not to allow drunken or disorderly behaviour on the premises.	***ensure staff are properly trained in the procedure of how to deal with this situation***
• If the customer refuses to leave then the police should be called	***do not get involved in any associated arguments or brawls***
• The Refusals Book should be kept so that it is readily available to all members of staff at all times	***refusals books should be maintained in any areas where alcohol is provided keeping a log of payment made for proper control***

S2.3 THEFT

• Shoplifting is mostly an opportunist crime so vigilance by you & your staff can be the biggest deterrent	***ensure that staff are fully aware of the potential for shoplifting***
• Watch out for suspicious behaviour and use eye contact to let customers know you have seen them	***involve other staff members if you are suspicious of some-body or a group of people***
• Ensure that your CCTV system is functioning correctly and is sited for optimum effectiveness	***check the system regularly and complete any logs if required by conditions on the licence***
• We recommend that spirits are located behind the counter	***for control and security***
• Ensure that alcohol and other high value items are in secure storage and that the keys are also safely secured	***all back up stock to be locked away to help prevent opportunist thefts***
• Security arrangements to prevent shoplifting are essential because of the desirability of alcohol due to the legal restrictions governing its availability	***ensure employees are aware that theft is a possibility once a person is denied service by staff via either a direct attempt or by proxy (an adult trying to buy on behalf of an under 18)***

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S2.4 RIGHT OF ENTRY TO PREMISES

- Both the police and HM Revenue & Customs officers have the right of entry to any premises to carry out their enforcement duties

police and local authority licensing officers have the right to ask for sight of the premises licence on demand

- HM Revenue & Customs officers may enter in order to check that the required tax on goods that you sell has been paid - excise duty for alcohol and tobacco products and VAT

normally HM Customs and Revenue will be accompanied by a police officer at all times of the day when visiting premises especially outside of normal opening hours

S2.5 STAFFING

- Under normal circumstances staffing levels are not dealt with by the Licensing Act

a condition may be attached to the licence specifying staffing levels in order to satisfy the licensing objectives - these must be adhered to as they are conditions of the licence - contact RB Retail & Licensing Services Limited

S2.6 PROSECUTION

- If you do sell alcohol to a person under the age of 18 years you are liable to:

- ***a fixed penalty notice or***
- ***a substantial fine and a possible premises licence revision as well as possible revocation of your personal licence***

- Be aware that enforcing authorities can and will conduct test purchases using underage children

always use Challenge 21/25

- In cases of underage sales the only evidence needed for a prosecution is that:

- ***an actual sale was made***
- ***the buyer was under 18***

- The person selling the alcohol has only limited potential defences:

'... where he believed that the person was over 18; and that either he had taken all reasonable steps i.e asked for acceptable identification to establish the person's age or that nobody could reasonably have suspected from his appearance that the person was under 18'

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The person charged by reason of the act or default of another has a defence if he can prove he	***'... exercised all due diligence to avoid the commission of an offence...'***
All legal requirements and restrictions referred to must be fully complied with by you and your staff to avoid prosecution and the associated penalties	***properly train your staff, carry out regular refresher training and maintain comprehensive records of all of your training to sell alcohol***
Late Night Refreshment	
• You must have a premises licence specifying LNR as a licensable activity if you sell hot food or hot drink after 23.00 hours and before 05.00 hours	***it is a criminal offence to provide hot food or hot beverages between 23.00 & 05.00 hours without a licence - see section S6.1***
Regulated Entertainment	
• You must have a premises licence specifying the entertainment you are providing	***it is a criminal offence to provide regulated entertainment without the appropriate provision on your licence - see section S6.2***

S2.7 NEW MANDATORY CONDITIONS

In April 2010 a new mandatory code was issued by the Home Office for all alcohol retailers in England and Wales.

Schedule 4 of the Police and Crime Act 2009 amends the Licensing Act 2003 giving the Secretary of State the power to impose up to nine mandatory conditions in relation to the supply of alcohol.

The new mandatory licencing conditions apply to all existing and future premises licences which authorise the supply of alcohol and came into force in April 2010 two further conditions became law in September 2010.

These conditions override any conditions already included in a Premises Licence or Club Premises Certificate, so far as they are identical to the existing conditions or inconsistent with, and more onerous than, the existing conditions. The new conditions will apply to every Licence and Certificate authorising the sale and supply of alcohol from the date this provision came into force.

As the new conditions are mandatory licencing conditions, any breaches are dealt with in the same way as breaches of existing conditions. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both.

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As from 6th April 2010 the new conditions were:

- Ban irresponsible promotions
- Ban the dispensing of alcohol directly into the mouth.
- Ensure that customers have access to FREE tap water.

These conditions do not apply to Temporary Event Notice (TENS) or premises permitted to sell alcohol for consumption off the premises.

As from 1st October 2010

- Require an Age Verification Policy to be in place.
- Ensure that customers have the opportunity to choose small measures of beer, ciders, spirits and wine.
  [does not apply to TENS]

All the above conditions will apply to the on-trade whilst for shops and supermarkets (the off-trade) only the age verification conditions will apply to them.

S2.8 GROWING POLICE CONCERN REGARDING PRE-LOADING

Pre-Loading is a term used to describe drinking at home before visiting town for a night out.

A recent Liverpool John Moore's University study on pre-loading surveyed 380 young people aged 18 to 35 on a night out in a large city centre in the north-west of England. Over a quarter (26.5%) of women and one in five (15.4%) men questioned had pre-loaded before going out. Those who drank before going out were over four times more likely to drink more than 20 units on a usual night out. To put that amount into context, the government advises that women should not regularly exceed 2-3 units which is equivalent to a 175ml glass of 13% wine http://www.drinkaware.co.uk /facts/alcohol-facts-and-information/wine) and that men should not regularly exceed 3-4 units (equivalent to a pint and a half of 4% ABV [alcohol by volume] beer).

• Beware if your premises are located near nightclubs or nite spots and groups of customers arrive to purchase alcohol.

Particularly during the evening, be alert for the tell tale signs of intoxication see S3.10 on Page 3.26

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S2.9 Legal / best practice requirements regarding display material and notices

• The Licensing Act 2003 requires that you prominently display the original copy of your Part B Summary of your Premises Licence on the premises at all times the premises are open for business	***so that it can be readily inspected by members of the public at any time - see section 1 for full details***
• The Act requires that the original licence itself - Part A - is available for inspection by licensing officers of the authority or a police constable at any time on demand	***do your staff have access to the original license in your absence for compliance purposes?***
• The notices endorsed by the Home Office and provided by the Retail Alcohol Sales Group - RASG - should also be displayed throughout the premises	***examples are enclosed (at Section S2.10) and we strongly recommend their use, they may also be included as a legally enforceable condition on your premises license.***
• Many licensing authorities require that other notices are displayed on the premises	***check with your licensing authority to ensure compliance***
• These may include	• ***their own age verification scheme notices*** • ***Pass accredited Proof of Age Scheme*** • ***hours for licensable activity*** • ***staff notices & reminders***
• You must display an A3 notice indicating it is illegal to sell tobacco products to anyone under 18	***must be displayed at the point of sale to ensure compliance***
• Other legislation may apply to your premises which requires notices to be displayed	***ensure compliance with all statutory requirements***

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S2.10 Statutory / best practice notices

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SECTION 3: Training

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S3.0 THE TRAINING REGIME

All on-site staff must read the training material provided and then satisfactorily pass the subsequent written test before being allowed to sell alcohol.

It is important that Section 3 is fully understood, should a staff member not satisfy the Designated Premises Supervisor (DPS) that they understand Section 3 then the DPS should not authorise that staff member.

THEY AND YOU ARE AT RISK OF PROSECUTION FOR MAKING UNAUTHORISED SALES.

Refresher training must be undertaken at least on an annual basis before staff are re-authorised to sell alcohol and a number of refresher quizzes have been included to help in testing your staff's knowledge.

DUE DILIGENCE PROCEDURE

- Read Section 3.
- Staff to satisfactory undertake questionnaire - all questions to be answered correctly.
- Training Statement, to be signed by staff member and countersigned by Designated Premises Supervisor (DPS).
- Staff Authorisation sheet, to be signed by staff member and countersigned by Designated Premises Supervisor (DPS).

If felt appropriate, you may also wish to put your staff member forward to sit the APLH Award for Personal Licence Holders exam if there is a likelihood of them becoming a DPS in the future.

For further details please contact RB Retail & Licensing Services Limited.

All staff training must be recorded as well as individual staff authorisations to sell alcohol. You should complete both the enclosed alcohol training statement sheet and the authorisation record sheet (at S4.5 & S4.6). All staff should be issued with their own confirmation of having received their initial training, whether under this regime or any alternative proprietary system, keeping the originals for your own records.

All your current staff should be listed on the authority record and it should contain their signature as proof of their understanding of the training they have received and the responsibilities that they hold in the sale of alcohol. Subsequently as they are re-authorized to sell alcohol on a regular basis this should form part of the refresher training and they are indicating by signing the authority sheet again that they are still fully conversant with the rules relating to the sale of alcohol.

New staff should then be added as they join, subsequently signing again on a regular basis thereafter, after each refresher.

The alcohol training and authority sheets are designed for quick reference by any of the authorities which may visit your store, and for you to identify and maintain all training requirements. As such they should be filed in the appropriate section in this manual (at section 7).

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S3.1 UNDERSTANDING THE LICENSING OBJECTIVES

All licence applications must comply with four objectives, namely:

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

The example below refers to both new and full variation premises license applications.

CRIME AND DISORDER

A local authority, may take into account and recognise that certain criminal activity or associated problems may be taking place or have taken place either within specialist premises or in the vicinity, despite the best efforts of the staff at the premises. In such circumstances, the council is empowered to take any necessary steps to remedy the problems. Its role is to promote the licensing objectives in the interests of the wider community rather than determine guilt or innocence of individuals. Such issues are for the courts of law.

Problems could include - anti social behaviour in the vicinity or past problems with the premises and or people involved/working in the business.

PUBLIC SAFETY

The council, as the licensing authority, should not take into account any issues that are dealt with in other legislation, such as public health, cleanliness or hygiene.

Problems covered include - overcrowding (leading to an increased risk of violence or to the safety of people in the premises); fire issues; anyone being hurt or having an accident in any premises.

The public safety objective is concerned with the physical safety of staff, visitors and customers using the relevant premises and not with public health.

As part of the application process, applicants must consider the impact of their premises in relation to the licensing objectives. They should consider implementing the measures listed below.

- The premises should comply with all statutory fire safety controls.
- The premises must comply with all food safety regulations.
- Provide disabled facilities and take reasonable steps to change their practices, policies or proceedures or provide a reasonable alternative method of making their services available to disabled people.

Health and safety issues such as:

- falls from height
- slips and trips
- manual handling
- slips on wet or food contaminated floors
- being struck by something (such as sharp knives or falling objects)
- machinery.

THE PREVENTION OF PUBLIC NUISANCE

The issues mainly relate to noise nuisance, light pollution, noxious smells and litter arising from licensable activities at the premises.

THE PROTECTION OF CHILDREN FROM HARM

This objective relates to the protection of children from moral, psychological and physical harm. This includes protecting them from early exposure whilst visiting this premises to:

- strong language
- sexual expletives
- adult entertainment
- drinking alcohol
- smoking
- drug taking
- gambling
- violence

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S3.2 BUSINESS LICENSABLE HOURS

You can carry out the sale of alcohol during the following period:

Write in book your hours / licensable activities

Note: the penalty for selling outside permitted hours is substantial - max £20,000 fine and/or six months imprisonment plus a possible licence review.

S3.3 CONSUMPTION OFF THE PREMISES

A condition of your premises licence is that sales are made for consumption off the premises only. This means that customers **MUST NOT** consume alcohol on the premises. Therefore you must ensure that customers **DO NOT DRINK ANY ALCOHOL:**

- **In the premises**
- **On any forecourt the business operates**
- **In their car whilst parked on any premises forecourt**
- **E.G. The licenced business is a petrol forecourt shop**

S3.4 CONSUMPTION ON THE PREMISES

Businesses that sell alcohol for consumption on the premises are known sometimes as "On Licenses" as opposed to "Off Licenses," which include convenience stores and supermarkets whose customers must not consume alcohol purchased within the confines of the shop.

On Licenses are more commonly known as Public Houses (Pubs), Night Clubs, Bars and Restaurants.

Special care must be taken as the risk of customers becoming intoxicated is a real possibility, so staff should be trained to be vigilant and to be prepared to refuse service as and when the point of apparant intoxication is reached.

Useful tools such as CCTV, refusal logs, incident books, notices regarding Challenge 25 are all good due diligence procedure measures but consideration also needs to be given to the employment of SIA (Security Industry Association) registered door supervisors/trained staff & drug searching and drug disposal polices/training. A risk assessment prior to commencement of business should be undertaken to identify the level of security awareness required.

It is also wise to consider the wider community who could be affected by rowdy customers leaving On Licence premises late at night - so the provision of taxi services (who do not slam doors or honk horns) are also important in the quick and effective dispersal of patrons at night.

Late night music and dancing is another factor these types of premises should consider specifically when dealing with the effective damping down of noise emanating from these venues that may affect the local residents, therefore the keeping of doors/windows closed during licensable activities is a responsible and sensible measure to take.

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DEFINITIONS OF VARIOUS TYPES OF ON LICENSES PREMISES

ON LICENCE PREMISES INCLUDING FAST FOOD PREMISES

Many on licence premises have licensed external areas where particular care must be taken to ensure residential neighbours are not be affected by excessive noise emaniating from patrons' use of there facilities - normally premises are conditioned with limited hours and other associated provisions for these licensed garden areas.

I FAST FOOD PREMISES THAT MAY OR MAY NOT SELL ALCOHOL FOR CONSUMPTION ON OR OFF THE PREMISES

Fast food premises which operate after 23.00 hours and before 00.50 hours the following morning need a late night refreshment licence (LNR) to provide late night refreshment either by way of take-away food or by eating the purchased food on the premises.

These types of premises are in general more likely than restaurants to lead to people remaining on the streets. Police generally comment that if no fast food premises were available people would be more inclined to disperse, and in retaining people until a later hour fast food premises could potentially undermine a timely dispersal of late night revellers. It is possible that these premises could be attractive to persons who have been drinking elsewhere. Licensing authorities consider that seeking to minimize the number of people on the street late at night, through rapid dispersal, especially those who have been drinking, is fundamental to promoting the licensing objectives of the prevention of crime and disorder, public nuisance, and public safety. Some councils come to this view despite the benefits which may be offered by well run fast food premises in terms of security, staff, CCTV, toilets, and the provision of a safe environment in which to wait until transport is available.

This type of business if not properly controlled can cause food waste and litter on pavements as well as noise nuisance.

II. RESTAURANTS

A restaurant is normally defined as premises (i) in which customers are shown to their table, (ii) which provide food in the form of substantial table meals that are prepared on the premises and are served and consumed at the table using non disposable crockery, (iii) which in some cases do not provide any take away service of food or drink for immediate consumption, and (iv) where intoxicating liquor shall not be sold, supplied, or consumed on the premises otherwise that to persons who are bona fide taking substantial table meals and provided always that the consumption of intoxicating liquor by such persons is ancillary to taking such meals. The sale and consumption of alcohol prior to such meals may be in a bar area but must also be ancillary to the taking of a substantial meal.

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III. PUBLIC HOUSES AND BARS

A variety of pubs and bars are part of a local areas appeal and contribute towards its character and they provide for residents as well as people working in and visiting the locality. They also provide venues for live music which, aside from its cultural benefits and enjoyment by customers, often has a positive effect on licensing objectives. However, premises that primarily serve alcohol, with or without the provision of any ancillary playing of music, can give rise to public nuisance for residents and other local businesses, particularly where there is a concentration of such premises. This is principally due to noise from the premises and from patrons when they leave. Pubs and bars present opportunities for crime and they can also give rise to disorder.

A pub is a premises where traditionally a customer usually went for the consumption of alcoholic beverages only, although nowadays customers are just as likely to want a hot meal with or without alcohol - it is also common for such establishments to be kown for vertical drinking (consumption of alcohol standing up). Customers are served from the bar area and unless there is food served there is normally no waiting staff. Pubs are found in rural, surburban and town centre environments.

A bar however tends to be located in built up areas such as town centres and can be quite upmarket in terms of its targeted clientele and therefore prices reflect the branding. Typically the premises will offer a range of wines, speciality brews, mixed drinks, ice shots, fruit punches and cocktails. Bars tend to be themed and utilise the themed environment to attract younger customers.

SUGGESTED CRIME PREVENTION AND EFFECTIVE MANAGEMENT CHECKLIST FOR AN OFF LICENCE PREMISES

Links to health and safety policy and legislation:

- Is there a written Health and Safety Policy for the premises?
- Is there a written Risk Assessment?
- When was it last carried out?

Incident logs - Crime & Disorder incidents to be recorded

- Is there an incident log in operation?
- Is the incident log avaiable for inspection?
- Within your premises, where are your crime hotspots?

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Staff training - training to resolve identified risks

- Are all staff trained to recognise aggressive or suspicious behaviour?
- Are all staff requested to approach customers about unattended property?
- On busy nights, are staff employed to warn customers about leaving property unattended?
- Do door Supervisors (if any) attend staff training days?
- Is there a record of staff training?
- Do staff sign a training attendance record?
- Who is responsible for company policy on staff training?
- Do the tills have an age prompt to remind staff to ask for I.D. for persons who appear to be under either 21/25 years of age, dependent on the age verification scheme adopted.

Staffing levels

- What are your minimum and maximum staffing levels?
- How are they decided?

Design of premises - Re Crime Prevention

- How many points of entry are there?
- Are the entry points monitored?
- Is there a Police response alarm?
- Do staff carry panic buttons?
- Is there a panc button in cash office?
- How is capacity monitored?
- Are the tills positioned, so staff face customers?
- Is cash stored on the premises?
- Is there a cloakroom?
- Does the cloakroom offer free hand luggage storage?
- Is the cloakroom facility advertised?
- Can the toilets be monitored easily?
- Are cupboards & drawers within the toilet kept locked?
- Are the cisterns boxed in and secure?
- Are there any flat surfaces?
- Do toilet cubicle doors have a gap at top and bottom?

Managing the effects on the local environment

- Ensure drinking glasses remain in the licensed area of the premises
- Are noise levels within legal limits? (To be set by EHO)
- Ensure that pedestrians & vehicles are not affected
- No rubbish on street
- Correct use of CCTV
- Are staffing levels adequate to monitor outside drinking?
- What links do you have with local residents?
- What steps are taken t41inimise disruption when people are leaving?

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Positive Customer care - appropriate complaint procedures

- Is there a Positive Customer Care Policy?

CCTV

- Has the venue got CCTV?
- Do high-resolution cameras cover all entry/exit doors?
- Does CCTV cover the cash office door?
- Is there a written operational requirement for the CCTV?
- Where is the CCTV video recorder stored and is it in a secure place?
- Which members of staff have access to it?
- Are the video recordings kept secured in a secure place?
- Is there a record of CCTV maintenance?
- Is there a record of the tape changes?
- How many discs do they use?
- How often are they renewed?
- Does the CCTV cover external areas?
- Has the CCTV system a dedicated operator?
- Is the system operated in accordance with Data Protection Act? (Registered with Data Protection Registrar)

Access Control

- Who is responsible for supervising security staff?
- Is there a written access policy?
- Is the queue supervised outside the venue?
- Is the queue supervised at the cloakroom?
- Is a record kept of door staff working on each day?
- Are personal details of security staff kept?

Crime Prevention

- Is crime prevention literature displayed?
- Is there a company policy regarding the display of crime prevention material?
- Who is in charge of the policy?
- What crime prevention initatives are in place?

Outside eating & drinking

- Does the venue allow outside drinking?
- Has the venue got a street `tables and chairs' licence?
- How are customers supervised outside?
- Is crime prevention literature displayed outside?
- Have any crime prevention measures been implemented outside?
- How are risks assessed regarding passing pedestrians and traffic?
- Are staff trained to supervise those outside?

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- How are numbers of persons outside controlled? (Capacity)
- Are tables and chairs taken in when not in use to prevent them offering opportunities for being used in crimes and disorder?

Drugs and Weapons

- Does the premises have a search policy?
- Are notices prominently displayed explaining the policy?
- Do security staff patrol inside the premises?
- Are staff trained in identifying problems within the venue?
- Are efforts made for close supervision of toilets and poorly lit areas?
- Are police informed of seizures?
- Are seizures correctly documented?
- Has the premises been supplied with self-sealed property bags and plastic weapon containers?
- Are door staff trained in how to deal with weapons/firearms?
- Do management/staff keep written notebooks for `original notes'?
- Has the venue provided a searce arch and/or provided search wands?
- Are door staff registered?
- Does the venue provide local police with a risk assessment one month in advance regarding external events?
- Does the premises enter into contractual agreements with outside promoters?
- Are police contracted before such agreements are signed?

Admission of children

- Ensure door supervisors are trained and empowered to deal with underage drinking.
- Put in place robust systems to monitor and control the access of young people
- Have a policy statement to deal with underage access which should include reference to the use of approved `Proof of Age' schemes which include photo identity cards as in the PASS scheme
- Display of Policy on checking of age

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S3.5 STAFF AUTHORISATION

Under the terms of the grant of the premises licence:

It is an offence for a person to serve alcohol to anybody unless you have been authorised to do so by a personal licence holder
It is an offence to sell alcohol to anybody from premises without a premises licence and/or without a named Designated Premises Supervisor who is in possession of a personal licence.

S3.6 UNDER-AGE SALES

It is an offence to sell alcohol to anyone under the age of 18, or to anyone purchasing alcohol on behalf of someone under the age of 18.

It is an offence for any person under the age of 18 to buy or attempt to buy alcohol.

It is an offence for anybody under 18 to sell alcohol unless

authorised to do so by a responsible person. Responsible person are defined as:

- The holder of the premises licence
- The Designated Premises Supervisor (DPS) if any, for the Premises Licence
- An individual aged over 18 authorised (ideally in writing) to sell alcohol for consumption off the premises by either the Premises Licence Holder or the Designated Premises Supervisor.

It is an offence to allow alcohol to be served to someone under 18 if the staff member could have prevented it. If a Challenge 21 or Challenge 25 scheme is adopted as a condition of the licence then each customer wishing to purchase alcohol who is unknown to the cashier serving as a person who is over 18 years of age must be asked for satisfactory identification to prove their age. If they cannot or are not asked then the cashier may be committing an offence should the condition wording be specific in this regard.

If a customer looks under 21 (or under 25) they **MUST** be challenged to prove that they are over 18 by producing photographic proof of age which must include a photograph and state the full date of birth of the customer. The only forms of proof of age that we will accept are:

- A passport
- A photographic new style driving licence
- A PASS accredited Proof of Age ID card such as:

  the Citizen Card

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DO NOT ACCEPT ANY OTHER FORMS OF ID UNDER ANY CIRCUMSTANCES

Note: the penalty for the member of staff selling alcohol to an under aged person ranges from a fixed penalty notice to a criminal conviction and a substantial fine.
You must ensure that you are completely satisfied as to the customer's age BEFORE you make the sale.
Do not ask staff members or `take someone's word' that, they are over 18 and always use CHALLENGE 21 / CHALLENGE 25.

There are only limited defences if an under-age sale is made and the impact on the DPS or personal licence holder is dependant on who made and who authorised the sale; remember, the only evidence required to prove an under-age sale was made is the actual age of the child and proof that the sale was made.

If a member of staff makes an under-age sale they may be offered a fixed penalty notice of £90 by which they admit their guilt. That is the end of the matter as far as the authorities are concerned with that individual; although disciplinary action could well follow from management as well as the premises licence being reviewed by the licensing authorities and/or the premise licence holder prosecuted if there are any underage sales.

Should the staff member deny this offence then contact RB Retail & Licensing Services Limited for further assistance.

S3.7 TRAINING GUIDELINES REGARDING THE SALE OF AGE RESTRICTED PRODUCTS

If you work somewhere that sells age restricted products such as cigarettes and alcohol, please read these notes.

Responsible authorities such as Trading Standards understand it can be very difficult for you to judge the age of a young person, but if you sell age restricted products to someone underage you may commit a criminal offence.

The Licensing Act requires anyone selling alcohol to take steps to check a customer's age.

The following guidance is about the importance of making sure you always get proof of age when supplying or selling goods to young people who may not be old enough to legally buy the goods they want.

You must take all reasonable steps to comply with this law. This is called due diligence.

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DUE DILIGENCE PROCEDURE

- Read Section 3.
- Staff to satisfactory undertake questionnaire - all questions to be answered correctly.
- Training Statement, to be signed by staff member and countersigned by Designated Premises Supervisor (DPS).
- Staff Authorisation sheet, to be signed by staff member and countersigned by Designated Premises Supervisor (DPS).

Age restricted products and proof of age are inseparable!

SECTIONS

i **Introduction**
ii **Test purchasing**
iii **Age restricted products**
iv **How to check proof of age**
v **Follow the guidelines**
vi **What the law says**
vii **Due diligence procedure**

i. *Introduction*

To protect children from harm and comply with the law, the vast majority of retailers take under age sales very seriously. Unfortunately, the few who don't often receive bad publicity, which affects the whole trade. There can be serious consequences for businesses, licensees AND individual members of staff. Penalties for breaking the law include substantial fines, loss of licences, even imprisonment. Individual members of staff can be taken to court and prosecuted. They could also lose their job.

Trading Standards & Police are amongst the responsible authorities who are consulted on licence applications under the Licensing Act 2003. If a licensee and the staff are not following the guidelines outlined in this booklet then these matters may be raised during the licensing process. Any evidence of under age sales can also trigger a review which could lead to loss of the Licence.

ii. *Test purchasing*

Trading standards and the Police (sometimes together) check that the law is followed and can carry out test purchases of all age restricted products as part of their enforcement duties.

The test purchases are made with volunteer young people who are to look their age.

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These test purchases follow procedures supported by the government. They are allowed as evidence of under age sales. Following these guidelines and asking for proof of age and receiving appropriate proof (asking by itself is not a defence), should make sure that you don't make an illegal sale.

Samples of `proof of age' are shown on the photocards poster in the support material (at S2.10).

iii. Age restricted products

These are some of the more common age restricted products and the age your customer must be to buy or get access to them:

AGE RESTRICTED PRODUCT	AGE RESTRICTION
Alcohol products	**18**
Cigarettes and tobacco products including from vending machines	**18**
Since 1st October 2015 it is illegal for retailers to sell electronic cigarettes or tobacco vapour products to underage persons	**18**
Fireworks	**18**
Knives, blades and axes (not including folding knives with blades under 3 inches long)	**18**
Glue, solvents and lighter fuels, Butane & refills	**18**
Liqueur Chocolates	**16**
Lottery tickets and scratch cards	**16**
Petrol/Diesel	**16**
Adult Magazines	**18**
Spray paints	**16**
Video/DVD/Games	**As shown on certificate e.g. 12, 15, 18**
Analgesics & medicines	**Up to the discretion of the retailer**

By following the rules regarding age related products it will help you show you are taking 'all reasonable precautions and exercising all due diligence'. This is legal-speak to say that you must have behaved in a way that can provide a defence in law if an illegal sale takes place. You must be able to show that you are doing all that you possibly can to make checks. This is what the courts would look at should an illegal sale take place.

iv. How to check proof of age ?

If a customer who looks under 21 (or under 25 dependent on which scheme you use) asks to buy an age restricted product, ask for one of the prescribed forms of proof of age and check it. If appropriate proof of age cannot be produced you must refuse the sale and make an entry in the refusals register.

You must only accept proof of age with date of birth and a photo. Remember to check that the photo matches the customer and that you can see their face clearly, including asking them to remove hoods and caps.

Proof of age cards need to carry a PASS hologram to show that they are part of an approved scheme and have been correctly issued. When you see a genuine PASS logo you can be more confident that it is valid proof of age, however there are good forgeries in circulation. Please see over page for checks.

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- ***Always follow these checks***

1. Check that the PASS hologram is genuine and flush with the body of the card.
2. Check that the photo matches the person using it and that it is printed on the card, not just stuck on top of it. Ask them to remove helmets, hoods and sun glasses if you are not sure.
3. Check that the date of birth is properly printed on the card and that you have calculated the date of birth correctly.
4. Check that the card has not been tampered with in any way.
5. Check the person. If you are unsure about any of the above you must, and have the right to, refuse the sale.

- ***Acceptable proof of age includes***

  - 10 year passport
  - Photo driving licence
  - Citizencard
  - "PASS " accredited proof of age card scheme

There are fake proof of age cards about so if you are unhappy with a card for any reason, refuse the sale. Items such as birth certificates and national insurance cards are not good enough. They carry no photo so can be passed between friends.

Legally you have the right to refuse to sell to anyone, whether over or under age, if you are unhappy with the sale in any way.

REMEMBER - IF IN DOUBT REFUSE THE SALE

v. <u>FOLLOW THESE GUIDELINES</u>

- Don't try to judge ages. Only accept approved proof of age cards with photos and date of birth.
- Follow either the 'Challenge 21 or Challenge 25 Rule' and ask for proof of age from anyone who does not look over 21 or over 25. Remember, if you guess wrong you could end up in court!
- Make sure notices (e.g. 'It is an offence to sell cigarettes to persons under 18') are on display.
- Know when dates of birth will be correct. Are they 18 yet? Just having today's date with the relevant year of birth will do!
- Fill in a 'refusals book' (at S4.11) each time a refusal takes place. The DPS should check entries regularly to make sure all staff are using the register.
- Be careful should young people wearing school uniforms request to purchase age related products.

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- Do not sell to an adult you suspect of buying for under age young people. It is an offence for an adult to buy alcohol on behalf of someone under 18. This is called proxy selling.
- Support colleagues when they refuse sales. It can be difficult to say 'no.'

PLEASE SEE SECTION S3.9, Page 3.17 FOR INFORMATION ON HOW TO RECOGNISE AND DEAL WITH FALSE I.D.

vi. What the law says

Alcohol

The age at which product alcohol can be legally served and bought is 18.

Do not sell to over 18s who you think may be purchasing for under 18s.

Both the owner of the business and the seller may commit a criminal offence if alcohol is sold to an under 18.

If you are found guilty of selling alcohol to a person under 18 the premises licence to sell alcohol is at risk.

Under 18s cannot legally purchase alcohol.

Always ask for proof of age before you serve and check the details.

You can face prosecution and a criminal record or alternatively the police can issue on the spot fine of £90 if under age sales are made.

Cigarettes and tobacco products

The age at which cigarettes can be legally bought is 18.

Under 18s who say they are buying for an adult must be refused.

It is illegal to split packets of cigarettes or to sell singly.

Do not sell to adults who you think may be purchasing on behalf of under 18s (proxy selling).

A notice must be displayed about sales to under 18s.

Always ask for proof of age before you sell.

Fireworks

The age which most fireworks can be legally bought is 18.

Do not sell to adults who think may be purchasing for under 18s (proxy selling).

If you hold a year round licence for the sale of fireworks, this could be at risk if sales are made to under 18s from your premises.

Notices must be displayed about sales to under 18s.

Always ask for proof of age before you sell.

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Knives, blades etc.
The age at which these can be legally bought is 18.

It applies to knives, blades, unsealed razor blades, axes and other articles that are sharp and can cause injury.*

Do not sell to adults who you think may be purchasing on behalf of under 18s (proxy selling).

Always ask for proof of age before you sell.

**Not including folding knives with blades under 3 inches long*

National lottery tickets and scratch cards
The age at which these can be legally bought is 16.

Your lottery terminal may be removed if you sell to under 16s.

Do not sell to adults you think may be buying on behalf of under 16s (proxy selling).

Under 16s cannot legally claim any prizes.

Always ask for proof of age before you sell.

Petrol

The age at which petrol can be legally bought is 16.

Petroleum licence conditions may state that people under 16 must not access petrol.

Do not sell to adults you think may be buying on behalf of under 16s (proxy selling).

If in doubt ask for proof of age before you authorise the pump.

Glue, Solvents and lighter fuels

The age which these can be legally bought is 18.

It is an offence to sell substances to people who you think may be likely to inhale them for the purpose of intoxication. Be wary of customers who make multiple purchases.

Do not sell to adults who may be buying on behalf of under 18s (proxy selling) if you suspect misuse.

Always ask for proof of age before you sell.

SOLVENT ABUSE CAN KILL INSTANTLY

Spray paints

The age at which spray paints can be legally bought is 16.

Do not sell to adults who you think may be purchasing on behalf of under 16s (proxy selling) if you suspect misuse.

Always ask for proof of age before you sell.

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Videos/DVDs/Games

The age at which these can be legally supplied depends on their classification always check this.

It is illegal to supply an `R18' video/DVD except in a licensed sex shop.

Refuse the sale if you suspect an adult is attempting to obtain a product on behalf of a young person (proxy selling).

Challenge customers and ask for proof of age.

S3.8 CHECKING PROOF OF AGE

When you ask somebody to produce proof of age in order to complete a purchase you must ensure that only an approved form of identification is accepted and that you check it correctly: Only accept -

- a valid passport
- a european style photo driving licence
- a PASS accredited cards such as a Citizen card

Always ask for the identification to be handed to you for authentication purposes

Check that

i. **Passport**
- not altered in any way
- the passport date - it is valid
- the photograph - it belongs to the customer
- date of birth - the customer is old enough to complete the purchase

ii. **European style driving licence**
- not altered in any way
- the licence date - it is valid
- the photograph - it belongs to the customer
- date of birth - the customer is old enough to complete the purchase

iii. **PASS cards**
- not altered in any way
- the card is completely flat with no raised edges around the photo or PASS logo - ***reject the card if it is not flat***
- the PASS logo hologram 3D effect is working
- the card date - it is valid
- the photograph - it belongs to the customer
- date of birth - the customer is old enough to complete the purchase

iv. **The customer**
- matches the photograph on the card
- is not acting suspiciously
- has not altered the card offered in any way

If you are in any doubt about the validity of the identification offered or the age of the customer even with the identification

you MUST refuse the sale and record the details in the refusals book ***(see example at Page S3.46)***

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S3.9 HOW TO RECOGNISE AND DEAL WITH FALSE ID

Young people are understandably keen to experiment and test their limits of consumption. This coupled with the disinhibitory effects of alcohol, can lead to risky and anti-social behaviour. For all of these reasons, the protection of children from harm is the licensing objective that many licensing authorities view most seriously.

Since 2010 a mandatory licence condition has required all premises to have in place an age verification policy. The policy must require that customers who appear to the staff member serving to be under 25 years of age, are required to be asked to prove that they are 18 years of age or over (or appear under 21 years of age if adopting Challenge 21 age policy) by producing appropriate ID when requested to prove their age. This, coupled with increased sanctions for premises persistently selling to under-18s, has led to many premises taking age verification much more seriously.

It has also led to a growing market for false ID. False ID is a problem in a number of areas around the country and staff who serve alcohol are sometimes uncertain about how to deal with this issue.

The fake ID cards which can be ordered on the internet often do not replicate existing documents. Examples include the UK national identification card and a provisional motorcycle licence. It is an offence under section 1 of the Forgery and Counterfeiting Act 1981 to make a false instrument or ID with the intention to use it to induce a person to accept it as genuine, and by reason of accepting this ID as genuine, the customer then commits an offence as does the seller albeit unknowingly, by their failure to properly check its validity.

TYPES OF FALSE ID

There are five types of false document:

- Genuine document which is being used be someone else,
- Genuine document which has been altered,
- Genuine document which has been fraudulently obtained,
- Fake document which is a copy of a genuine document, and
- Fake documents which is a form of ID that does not exist.

IDENTITY DOCUMENTS ACT 2010

This legislation contains a number of offences relating to the possession and use of false identity documents. For the purposes of legislation, the definition of `identity document' includes (but is not limited to) a passport (whether a UK passport or a passport issued by the authorities of another country) and a driving licence. A full list of what items fall within the definition of `identity documents' is found in the extracts of the Identity Documents Act 2010 in Annex A.

Two offences under the Identity Documents Act 2010 are relevant.

A person commits an offence if he or she has in their possession an identity document which is false, and which they know or believe to be false, with the intention of using

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it to establish personal information about him or her to induce another to ascertain personal information about him or her, e.g. providing a date of birth that is false. A person guilty of this offence is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine (or both).

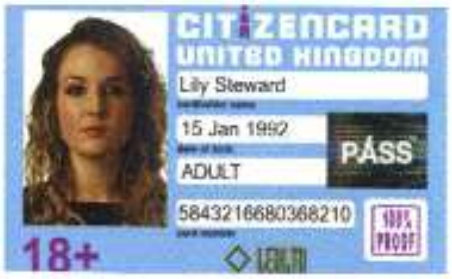
A person commits an offence to have, without reasonable excuse, in his or her possession a false identity document which relates to another person. A person guilty of an offence under this section on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both).

i. **Proof of Age Standards Scheme (PASS) Approved Cards**

The Proof of Age Standards Scheme (PASS) is the UK's national guarantee for proof of age card and has the backing of the Home Office, the Association of Chief Police Officers (ACPO), the Security Industry Authority (SIA) and the Trading Standards Institute (TSI). The scheme delivers a common standard through its easily recognised logo, which is backed by a robust audit and accreditation process to help protect retailers of age restricted goods, and their employees, against being taken in by the many forms of false ID in use.

Accepting a card with the PASS hologram which carries the bearer's image and acceptable date of birth is a means of demonstrating due diligence. Examples of all PASS accredited schemes can be found on the PASS website: www.pass-scheme.org.uk

Read how to check I.D. at Section S3.6 (iv) Page 3.5









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ii. **Passports introduced in 2006**







New UK passport designs are introduced through a phased roll-out. Older style passports were issued after the introduction of this design. These will continue to be valid until their stated expiry date.

Key Information

Validity
• Adults, normally 10 years up to a maximum of 10 years 9 months
• Children, normally 5 years up to a maximum of 5 years 9 months

Size
• Approximately 125 x 88 mm

Number of pages
• Standard issue book is 32 pages
• Business book is 48 pages

Location of the data page
Page 31

Laminate
• Page 31 and 32, sewn in, clear laminate with UV visible printing and holograms on page 31

Photograph
• Digitally printed

Numbering
• 9 digits, printed on page 1. These are entered on the biodata page in the same style as the personal details. The serial number is perforated through pages 1-30 (1-46 in business book)

Observations
• An electronic chip and antenna is visible on page 32 (48)

Extra Checks
• The holograms are on three patches attached to the underside of the laminate on page 31

• The stitching thread is red, white and blue and fluoresces yellow and red in UV light

• The front and rear endpapers are printed in green, burgundy and blue intaglio (raised printing)

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PASSPORTS INTRODUCED IN 2010






New UK passport designs are introduced through a phased roll-out. Older style passports were issued after the introduction of this design, and these passports will continue to be valid until their stated expiry date.

Key Information

Validity

• Adults, normally 10 years up to a maximum of 10 years 9 months
• Children, normally 5 years up to a maximum of 5 years 9 months

Size

• Approximately 125 x 88 mm

Number of pages

• Standard issue book is 32 pages
• Business book is 48 pages

Location of the biodata page

Page 2

Laminate

• Page 2 contains a thin film patch that is clear in colour but has UV visible printing and holograms contained within it. Page 3 is not laminated

Photograph

• Digitally printed on pages 2 and 3

Numbering

• 9 digits, printed on page 1. These are entered on the biodata page (page 2) in the same style as the personal details
• The serial number is perforated from page 1 through to the rear of the cover of the passport
• The thin film patch contains a unique serial number which consists of 3 alpha characters and 4 numeric followed by a check symbol. This number is located beneath the holder's image should not be confused with the 9 digit passport number

Observations

• Passport visa pages feature a cross-page printed design
• A secondary image of the passport holder is located on page `3' of the passport
• Additional information about the passport holder is written on page `3' of the passport
• A check symbol is included within the laser perforated passport number. This symbol is not replicated within the printed serial number of the book on pages 1 and 2 and differs to the check symbol that is present for each thin film patch
• Observation data is bounded above and below by lines consisting of a unique character
• The passport stitching method utilises a process that is different to any previous UK passport
• The gold foil on the front cover is more lustrous than that of the previous UK passport
• Where the passport holder does not require any additional data to be inserted into the passport, the passport observations page (page 3) will read "There are no official observations."

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Laminate
• Page 2 contains a thin film patch that is clear in colour but has UV visible printing and holograms contained within it. Page 3 is not laminated.

Note
• The biodata (personal details) page is at the front of the passport and located on page 2
• The passport chip is located in the cover of the passport
• The invisible printing of the laminate fluoresces strongly
• The laser perforated number consists of variable hole shapes (circle, square and triangle)

PASSPORTS FROM FOREIGN STATES

Space limitations do not allow images of the passports of foreign states to be reproduced in this guidance. Machine readable passports (MRP) were first introduced in the 1980s and most passports worldwide are now MRPs. To assist anyone presented with a foreign passport, set out below are features that can be detected by the naked eye or by using an ultraviolet light, that are required in all MRPs by International Civil Aviation Organisation standards:

• paper that does not reflect ultraviolet light or whose florescence is easily distinguishable from the blue used in commonly available fluorescent materials;
• watermarking on the biographical data and visa pages;
• an intricate, repetitive pattern as the background design on each page;
• a background design on the biographical data page that is different to the design(s) on other pages in the passport;
• ultra-violet fluorescent ink on the biographical data page;
• MRPs issued since 2010 should have a unique number on all pages except the inside covers; and
• many passports include optically variable features on the biographical data page. An optically variable feature (most commonly a hologram) changes appearance in colour or design as the page is tilted. However, the standards allow devices offering equivalent protection to be used instead.

iii DRIVING LICENCE



Your personal details (1, 2 and 3)
Fields 1, 2 and 3 of your photocard licence record your surname, first names, date and place of birth.

Date of licence issue, photo expiry, issuing authority (4)
The date shown in 4a is the date the photocard was issued. 4b shows either the date the photo expires (driving entitlement is valid until 70th Birthday) or the date entitlement expires (medically restricted and over 70 licences). The authority that issued the licence is shown in 4c i.e. DVLA.

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Driver number (5)

A	B	C	D	E
MORGA	657054	SM	91J	**

A - First five characters of surname. If the surname is less than five characters the remaining spaces will be made up using the figure 9 (e.g. MAN99).
B - The first and last numbers are the year of birth. The second and third numbers are the month of birth. If you are a women, `5' is added to the second number and the total used as the second digit e.g. if you were born in October the second and third numbers would be 60. The fourth and fifth digits show the day of your birth.
C - The first two initials of your forenames. If you have only one initial then the second will be a `9'.
D - Computer check digits.
E - Licence issue number.

Holder's Photograph (6)
The new photocard licence has a black and white photo. This is because the laser technology used to burn the image onto the card producing a black and white photo is more secure. A colour photo will still need to be provided with your application to be stored on your driver record.

Holder's signature (7)
this is digitally reproduced and burned into the photocard from the signature you produced on the application form.

Holder's address (8)
This shows the driver's permanent address in Great Britain.

Entitlement categories (9)
The letters in capitals show the categories of entitlement covered by the European Community Directive. National categories are shown in smaller letters.

Holographic feature (10)
This feature is similar to a hologram but is clearer because it has definite lines and brilliant colours. It contains a steering wheel that appears to turn as you tilt the card in different directions.

Changing images (11a and 11b)
a. This security feature is an image that changes both shape and colour depending on how you tilt the licence. On full (pink) licences it's a blue road sign changing to a black triangle, on a provisional (green) it's a red road sign changing to a black triangle.
b. This security feature is personalised according to the data on the card. It contains the last five characters of the driver number changing to the month and year of the photo expiry which appear and disappear depending on how you tilt the licence.

Unique identifier (12)
Cards are to pre numbered by the card manufacturer. This number is laser engraved onto the card prior to delivery to DVLA and is unique on every card.

Not used (13 and 14)

Pictogrames (15)
These illustrations are representations of types of vehicles in those categories shown.

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Category validity periods (16)
These are the dates when entitlement to drive each category begins and ends.

Information codes (17)
The code numbers printed in this area indicate what (if any) restrictions to which the entitlement is subject.

Steering wheel security feature (18)
This is a security feature in the shape of a steering wheel. The colour of the wheel changes from green to gold depending on how you tilt the licence.

Security features



1 & 2. Changing Images
1. This is an image that changes both shape and colour depending on how you tilt the licence. On full (pink) licences it is a blue road sign changing to a black triangle, on a provisional (green) it is a red road sign changing to a black triangle.
2. This security feature is personalised according to the data on the card. It contains the last five characters of the driver number changing to the month and year of the photo expiry which appear and disappear depending on how you tilt the licence.

3. Holographic Feature
This feature is similar to a hologram but is preferred as it can be seen much more clearly due to its definite lines and brilliant colours. It contains a steering wheel which appears to turn as you tilt the card in different directions.

4. Tactile Engraving
This process involves burning the data into the card for a longer period than normal, and results in the text raising up above the surface of the card. The driving licence has 'Field 1 (Surname)' and 'Field 9 (Categories)' printed in raised characters as part of the laser engraving process.

5. Complex Background Pattern
A design made up of an interlocking pattern of small irregular shapes, printed in two colours and requiring very close register printing in order to preserve the integrity of the image.

6. Tactile Feature
Raised tactile steering wheel placed in the centre of the card. It can be felt when a finger is run across the card and can be seen when viewed at an angle. It also contains the words "Driving Licence" in microlettering

7. Laser Engraved Photograph
Laser engraving technology is highly secure as the image is burnt into different layers of the card and it can not be changed without serious damage to the card. This results

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in a highly secure black and white photograph. Note: DVLA will still require a full colour photograph be provided by customers to keep on our records.

8. Security Background Design Overlapping With Photograph
This security feature has the rainbow print lines and the complex background pattern converging over the area where the photograph is engraved. This further protects the photo image by the integration of security elements.

9. Optically Variable Ink (OVI)
Optically Changing Colours is a printing feature that changes in colour depending on the angle of inspection. When the card is tilted, the element printed with Colour Change Printing will show deviations in colour tone clearly visible to the naked eye i.e. gold to green.

10. Unique Number
Cards are to be pre numbered by the card manufacturer. This number is to be laser engraved onto the card prior to delivery to DVLA and is unique on every card.

PROVISIONAL DRIVING LICENCE



The security features of the provisional licence are identical to the full driving licence.

QUESTIONS THAT CAN BE ASKED TO CHECK THE IDENTITY
Staff should ask customers questions once ID is given to verify ownership and on this basis compiled the following list of questions that may be used:

- Ask the person for their date of birth - this can lead to them mixing their own with the one on the ID or not being able to recite the date on the ID on the spot.
- Ask the person for their star sign - a young person may have memorised the date of birth on the ID which they are using but are unlikely to know the corresponding star sign.
- Ask for another form of ID, such as a bank or student card. If someone steals or borrows another person's ID, they are unlikely to take other forms and their purse/wallet will have their own ID in it.
- Ask for the postcode on the ID; a person using borrowed ID may know the first line of the address but may have difficulty remembering the postcode under pressure.
- Ask for their age - someone with borrowed ID may accidentally give their own age or 18 as this is the legal drinking age.

How false ID should be stored and recorded
It is advisable that premises have an incident book to record those occasions on which there has been the use or attempted use of false ID at or on entry to the premises. If false ID is handed in, this should be recorded in the book along with the names of staff involved, the name on the ID and the name of the manager in overall charge of the premises. A description of the person using the ID and the time of the incident may also be useful to the police.

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Once the false ID has been recorded, it should be stored, along with the police half of the bailment form (where in use), in the same way that a premises handles confiscated drugs. It should be locked away in a secure place until the police are ready to collect it or the manager takes it to the police station.

How and when to contact the police

The police should consider setting up a single point of contact in the licensing team whom licenced premises may contact to deal about false ID issues. Local arrangements should be made between the police and licensed premises to outline how and when the police should be informed of incidents involving false ID.

It is good practice that false ID should be held at premises for a period not greater than 72 hours after it was handed over. This means that ID handed over on Friday evening can be held until Monday morning before being given to the police.

What to do if a person complains after handing over their ID

If someone complains that their ID has been retained, the premises manager (if available) should take the person to one side and explain why this has happened. If this person is still unhappy call the police and ask for guidance.

Signs that can be placed at entrances

Signs placed at the entrances to premises can deter young people who intend to use false ID from entering the premises, and are a means of diffusing anger towards door staff. Such signs could set out the ID policy and inform individuals that anyone using false ID will be asked to hand it over and, if they fail to do so, the police may be called. An example of wording for these signs is below, or a common example is:



"These premises operate a Challenge 25 policy. You may be asked to show ID if you appear to be under 25. If the ID that you present is suspected to be false or belonging to someone else, you may be refused entry to these premises and you may be asked to hand over the ID so that it can be given to the police. If you fail to do so, the police may be called. Gaining entry to these premises using fake ID or ID that doesn't belong to you may be a criminal offence."

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S3.10 WHAT TO WATCH OUT FOR REGARDING THE IDENTIFICATION OF A PERSON POSSIBLY UNDER THE INFLUENCE OF ALCOHOL

50 SIGNS OF VISIBLE INTOXICATION:

Serving alcohol to a visibly intoxicated person (VIP) is against the law. If you can tell on sight that a person has been drinking or using other drugs, the person is visibly intoxicated. Staff are not expected to know a customer's blood alcohol content as determined by a blood, breath, or urine test, but they are required to recognize visible intoxication.

Here are some of the common signs of visible intoxication. These are not all of the possible signs. If a person shows just one or two of these signs that does not necessarily mean the person is intoxicated. But if a person shows a combination of several signs, or has a sudden change of behavior, that could be a strong indication that the person is intoxicated. Remember that intoxication can result from the use of drugs other than alcohol. **IF IN DOUBT, DO NOT SERVE.**

APPEARANCE

1. Blooshot, glassy, or watery eyes
2. Flushed face
3. Droopy eyelids
4. Blank stare or dazed look
5. Twitching or body tremors
6. Disheveled clothing

SPEECH

7. Thick, slurred speech
8. Loud, noisy speech
9. Speaking loudly, then quietly
10. Rambling train of thought
11. Unusually fast or slow talking
12. Slow respose to questions or comments
13. Repetitive statements
14. Bravado, boasting
15. Making irrational statements

ATTITUDE

16. Annoying other customers and employees
17. Argumentative
18. Aggressive or belligerent
19. Obnoxious or unpleasant
20. Inappropriate sexual advances
21. Overly friendly to other customers or employees
22. Boisterious

BEHAVIOR

23. Swaying, staggering, or stumbling
24. Unable to sit straight

BEHAVIOR (cont.)

25. Careless with money
26. Difficulty counting change
27. Restless
28. Depressed or sullen
29. Crying or moody
30. Extreme or sudden change in behavior
31. Overtly animated or entertaining
32. Crude, inappropriate speech or gestures
33. Drowsiness or falling asleep
34. Lack of focus and eye contact
35. Difficulty standing up
36. Unusual walk
37.* Can't find mouth with glass
38.* Falling down or falling off a chair
39.** Difficulty lighting cigarettes
40.** Lighting more than one cigarette
41. Clumsy
42. Difficulty remembering
43.* Spilling drinks
44. Disoriented
45. Agitated, anxious
46. Grinding teeth
47. Vomiting

OTHER

48. Odor of alcohol, drugs or chemicals
49. Excessive perspiration
50. Repeated trips to toilet or outside area.

** On Licence Premises* ***Observed in smoking areas only*

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i. Other ways of determining if someone is intoxicated

Interaction with the person and their friends will help to determine whether someone is intoxicated and their level of intoxication, i.e. a friend laughs and says that `Bill is well ****** (insert slang phrase for intoxication).

Talk with the person and ask them questions such as:

How much alcohol have they consumed?

When did they last eat and how much?

Whether they consider themselves intoxicated?

What type of alcohol has been consumed?
How much has the person been witnessed drinking? If it is difficult getting a reasonable response from the person, talk to the people the customer is with.

Be sensitive to a person's right of privacy.

THESE SIGNS ARE NOT EXHAUSTIVE AND NOT ALWAYS NECESSARILY CONCLUSIVE PROOF OF INTOXICATION

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S3.11 CONFLICT MANAGEMENT - some practical steps staff can take

Experienced Staff
An experienced and well trained member of staff will contribute to good standards of a premises and help create the right atmosphere, so customers are aware that bad behaviour will not be tolerated.

Cashiers should at all times enforce their legal responsibilities and consider the consequences of allowing alcohol into the hands of under age or intoxicated people.

In refusal of service or conflict situations, you will need a lot of patience. Try to learn from your more experienced colleagues and observe what they do and say in different situations. Practice also helps you to get it right. Reading this information is a good first step, but putting it into practice and learning from your successes and mistakes is what this section is really about!

Initial / Action Points

1. Write down 3 key phrases you can use when refusing service to someone who is underage.

2. Write down 3 key phrases you can use when refusing service to someone who is drunk.

3. Speak to friends and colleagues about their experience of situations that they gotten out of hand and how they dealt with them. Would you deal with them differently now that you have read this guide?

4. Set up an incident book for your workplace or make sure you know where the current one is kept.

Keep calm. Don't get into an argument.

Explain briefly why you cannot sell. Try saying, for example:

- 'I'm sorry, if I serve you I might be breaking the law.'
- 'We have a policy of `no proof of age, no sale.'
- 'Our company policy is not to sell these products to young people.'

Show customers notices, posters and stickers that indicate you will not serve alcohol to under 18s or sell other age restricted products.

Offer an application form for an approved proof of age scheme. E.G. CITIZEN CARD

Be positive in your refusal. Have a firm tone of voice, be confident and use direct eye contact. The law is on your side and you are doing the right thing.

Call your supervisor or manager for support if necessary/available.

Remember the object is to get the customer who is being refused goods / services out of the shop if all else fails call the Police to help remove the customer and if appropriate ban the customer from using the premises in future.

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Reacting to Trouble
Most conflict can be prevented or controlled in the early stages. However, if a situation has deteriorated to a heated stage before you arrive, it can be much more difficult. Remember your own and others' safety:
• Keep calm and try to slow things down
• Try to find out what the problem is, making sure you listen

A good way to keep in mind all the essential stages is to use the word REACT.

REACT
R Request - ask the conflicting parties to calm down or leave
E Explain - that their behaviour is unacceptable and list any rule or law that has been broken
A Appeal - say "please," turn it around and say things like, "You don't want me to get into trouble" or "if you keep this up, I won't be able to serve you" or I don't want to call the police but I will have to if you don't back down"
C Confirm - if the customer still refuses to abandon the confrontation, repeat any potential consequences and ask them if there is still anything you can do to get them to stop misbehaving
T Take Action - here you will have to ask them to leave again. If they refuse to do so, you will have to call the police. Physical force is the last resort and should never be used if you are on your own. Unless you are alone in the shop you may wish to lead the misbehaving customer towards the door, but be careful about using any level of physical force or coercion and be aware of your own safety. If all else fails call the police.

Once trouble is over, it is important to apologise to other customers for any disruption and reassure them that everything is back to normal. Recognise that you have been through a difficult situation and take a break, if possible, to regain your composure.

It is also good practice to record the incident accurately, while information is still fresh in your mind.

Recording Incidents
You should record all incidents for a variety of reasons:
• It can be used as a learning tool and can assist in communication between staff and management
• It provides an accurate record for police, company or insurance purposes
• It can help to prevent similar incidents from happening again

The record should include the following:
• Date
• Time
• What happened
• Who was involved
• How it was dealt with
• Whether police were called
• You may also wish to record the names of any witness and their contact information.

Body Language
Understanding body language can be very helpful in seeing trouble and dealing with it effectively. The table below shows the signs to look out for if someone is getting aggressive. You also need to think about your own body language. When dealing with the situation, you need to be assertive if you want people to do as you say.

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BODY LANGUAGE			
	AGGRESSIVE (angry)	**ASSERTIVE** (in control)	**PASSIVE** (weak)
Body Position	Leaning forward	Upright / straight	Shrinking
Head	Chin jutting out	Firm, not rigid	Head down
Eyes	Strongly focused, staring, often piercing or glaring eye contact	Good, regular eye contact	Glancing away or downwards, little eye contact
Face	Set or firm	Expression fits the words	Smiling even when upset
Voice	Loud and emphatic	Well modulated to fit content	Hesitant or soft, trailing off at ends of words or sentences
Arms/Hands	Hands on hips, fist, sharp gestures, pointing, jabbing	Relaxed / moving easily, open palms	Aimless / still
Movement /Walking	Slow and pounding or fast, deliberate	Measured pace suited to the situation	Slow and hesitant or fast and jerky

How to get it right
It's not easy to get it right. You must try to be **assertive**, not aggressive or passive.

Don't give up. If you think carefully about your voice, your movements and being calm, everything else tends to follow.

Distance
You'll probably be aware that each person has a certain amount of "personal space". If a stranger stands to close, it is uncomfortable. In conflict situations, standing too close may be seen as a threat, so keep a comfortable distance from the person you're speaking to. Remember also that a person from a different country or culture may prefer a different amount of personal space (e.g. they may like to stand closer or further away than you do).

A barrier of some kind, such as a table, can help to keep this distance. The counter itself is a barrier. You may have found that you feel more comfortable speaking with people when you are behind the counter than when you are out on your own. This is because the physical barrier acts as a psychological barrier as well.

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S3.12 DUTY TO REFUSE SERVICE

It is your duty to refuse to serve under 18s and also you must refuse to serve a person if they are or appear to be drunk.

How to refuse a sale

Sometimes refusing a sale will make the customer angry. Here are some tips to help you handle difficult refusals.

Ask for proof of age. This helps the situation as it is not a direct refusal. It says that you will make the sale if they can produce valid proof of age. Only accept proof of age with a photo, and only if you are happy it is correct.

Refuse politely. If necessary repeat your refusal clearly.

Keep calm. Don't get into an argument.

Explain briefly why you cannot sell. Try saying

- 'I'm sorry, if I serve you I might be breaking the law.'
- 'We have a policy of `no proof of age, no sale.'
- 'Our company policy is not to sell these products to young people.'

Show customers notices, posters and stickers that indicate you will not serve alcohol to under 18s or sell other age restricted products.

Offer an application form for an approved proof of age scheme.

Be positive in your refusal. Have a firm tone of voice, be confident and use direct eye contact. The law is on your side and you are doing the right thing.

Call your supervisor or manager for support if necessary.

Record details in your premises' refusal register.

Report incidents where you have felt threatened and/or intimidated.

Remember, ***you commit an offence*** if:

- You sell alcohol to a person who is under 18
- You allow alcohol to be sold to someone who is under 18 when you could have prevented that sale
- You sell alcohol to a person who is drunk
- You sell alcohol to a companion of a person who is drunk for the drunken person's consumption
- You allow alcohol to be sold to someone who is drunk when you could have prevented that sale

On the spot fixed penalty notices can be issued for serving alcohol to someone who is drunk or under age with prosecution also being a possibility.

If someone is drunk or disorderly they can be ejected from the premises and the police must assist if requested to do so - if you think a customer should be ejected please enure that you seek assistance from a colleague and follow your company procedures in order to deal with the incident properly and safely.

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Last Word

- However hard you work at preventing violence there is a possibility that you will be confronted by a violent customer at some stage on your premises

avoid situations if at all possible. A conflict management course for you and your staff would help avoid confrontation because you would identify earlier the key signs and take steps to defuse this problem

- Ensure that you and your staff know the company procedure for dealing with violent customers and follow it if faced with such a situation

do not hesitate to involve the police if you are concerned for your own or your staff or customers' safety

S3.13 TEST PURCHASING

Police and Weights & Measures officers may send under 18s in to your premises to attempt to buy alcohol to check compliance with the law. Under some circumstance the test purchaser may not tell the truth when asked if they are over 18 or if they have ID you **MUST** ask for approved proof of age and check it.

When an attempt is made to purchase alcohol you must either Challenge 21 or Challenge 25 (depending on the scheme used) and ask for acceptable proof of age identification from any customer who appears to be under 21 or 25 years old and is unknown to you as a person over 18 years old, if in doubt - ask for identification if you fail in this duty you may commit a criminal offence.

If you have any doubt about someone's age even, if they have produced proof of age, do not serve them with alcohol and note the refusal in the site refusal book.

S3.14 REFUSALS BOOK

If you have to refuse a sale of alcohol (or any other age restricted products such as cigarettes, tobacco, lottery tickets etc.) you **MUST** enter the details of the refusal in the **REFUSALS BOOK.** This will help you maintain evidence that under-age sales are being refused and also act as a training tool for your staff.

You have the right to refuse to sell any alcohol product, provided that the reasons for refusal are not based on discrimination on the grounds of sex, race or disability and you have a duty not to sell age restricted products to anybody under age.

Always keep letters of third party test purchases such as tobacco checks by trading standards and lottery ticket sales by Camelot.

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S3.15 REVIEWS

The review provisions in the Act, added to ensure an element of balance under the new regime, allow residents and businesses in the area and the regulatory authorities to voice concerns subsequent to the grant of a licence if they feel that there are relevant problems being generated at or by the premises.

Reviews are important because premises licences are not renewed (they are granted for the life of the business, subject to the annual fee paid to the local authority) so an objection can no longer be made as with the old system at renewal of the Justices' licence.

S3.16 STREET DRINKING & SUPER STRENGTH BEER /LAGER /CIDER

Introduction

Street drinking and the availability of super strength beer, lager and cider (i.e. above 6.5% ABV - Alcohol by volume) are potential concerns that may be raised by the police and other responsible authorities when considering new licence applications and variations to existing licences. Indeed in some cases where this problem has become excessive the local authorities in partnership with the police sometimes request voluntary agreement from retailers to not stock super strength beer/lager and cider as this is the preferred drink of many street drinkers because it is generally inexpensive and gives the "buzz" street drinkers crave.

The Law

Recent legislation has given the police greater powers to address the alcohol related offence problems that they believe have fuelled a large proportion of crime and disorderly anti-social behaviour. These are specifically:

- S17 Crime and Disorder Act 1998
- S13 Criminal Justice and Police Act 2001
- S4 Licensing Act 2003
- S27 Violent Crime Reduction Act 2006
- Part 7 Police & Crime Act 2017

These acts impose duties on either or both the Police & Local Authorities or provide powers to reduce anti-social incidents that result in crime and disorder from the misuse of alcohol as well as other substances.

Various strategies are being considered and will continue to be reviewed on a local authority by local authority basis such as Early Morning Restriction Orders and Late Night Levies (to fund extra policing at night etc.) Additional legislation has also been introduced by central government to ensure a minimum level of price per unit of alcohol is enforced by the licensing section and monitored by local government to try to eradicate cheap alcohol being offered for sale in shops and pubs.

Super Strength Beer, Lager & Cider

Nothing has yet been formally announced regarding super strength beer, lager and cider products being banned or reduced in strength or the packaging in which they are offered for sale being cut in size but there is a growing consensus amongst health professionals and the police that government must do more.

Street Drinkers

Strong beers, lagers and cider have over the last decade or so have become the preferred alcohol product of choice by street drinkers who can generally be described as persons who have limited financial resources, are unemployed, have underlying health and/or mer[illegible] issues and possibly homeless.

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A street drinker has been defined by a community safety partnership as: "Someone who regularly drink alcohol, or is drunk in public places, and their behaviour significantly raises the risk of the following:

- Offending behaviour - if littering or urinating in public, or begging.
- Harm to themselves
- Harm to others
- Anti-Social behaviour - causing harassment, alarm or distress.
- Drawing other vulnerable people into the same type of lifestyle.
- Homelessness.

Street drinkers themselves describe health issues when asked, that mirror health problems experienced by dependent drinkers such as:

- Damage to heart, liver and stomach.
- High blood pressure.
- Double incontinence.
- Fits.
- Mental health problems.
- Depression.
- Black Outs
- Memory loss.

The ramifications of the above include:

- Anger
- Loss of self-esteem.
- Sickness in morning if no alcohol is available.
- Bleeding veins
- Stomach ulcers
- Aching bones
- Loss of balance
- Sleep deprivation

Fortunately the vast majority of adults who drink, do so responsibly whilst street drinking affects a very small minority of people. However the cost to the public is disproportionate as it is very expensive for the police, NHS, local authorities and others to initially respond to the issues caused and then fund the cost of helping the street drinkers themselves - and who in some cases do not want to accept help.

Other groups of street drinkers can be described as ethnic drinkers where drinking outside for example may be considered the social norm and therefore they drink outside as a matter of choice.

Some local authorities have adopted a legal instrument called a DPPO (Designated Public Places Order) although some may know this as a DACZ (Designated Alcohol Control Zone) both mean that should an individual drink in public and is observed causing a criminal nuisance offence by a police officer then the alcohol can be confiscated.

DPPO/DACZ are so effective that in some cases the street drinking problems are moved into areas where there is no DPPO/DACZ in force and therefore move the problem from one area to another.

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Voluntary agreements to not stock cheap high strength alcohol will in some cases resolve the issue as long as it is adopted consistently by other similar retailers within the designated geographical area. Otherwise the street drinkers will just congregate near to businesses that stock their favourite product rather than loiter in the areas that do not.

S3.17 ALCOHOL DELIVERY SERVICES

There are an increasing number of licensing applications by small independent operators for the provision of off-sales of alcohol ordered by customers direct to their home via the telephone or online.

Premises that wish to deliver alcohol direct to customers should seek professional assistance on how to run such an operation be it during normal shop hours or for up to 24 hours a day.

The applicant must comply, for example, with the following:

- the premises to be licensed should be where the product is stored prior to its dispatch and not a separate call centre where the money is taken.

- the applicant cannot license the delivery vehicle.

- there needs to be a robust procedure in place to ensure the alcohol is delivered to the person ordering the product including checking proof of age. The delivery person should also, as far as possible, check that the customer is not buying alcohol for the consumption by under 18s e.g. a party at the same premises where young people are in attendance.

- the application should ensure that the four licensing objectives are not compromised.

- the advertisement of the alcohol delivery services show potential customers a full list of the terms and conditions.

- payment should not be taken at the point of delivery.

It is recommended that the applicant seeks proper guidance before submitting such an application. R.B. Licensing Services would be pleased to assist.

S3.18 BAN ON THE SELLING OF ALCOHOL BELOW THE COST OF DUTY + VAT

The Government launched its Alcohol Strategy which was published on 17th July 2013 following the analysis of all the consultation responses received and concluded that a policy was needed to reshape the approach to alcohol and specifically reduce the number of people drinking to excess. The Alcohol Strategy is targeted at harmful and hazardous consumers and aimed to limit the impact on responsible consumers. The document set out its intention to ban below cost selling to tackle the worst examples of sales of cheap alcohol. This ban came into force on the 28th May, 2014.

The ban prevents businesses from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harm

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The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises, including those with club premises certificates, in England and Wales.

Responsibility for ensuring compliance within the mandatory condition part of your premises licence will always be the responsibility of the premises licence holder and/or designated premises supervisor irrespective whether the pricing was undertaken by a member of staff or not.

The level of duty plus VAT is calculated by taking the relevant excise duty figure for a particular product and the applying the current rate of VAT to this amount. Duty rates differ in accordance with the type of alcohol and often the strength of the product. There are three categories for calculating the permitted price of duty plus VAT.

The three categories are:

1. Beer

2. Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22% ABV)

3. Wine, made-wine and cider (not exceeding 22% ABV)

The following calculations are used to determine the permitted price for each product:

Beer permitted price = Duty + VAT
Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22%) permitted price = Duty + VAT
Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Wine, made-wine and cider (not exceeding 22% ABV) permitted price = Duty + VAT
Where Duty (pence) = volume (litres) x duty rate

(Note: duty rates for beer, wine, made-wine and cider are given in pounds per hectolitre. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per litre, which is an identical figure. Duty rates for spirits and other products over 22% ABV are given in pounds per litre of pure alcohol. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per centilitre (i.e. 10ml) of pure alcohol, which is also an identical figure.)

It should be noted that there are different duty rates within each of the categories of beer and wine and cider, and that the appropriate rate should be used.

Duty rates may change each year, typically following the Chancellor's Budget. Therefore, those who supply alcohol will need to ensure the new duty rates are applied to the three formulae in the preceding section when duty rates change.

Businesses and others who supply alcohol will need to ensure that their pricing systems are accurate enough to prevent any sale of alcohol below the cost of duty plus VAT. This includes ensuring that prices are accurate on shelves, barcodes, menus and price lists, where appropriate.

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Care should be taken when undertaking any of the following activities:

- Multibuy promotions
- Multibuy promotions that include alcohol and non-alcohol products
- Multipack products that consist of bulk packs of alcohol
- A package that includes inclusive alcoholic drinks
- Complimentary alcoholic drinks
- Discount coupons which include alcoholic drinks
- Reward cards which can include alcoholic drinks
- Staff discount Companies can offer staff discount, as long as the price after all discounts are applied is above the permitted price of the alcohol
- Online internet sales. The ban will apply to all sales of alcohol that take place (i.e. the alcohol is despatched to the customer) within England and Wales.

If unsure regarding any of the above please contact either your wholesale supplier or contact RB Retail & Licensing Services Limited.

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S3.19 RIGHT TO WORK IN THE UK

New powers to tackle illegal working in licensed premises
Under the measures, brought in as part of the Immigration Act 2016, immigration checks will be part of the process for applying for a licence. As from 6th April 2017, a premises or personal licence will not be issued to anyone who does not have permission to be or work in the UK. Being granted a licence and continuing to hold it will also be reliant on complying with the UK's immigration laws.

Additionally, the Home Office will be consulted in the same way as the police before a license is granted. If a business has any immigration offences and civil penalties, these will be considered as part of the licence application, and as a ground for making a formal request to a licensing authority for a license to be reviewed.

Immigration officers will also receive the same powers as licensing enforcement officers and the police to enter a premises being used to sell alchol or late night refreshment, in order to investigate immigration offences. This will enable joint enforcement operations with licensing enforcement officers, and allow immigration officers to enter licensed premises without a warrant where there is intelligence of illegal working taking place.

If persons are found working in premises performing paid or unpaid work and do not have a right to work in the UK, then the premises (if licensed) can be reviewed by the local authority with a high probability that the premises licence will be revoked.

- All staff current and new must produce documentation from the list of documents reproduced on pages S3.39/S3.40.

- Copies (preferabley colour) of the original documents must be kept by the business as evidence of compliance and kept safely onsite. Should local licensing officers, police or representatives of any other responsible authority visit the shop and ask for proof of the right to work in the UK, you will be able to provide appropriate documentation. Failure to do so may result in a review of your premises licence and the instigation of criminal proceedings against you.

PLEASE SEE THE RIGHT TO WORK CHECKLIST ON THE FOLLOWING TWO PAGES

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Home Office

Right to Work Checklist

Name of person:	
Date of check:	
Type of check:	Initial check before employment ☐ Follow-up check on an employee ☐

Step 1 Obtain

- You must **obtain original** documents from either **List A** or **List B** of acceptable documents.

List A

1. ☐ A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. ☐ A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3. ☐ A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office, to a national of a European Economic Area country or Switzerland.
4. ☐ A Permanent Residence Card issued by the Home Office, to the family member of a national of a European Economic Area country or Switzerland.
5. ☐ A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. ☐ A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7. ☐ A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
8. ☐ A **full** birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
9. ☐ A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
10. ☐ A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

List B Group 1

1. ☐ A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.
2. ☐ A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
3. ☐ A **current** Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
4. ☐ A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

List B Group 2

1. ☐ A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is **less than 6 months** old **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
2. ☐ An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
3. ☐ A **Positive Verification Notice** issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

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Step 2 Check

- You must **check** that the documents are genuine, that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering.

1. Are photographs consistent across documents and with the person's appearance?	Yes ☐	No ☐	N/A ☐
2. Are dates of birth consistent across documents and with the person's appearance?	Yes ☐	No ☐	N/A ☐
3. Are expiry dates for time-limited permission to be in the UK in the future i.e. they have not passed (if applicable)?	Yes ☐	No ☐	N/A ☐
4. Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (for **students** who have limited permission to work during term-times, you **must** also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed)	Yes ☐	No ☐	N/A ☐
5. Are you satisfied the document is genuine, has not been tampered with and belongs to the holder?	Yes ☐	No ☐	N/A ☐
6. Have you checked the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)	Yes ☐	No ☐	N/A ☐

Step 3 Copy

You must make a clear **copy** of each document in a format which cannot later be altered, and retain the copy securely: electronically or in hardcopy. You must copy and retain:

1. ☐ **Passports**: any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
2. ☐ **All other documents**: the document in full, both sides of a Biometric Residence Permit.

You must also record and retain the date on which the check was made.

Know the type of excuse you have

If you have correctly carried out the above 3 steps you will have an excuse against liability for a civil penalty if the above named person is found working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it lasts for, and if, and when you are required to do a follow-up check.

The documents that you have checked and copied are from:

1. **List A** ☐ You have a **continuous statutory excuse** for the **full duration** of the person's employment with you. You are **not** required to carry out any repeat right to work checks on this person.

2. **List B: Group 1** ☐ You have a **time-limited statutory excuse** which expires when the person's permission to be in the UK expires. You should carry out a **follow-up check when the document evidencing their permission to work expires.**

3. **List B: Group 2** ☐ You have a **time-limited statutory excuse** which expires 6 months from the date specified in your Positive Verification Notice. **This means that you should carry out a follow-up check when this notice expires.**

Date follow-up check required:

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S3.20 STAFF TRAINING - Revision

The Licensing Act 2003 introduced a single integrated system throughout England and Wales to regulate the sale and supply of alcohol, the provision of entertainment to the public and the provision of late-night refreshment - the sale of hot food and hot drinks between the hours of 11pm and 5am.

Under the Act there is a statutory requirement that retail sales of alcohol can only be made from premises that have been granted a premises licence.

In addition all premises licensed for the sale of alcohol must have a designated premises supervisor (DPS) appointed for those premises who must be a personal licence holder.

Sales of alcohol can only be made or authorised by a personal licence holder.

UNDERSTANDING THE LICENSING LANGUAGE

The licensing objectives - these are the governing principles of licensing law in England and Wales. Everyone involved with any of the licensable activities including the sale of alcohol must be aware of and actively promote these objectives at work.

The four licensing objectives, all of which are of equal importance, are as follows:

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

LICENSABLE ACTIVITIES

For a business to carry out any of the following activities, a premises licence is required. The licensable activities are defined as:

sale of alcohol by retail

supply of alcohol in club premises

provision of regulated entertainment

provision of late night refreshment 11pm - 5am

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The penalties for carrying out a licensable activity without a licence or failure to comply with the conditions on a premises licence are severe:

A MAXIMUM FINE OF £20,000 AND/OR 6 MONTHS IMPRISONMENT

Make yourself aware of the hours and any conditions on the premises licence

Premises licence
The licence required by a business to allow it to carry on any of the licensable activities listed above.

The premises licence will usually be held in the name of the owner of the business or the operator and can be a company or an individual person or persons.

Personal licence
The licence needed to be held by a person to allow that person to sell alcohol from premises that hold a premises licence (that allows the sale of alcohol) and to authorise others who do not hold personal licences to do so. There must be at least one personal licence holder at your site but there can be more than one.

Designated premises supervisor
Usually the person in day-to-day control of the premises named to the Licensing Authority as the person responsible for the sale of alcohol at the premises by the premises licence holder. A person must have a current personal licence to hold this position and there can only be one named DPS for each site.

Understanding your duties with regard to the sale of alcohol
The sale of alcohol is a licensable activity controlled by law and carrying penalties that reflect the important social responsibilities that apply to people who sell it.

These penalties only relate to those people who break the law, committing what is a criminal offence punishable by measures varying from a fixed penalty notice of £90 to a £20,000 fine and/or six months imprisonment and forfeiture of the premises licence.

When selling alcohol it is your responsibility to ensure that you carry out this action lawfully. Remember you can only sell alcohol when you have been authorised to do so and then only to customers who it is lawful for you to sell it to.

Authorised sales
Regardless of your age or training you are only legally allowed to sell alcohol when you have been authorised to do so by your DPS or another personal licence holder at the site. You will only receive this authorisation when you have demonstrated to the DPS that you understand your responsibilities and the law controlling these sales. You will have to be re-authorised on a regular basis and this would normally follow refresher training in the sale of alcohol.

Do not sell alcohol unless you are sure that you have been authorised to do so.

Do not accept authorisation if you are unclear on the law and/or your responsibilities involved in these sales.

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SALE OF ALCOHOL

It is a criminal offence for any person to sell or supply alcohol to a person under the age of 18.

THERE ARE NO EXCEPTIONS TO THIS

It is an offence to sell alcohol to someone under 18.

It is an offence to deliver alcohol to someone under 18.

It is an offence for anyone under 18 to purchase or attempt to purchase alcohol.

It is an offence to obtain alcohol for someone under 18.

It is an offence to sell alcohol if you are under 18 unless you are authorised to do so and the individual sale is supervised by somebody over 18 who is also authorised by a Designated Premises Supervisor.

You must not sell alcohol to someone you believe to be buying for a person under 18 (proxy purchasing).

It is an offence to allow another person to sell alcohol to somebody under 18 where you could have prevented that sale.

Those who commit such offences could be fined up to £5000.

A fixed penalty notice of £90 may be applied to the person selling the alcohol.

The holder of the relevant premises licence may also have their licence reviewed which could result in the alcohol sales at the premises being suspended for up to three months or in serious cases removed permanently.

Our rules for the sale of alcohol

In order to avoid under age sales and committing an offence we have twelve basic rules which must be obeyed at all times. These basic rules for the sale of alcohol are simple and straight forward and once a member of staff has been properly trained there can be no excuse for not obeying them at all times, please refer to Page 3.45 for Rules.

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SUMMARY OF AGE RELATED PRODUCTS TYPICALLY SOLD IN RETAIL STORES

You must not sell liqueur confectionery (chocolates with alcohol inside) to a person under the age of 16.

Your site may have other age-restricted products that you must know about, including:

AGE RESTRICTED PRODUCT	AGE RESTRICTION
Alcohol products	**18**
Cigarettes and tobacco products including from vending machines	**18**
Since 1st October 2015 it is illegal for retailers to sell electronic cigarettes or tobacco vapour products to underage persons	**18**
Fireworks	**18**
Knives, blades and axes (not including folding knives with blades under 3 inches long)	**18**
Glue, solvents and lighter fuels, Butane & refills	**18**
Liqueur Chocolates	**16**
Lottery tickets and scratch cards	**16**
Petrol/Diesel	**16**
Adult Magazines	**18**
Spray paints	**16**
Video/DVD/Games	**As shown on certificate e.g. 12, 15, 18**
Analgesics & medicines	**Up to the discretion of the retailer**

Please speak to your supervisor about the products you have on sale at your site and the age restrictions that relate to them.

Weights & measures inspectors may also send under 18 test purchasers to attempt to purchase cigarettes, tobacco or tobacco products from any premises to check compliance with the law.

Remember, you commit an offence if you sell age-related products to somebody who is under age.

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MY 12 BASIC RULES FOR SELLING ALCOHOL

1. I can only be authorised to sell alcohol for the hours stated on our licence summary and once authorised will not do so outside of those hours.

2. Alcohol sales are only for consumption off the premises and I must be aware of customers actions at all times & not allow consumption on the premises.

3. I will not sell alcohol to anybody under the age of 18.

4. I will challenge anybody attempting to purchase alcohol who appears to be under the age of 21/25 (delete one) to prove that they are over 18 by producing acceptable proof of age.

5. I will only accept a Passport, a Photo Driving Licence or a PASS accredited card as proof of age such as the Citizen Card.

6. I will not sell alcohol to anybody who I believe is purchasing to supply somebody under the age of 18 (proxy selling).

7. I will not sell alcohol to anybody who I believe is, or appears to be drunk.

8. I will not sell alcohol to anybody who I believe is purchasing for somebody who is, or appears to be drunk.

9. If I am in any doubt at all on numbers 3, 6, 7 and 8 as written above I will refuse the sale.

10. I will record all incidents of refusals in the refusals book noting the date and time, plus a description of (and name of) the person (if known) together with a note of the product refused.

11. I will advise my supervisor of the refusal as soon as possible and certainly no later than the end of my shift.

12. I acknowledge that I am not authorised to sell alcohol unless I comply with all of the above at all times.

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Example of refusal log

RB Retail & Licensing
Services Limited

REFUSAL LOG

DATE: 12th July 2017	TIME: 17.02	PRODUCT: can of Boddingtons
Reason for refusal: looked under 18, no ID with him and got aggressive		
Description of person: white male, 6'3", goatee beard, short blond hair, earing in both ears, blue jeans, black hoody.		
Till Operator Aaron Brown		Manager Geoffery James
Premise Supervisor Geoffery James		Area manager n/a

DATE: 18th July 2017	TIME: 6.55 pm	PRODUCT: Bulmers Cider
Reason for refusal: Girl looked under 21, not happy with ID shown as she would not give it to me		
Description of person: white, 5'7", long black gothic style hair, black vest top and black trousers, lots of tattoos and jewellery		
Till Operator Miranda Hastings		Manager Geoffery James
Premise Supervisor Geoffery James		Area manager n/a

DATE:	TIME:	PRODUCT:
Reason for refusal:		
Description of person:		
Till Operator		Manager
Premise Supervisor		Area manager

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SECTION 4: Due diligence records

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S4.0 A: Alcohol procedure and law quiz

Name:	Date:
Site Address:	Site Name:
DPS Name:	Date test marked and number of questions answered incorrectly Date: ..... Answered incorrectly: .....

Please ring around the answer that you think MOST correct - there is only ONE correct answer

INITIAL TRAINING 1

Staff signature: .....

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S4.0 B: Alcohol procedure and law quiz

Site:	Site Address:

Master Answers

INITIAL TRAINING 1

Staff signature: .....

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S4.1 A: Alcohol procedure and law quiz

Name:	Date:
Site Address:	Site Name:
DPS Name:	Date test marked and number of questions answered incorrectly Date: ..... Answered incorrectly: .....

Please ring around the answer that you think MOST correct - there is only ONE correct answer

INITIAL TRAINING 2

Staff signature: .....

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S4.1 B: Alcohol procedure and law quiz

Site:	Site Address:

Master Answers

INITIAL TRAINING 2

Staff signature: .....

© RB Retail & Licencing Service Limited



S4.2 A: Alcohol procedure and law quiz

Name:	Date:
Site Address:	Site Name:
DPS Name:	Date test marked and number of questions answered incorrectly Date: ..... Answered incorrectly: .....

Please ring around the answer that you think MOST correct - there is only ONE correct answer

REFRESHER TRAINING 1

Staff signature: .....

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S4.2 B: Alcohol procedure and law quiz

Site:	Site Address:

Master Answers

REFRESHER TRAINING 1

Staff signature: .....

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S4.3 A: Alcohol procedure and law quiz

Name:	Date:
Site Address:	Site Name:
DPS Name:	Date test marked and number of questions answered incorrectly Date: ..... Answered incorrectly: .....

Please ring around the answer that you think MOST correct - there is only ONE correct answer

REFRESHER TRAINING 2

Staff signature: .....

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S4.3 B: Alcohol procedure and law quiz

Site Name:	Site Address:

Master Answers

REFRESHER TRAINING 2

Staff signature: .....

© RB Retail & Licencing Service Limited



S4.4 A: Alcohol procedure and law quiz

Name:	Date:
Site Address:	Site Name:
DPS Name:	Date test marked and number of questions answered incorrectly Date: ..... Answered incorrectly: .....

Please ring around the answer that you think MOST correct - there is only ONE correct answer

REFRESHER TRAINING 3

Staff signature: .....

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S4.4 B: Alcohol procedure and law quiz

Site Address:	Site Name:

Master Answers

REFRESHER TRAINING 3

Staff signature: .....

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S4.5 TRAINING STATEMENT

Premises name:

Premises address:

TRAINING STATEMENT

I am over 18 years of age and confirm that I have been trained in the sale of alcohol and alcohol products. I am fully conversant with my obligations in the sale of these products and the penalties that will apply if I serve a customer illegally. These range from a fixed penalty notice of £90 to a criminal conviction with a fine of up to £20,000 and/or 6 months imprisonment.

I warrant that:

1. Once authorised I can only sell alcohol during the hours specified on our Licence Summary as displayed on the premises.

2. Alcohol sales are only allowed for consumption off the premises and I will not allow consumption on the premises.

3. I will not sell alcohol to anybody under the age of 18.

4. I will challenge anybody attempting to purchase alcohol who appears to be under the age of 21/25 (delete one) to prove that they are over 18 by producing acceptable proof of age.

5. I will only accept a Passport, a Photo Driving Licence or a PASS accredited card as proof of age such as the Citizen card.

6. I will not sell alcohol to an adult who I believe is purchasing to supply somebody under the age of 18 (proxy selling).

7. I will not sell alcohol to an adult who is, or appears to be drunk.

8. I will not sell sell alcohol to anybody who I believe is purchasing for somebody who is, or appears to be drunk.

9. If I am in any doubt at all regarding numbers 3, 6, 7 and 8 as written above I will refuse to make the sale.

10. I will record all incidents of refusals in the refusals book noting the date and time, plus a description of and name of the person if known together with a note of the product refused.

11. I will advise my supervisor of the refusal as soon as possible and certainly no later than at the end of my shift.

12. I acknowledge that I am not authorised to sell alcohol unless I comply with all of the above at all times.

Staff Name (print): Signature:

DPS Name (print): Signature:

Date:

Two copies to be signed - one for the staff member and one to be filed in the premises manual in each staff members training file in Section 7

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S4.6 AUTHORISATION TO SELL ALCOHOL

Licensing Act 2003

Site Name & Number:

Site Address:

Authorisation for Staff to sell Alcohol

As the Designated Premises Supervisor (DPS) I confirm that the following staff have been fully trained in the sale of alcohol and alcohol products and that in my opinion they have demonstrated their understanding of the legal requirements relating to these sales.

(Initial training level is indicated by the initials IT and refresher training by the initial R).

I therefore authorise by delegated authority the following staff to sell alcohol from these premises known as: .....

Staff Name (print)	Staff Signature	DPS Signature	Training level	Date

PLEASE NOTE THAT REFRESHER TRAINING IS TO BE CARRIED OUT AT LEAST EVERY 12 MONTHS FOR EACH STAFF MEMBER

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S4.7 DPS CHECKLIST SUMMARY

ANNUAL DPS REFRESHER TRAINING PLANNER

Year:	Staff member planned to receive refresher training	DPS Initials
JANUARY		
FEBRUARY		
MARCH		
APRIL		
MAY		
JUNE		
JULY		
AUGUST		
SEPTEMBER		
OCTOBER		
NOVEMBER		
DECEMBER		

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S4.8

Licensing Act 2003
DPS Premises Licence Monthly Checklist

Site Name:.....

Site No:.....**Total No of Staff:**.....

Licensable Activities authorised by the premises licence:

Sale of Alcohol by Retail ☐

Late Night Refreshment ☐

Regulated Entertainment ☐

Are there any specific conditions listed on the premises licence *	yes/no
Are all staff aware of these conditions and are they being adhered to	yes/no
Do the site's **opening** hours match the hours listed on the licence	yes/no
Do the site's **alcohol** trading hours match those listed on the licence	yes/no
Does the DPS named on the licence still work at the site	yes/no
Does the site sell hot food/hot drinks between 11pm & 5am *	yes/no
Is Late Night Refreshment approved on the licence for these hours	yes/no
Does the site have any Regulated Entertainment * *(background music and live radio do not count as regulated entertainment)*	yes/no
Is Part B summary of the premises licence prominently on display *(ie. behind the counter)*	yes/no
Is the letter showing the nominated keeper of the licence on display *(ie. behind the counter)*	yes/no
Is Part A the main part of the premises licence available for inspection	yes/no

Where is it kept?.....

continued on second sheet

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continued from page one

Is all Challenge 21 material clearly on display yes/no

Please list all Personal Licence Holders working at the site including yourself and note the licence numbers and expiry date

.....

.....

.....

Have all cashiers been issued with "your guide to selling alcohol" yes/no

Have all cashiers taken the "alcohol sales questionnaire" yes/no

Have all cashiers signed a "training statement" yes/no

Have all cashiers signed the "authorisation for staff to sell alcohol" yes/no

Have you signed the "authorisation for staff to sell alcohol" yes/no

Does each cashier have complete records maintained for the above yes/no

When was refresher training last carried out .....

How many staff have had refresher training .....

When was the refusals book last used and by whom .....

Is it being countersigned by you AND the area manager yes/no

continued on third page

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continued from page two

Are you named on the premises licence as the DPS	yes/no
Are your name/address details current & correctly listed on this licence	yes/no
Do all staff use Challenge 21 / Challenge 25 at all times (delete one)	yes/no
Do you have your personal licence with you during working hours	yes/no
Do all other personal licence holders have their licences with them too	yes/no
Are their name/address details current & correctly listed on their licence	yes/no

Signed:.....**Date:**.....

Print Name:.....

IF YOU HAVE ANSWERED NO TO ANY QUESTION APART FROM ONES MARKED BY * THEN YOU MUST CONTACT YOUR LINE MANAGER IMMEDIATELY

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S4.9 Alcohol staff training pamphlet and log sheet

Licensing Act 2003

As the Designated Premises Supervisor (DPS) I confirm that the following staff have been issued with their own copy of the Alcohol Training Pamphlet.

Staff Name (print)	Staff Signature	DPS Signature	Date Issued



S4.10 Nominated keeper of the premises licence

Date

Premises Address:

Re: Nominated Keeper of the Premises Licence

With reference to the premises licence for this site, I/We, Any Company Ltd, nominate the Designated Premises Supervisor/Manager for these premises to be the keeper of the licence.

Signed:

Print Name:

Position:

Company Name:

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4.12: Staff training pamphlet

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SECTION 5: Product Knowledge

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S5.1 PRODUCT KNOWLEDGE

Please copy this section leaving a copy at the point of sale to support your staff when needed.

• *How wine is made*

HARVEST
Winemaking begins with the grape harvest, the time for picking is determined by scientific testing of the juice's sugar and acid content, but the decision to pick is still subject to chance.

CRUSHING
After picking, the grapes are transported to the winery and they are crushed and de-stemmed to produce `must,' which is treated with sulphur dioxide to kill any harmful microbes.

PRESSING
The separation of the juice from the skins, stems and pips is known as the pressing. For red wine, the juice is separated at a later stage, with rose wine the juice is run off after a short time, but white wines are pressed immediately after crushing before the juice picks up the tannins and pigments from the skins and stems.

FERMENTATION
The juice or `must' is transferred to a fermentation tank, where pure wine yeasts are added. During the process of fermentation the yeast acts upon the sugars in the grape juice, converting them into alcohol and carbon dioxide. Under normal conditions, the yeast will go on working until all the sugar is converted to alcohol, therefore, the wine would be dry. However, it is possible to stop fermentation by adding sulphur to kill the yeasts or by filtering the yeasts out.

RACKING
After fermentation the wine is transferred to a new tank and the process of racking or clarification begins. The wine is allowed to stand quietly so all the suspended material falls to the bottom: the residue is known as the `lees.' The clear wine is then pumped off and undergoes a final clarification prior to blending and/or bottling. Most wines will go into wooden casks for ageing during which time they are racked periodically.

BOTTLING
This final process is carried out under scrupulously clean conditions. The right moment must be chosen to bottle the wine; white wines and light reds are usually bottled a few months after they are made, but the finer wines spend up to five years in cask. Some types of wine need bottle aging as well, to reach their full potential.

• *Wine labels*

HOW TO READ A WINE LABEL

1. CONTENTS: All alcoholic drinks must show the contents either in litres or centilitre. In 1989 EEC regulations decreed that the standard wine bottle size would be 75cl. An `e' stated after the contents indicates that all necessary quality checks have been completed by the bottler.

2. COUNTRY OF ORIGIN: This must appear on the label regardless of where the wine comes from. Only wines from the EEC may be blends of more than one country. Such a blend must have on the label, in english, `a blend of wines from different countries of the EEC.'

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3. NAME & ADDRESS OF BOTTLER: By law, in case of complaint, the name and address at which the bottler can be contacted must appear on the label. If the wine is bottled outside the EEC, the name of the importer should be shown.

4. ALCOHOL CONTENT: Alcohol content is measured in per cent by volume. The possible range is from 6.5% to 20% or more.

5. TABLE WINE: Refers to light wine produced in EEC. It must be labelled as such, but if produced outside the EEC, it need only be labelled `wine.' If the wine meets certain yield and quality factors, it can be described as Vin de Pays, etc.

6. QUALITY WINES: Stringent labelling requirements, and must show the region of production as well as country. No blending is allowed. The words `Quality Wine' or equivalent must be shown:

FRENCH:	VDQS.AC.AOC
ITALIAN:	DOC.DOCG
GERMAN:	Qba.QmP
SPANISH:	Do

• *Food and wine*

FISH AND SEAFOOD: Can be served with a whole range of whites, from dry Burgundies to light Loire wines. Fresh water fish like trout go well with Chablis or German Mosells. Salmon goes well with dry whites or reds such as Chinon or Beaujolais.

GAME: Hearty robust Burgundy wines, or those from the Rhone or Italy. If the game is served cold, Bordeaux is best.

ROASTS & CASSEROLES: Roast beef is perfect with red Burgundies and Bordeaux. Other roasts go well with Rhones, Californian reds, Italian reds and the classic Spanish red, Rioja.

SMOKED FOOD: Smoked fish is best with dry white Bordeaux and fino sherries or Alsace grape varieties. German wines are also popular.

CHEESE: Strong acidic English cheese are complimented by good ports and red wines such as Chateauneuf or Barolo. Choose sweet or strong regional wines to accompany continental cheeses.

DESERT WINES: Dessert wines are very sweet, and are traditionally served chilled with the dessert course or fruit. One never needs to drink much of these wines, and one bottle will serve up to eight people.

Sweet dessert wines reach their peak among small districts of Sauternes and Barsac in France. These golden wines produced from Semillon and Sauvignon grapes are large and fragrant and age well in the bottle.

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• *Wine sweetness guide*

WHITE WINE:

The following gives and indication of the sweetness of some popular wines, those marked 1 being the driest and 9 the sweetest, with the numbers spanning the remaining dry to sweet spectrum.

1. Muscadet
   Chablis
   White Bordeaux
   Pouilly Fume
   Bergerac Blanc

2. White Burgundy
   Chenin Blanc
   Chardennay
   Pinot Grijio
   Soave
   Rioja
   Fino Sherry

3. Anjou Rose
   Dry Amontillado Sherry
   Dry White Vermouth

4. Moselle Kabinett
   Rhine Kabinett
   EEC Wines
   Yugoslav Laski
   Portuguese Rose/Vinho Verde

5. Vouvray Demi Sec
   Liebfraumilch
   Medium British Sherry

6. Demi Sec Sparkling Wine
   Demi Sec Champagne
   Medium Spanish Wine

7. Asti Spumante
   Rosso/Bianco/Rose Vermouth
   Pale Cream Sherry

8. Sauternes
   Barsac
   Rich Cream Sherry

9. Marsala

RED WINE:

The Guide starts with wines which are comparable to Beaujolais - light and easy to drink, at the other end of the scale at `E', the wines are more concentrated with more depth and fullness.

a. Bardolino
   Lambrusco Rosso
   Beaujolais

b. Cotes de Rousillon
   Pinot Noir
   Red Burgundy
   Valpolicella
   Spanish Red Wine

c. Bordeaux Rouge/Claret
   Cotes du Rhone
   Chinon
   Rioja
   Bergerac Red

d. Chateauneuf du Pape
   Chianti

e. Cyprus Red
   Barolo
   South African Shiraz

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White Grape Varieties

CHARDONNAY:
The principle white grape of Burgundy and also Champagne, California and Australia. Wines rage from pale green to a golden straw in colour.

CHENIN BLANC:
Produces pale greenish tinged wines.

GEWURZTRAMINER:
The spicy speciality of Alsace. Dark, gold and pungent. Also grown in Germany, Australia & California.

MUSCAT/MOSCATO:
Aromatic smell, used in Italian sparkling wines and sweet fortified wines.

RIESLING:
Produces nearly all German fine wines. Pale green/gold, sharp and aromatic.

SAUVIGNON:
Produces soft dry and fruity wines, sometimes smoky.

TREBBIANO/UGNI BLANC:
A versatile grape used in French and Italian blends to give bite and acidity. Also used for distillation in Cognac.

PALAMINO:
Classic Spanish variety, used for making Sherry. Also grown in California, Australia, Cyprus and South Africa.

Red Grape Varieties

CABERNET SAUVIGNON:
From Bordeaux region of France, produces dark, dry wines which require considerable ageing.

GAMAY:
Only makes first class wines, grown in Beaujolais. Light, fruity and acidic, the wines are designed to drink young.

NEBBIOLO:
Also known as `Spanna,' it is grown in North West Italy. Produces deep brownish-red wines, high in alcohol and tannin.

PINOT NOIR:
From the Cote d'Or in Burgundy, produces delicate silky wines. In champagne it is pressed before fermentation to make white wines.

SYRAH
The best red grape of the Rhone. The wines tend to be intense and high in alcohol, deep in colour and smoky and spicy when aged. The Australian (Hermitage) makes some excellent wines.

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S5.2 ALCOHOL STRENGTHS

HOW MUCH?

Because of the different strengths and varying sizes of serving measures, the actual amount of alcohol you drink is measured in units.

1 unit = 8 grams or 1cl of pure alcohol

This is equivalent to:

1 pub measure of spirits (40% alcohol)

Small glass of fortified wine, Sherry etc. (17-20% alcohol)

A glass of table wine (10-12% alcohol)

A half pint of beer (4% alcohol)

The following table shows normal or main range of alcoholic strengths for a variety of types of drink. The strengths must by law be shown on the label by the term `% volume' which states the percentage of the total liquid made up of pure alcohol.

PRODUCT	% Volume
Alcohol free wine	Less than 0.05%
De-alcoholised wine	Less than 0.5%
Reduced alcohol products	1.2 - 5.5%
Light wine	8.5 - 13%
Sherry, Port	15 - 22%
Spirits	37 - 40%
Liqueurs	18 - 40%

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SECTION 6: Other licensable activities

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S6.1 LATE-NIGHT REFRESHMENTS

Since 24th November 2005 you are committing a criminal offence if you sell hot food or hot drink (i.e. above ambient temperature) in your premises after 23.00 hours until 05.00 on any day without the grant of this provision on a current premises licence.

The only authority to sell hot food and hot beverages during the hours of 23.00 hours to 05.00 hours comes from your premises licence and it is only valid if you have applied for this provision under the Act.

If you are in any doubt at all about this activity contact Richard Baker Licencing Consultant for advice.

If the hot food or hot beverages are supplied to the customer via a customer payment vending machine, and providing the customer inserts the payment and removes the product themselves and is not served by premises staff, a licence is not needed.

The only other exception to this are residents in hotels and guest houses, under all other retailing circumstances this provision is required on a premises licence, even if you do not sell alcohol. This includes heating products in a microwave, either by staff or customers and coffee dispensers and jug coffee sales or pot noodle machines!

If you have late-night refreshment as a licensable activity the operating details can be found on your premises licence and summary in section 1.

The area of display or supply and point of production and sale will also be shown on your premises plan.

If you wish to engage in this activity and do not have the provision as a licensable activity on your licence contact RB Retail & Licensing Services Limited for details of how we can assist you to secure this this on your behalf.

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S6.2 AN OUTLINE OF REGULATED ENTERTAINMENT

Since 24th November 2005 you are committing a criminal offence if you provide regulated entertainment on your premises at any time of the day or night without the grant of this provision on a current premises licence.

This applies whether you sell alcohol or not and whether or not you provide food and beverages in any form at any time.

Regulated entertainment is defined in the Act by paragraph 2(0) of schedule 1:

performance of a play

exhibition of a film

indoor sporting event

boxing or wrestling entertainment

*performance of live music

playing of recorded music

performance of dance

entertainment of a similar description to the performance of live music, the playing of recorded music or the performance of dance where the entertainment takes place in the presence of an audience and includes all forms of live music, dance, theatre and shows as well as presentations and showing of films, pre-recorded TV, dvds, videos etc.

All theatres, cinemas, concert halls and night clubs are now required to have this provision on their current premises licence and restaurants, member clubs and pubs are also required to have it where such a licensable activity occurs.

*As of 26th March 2015 - Premises do not need a premises licence to stage a performance of live music or the playing of recorded music if:

- It takes place between 8am - 11pm and;
- It takes place at an alcohol on-licenced premises and;
- And the audience is no more than 500 people
- In some circumstances a licence may be required - **Check with RB Retail & Licensing Services Limited.**

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There are qualifying exemptions which include:

- film exhibitions
- education/information/advertisements
- museums and art galleries

incidental or background music

- shops
- garages
- pubs
- lifts
- restaurants
- shopping malls
- etc.

tv and radio broadcasts

- must be live not recorded e.g.
  - live football
  - live sport commentary

religious services or places of religious worship

garden fetes - unless for private gain

Morris dancing

Amusement machines are not classed as regulated entertainment and are not classed as regulated entertainment and are not therefore licensed under the premises licence but they must be licensed under other legislation.

The details of the grant of the provision of entertainment for your premises is to be found on your premises licence in section 1 of this manual, with further details on your plan.

Should you have any queries on this licensable activity, or if you are unclear as to whether it applies to you or not, or if you wish engage in this activity and do not have the provision as a licensable activity on your licence contact RB Retail & Licensing Services Limited for details of how we can assist you to secure this on your behalf.

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SECTION 7: Staff training records

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Staff Training Records

Site Address: .....

.....

.....

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Training Records

Staff Name: .....

Date: Training Given:

1. .....

2. .....

3. .....

4. .....

5. .....

6. .....

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SECTION 8: Licence Documents

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[Full Text] - Judgment Approved - 17 pages

DANIEL THWAITES PLC (Claimant) v WIRRAL BOROUGH MAGISTRATES' COURT (Defendant) & SAUGHALL MASSIE CONSERVATION SOCIETY (First interested party) & WIRRAL MBC (Second interested party) (2008)

[2008] EWHC 838 (Admin)

QBD (Admin) (Black J) 6/5/2008

HOSPITALITY AND LEISURE - LOCAL GOVERNMENT

JUDICIAL REVIEW : LICENSING AUTHORITIES : LOCAL AUTHORITIES

Counsel:
For the claimant: David MW Pickup
For the defendant: No appearance or representation
For the first interested party: David Flood
For the second interested party: Matthew Copeland

Solicitors:
For the claimant: Naphens Plc
For the first interested party: Kirwans
For the second interested party: In house solicitor

LTL 6/5/2008

Document No. AC0117188

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Neutral Citation Number: [2008] EWHC 838 (Admin)

Case No: CO/5533/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2008

Before:

THE HONOURABLE MRS JUSTICE BLACK

Between:

Daniel Thwaites Plc	**Claimant**
- and -	
Wirral Borough Magistrates' Court	**Defendant**
- and –	
The Saughall Massie Conservation Society	**1st Interested Party**
- and –	
Wirral Metropolitan Borough Council	**2nd Interested Party**

David MW Pickup (instructed by **Naphens plc**) for the **Claimant**
The Defendant did not appear and was not represented
David Flood (instructed by **Messrs Kirwans**) for the **1st Interested Party**
Matthew Copeland (instructed by **Wirral MBC**) for the **2nd Interested Party**

Hearing date: 10th March 2008

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Black J :

1. This is an application by Daniel Thwaites Plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Mr Justice Pitchford on 2 November 2006.

The factual background

2. The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the Licensing Act 1964. In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral ("the licensing authority") for the existing licence to be converted to a premises licence under the Licensing Act 2003 and for the licence to be varied simultaneously.

3. In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 p.m. and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 p.m., with the doors closing one hour after the last alcohol sale every night.

4. The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society ("the First Interested Party") and other Saughall Massie residents.

5. The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later "on special occasions" This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

6. The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 p.m., that the premises must promote the use of taxi firms which use a call-

back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

7. The Saughall Massie Conservation Society and "others" appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision "was not made with a view to promotion of and in accordance with the licensing objectives pursuant to Section 4, Part 2 of the Licensing Act 2003".

8. The appeal occupied the Magistrates' Court from 3 – 5 April 2006. The respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

9. The justices granted the appeal. Their Reasons run to 3 pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 p.m. and alcohol sales until 11.30 p.m. on all nights except Friday and Saturday when entertainment would be permitted until 11.30 p.m. and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 a.m.. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.

10. The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the "Witnesses of the Appellant", they say simply that they have read and considered them but attached little or no weight to them.

11. The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such

as R v Westminster City Council ex p Ermakov [1996] 2 All ER 302 that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

The broad nature of the claim in relation to the licensing decision

12. The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the Licensing Act 2003 ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

The legal background

13. The Licensing Act 2003 was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

14. Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

> "12. In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

15. Section 1 of the Act provides:

> "S1(1) For the purposes of this Act the following are licensable activities—
>
> (a) the sale by retail of alcohol,
>
> (b) [clubs]
>
> (c) the provision of regulated entertainment, and
>
> (d) the provision of late night refreshment."

16. To carry on a licensable activity, a premises licence granted under Part 3 of the Act is generally required, section 2. Application for a premises licence must be made to the relevant licensing authority, section 17(1).

17. By virtue of section 4, the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the "licensing objectives". These are set out in section 4 as follows:

> "S 4(2) The licensing objectives are—
>
> (a) the prevention of crime and disorder;
>
> (b) public safety;
>
> (c) the prevention of public nuisance; and
>
> (d) the protection of children from harm."

18. In carrying out its licensing functions, by virtue of section 4(3) the licensing authority must also have regard to its licensing statement published under section 5 and any guidance issued by the Secretary of State under section 182.

19. Section 182 obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 ("the Guidance"). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

20. The Foreword says that the Guidance

> "is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice."

21. As the Guidance says in paragraph 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

> "Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

22. An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in section 17(4) which are as follows:

> "(a) the relevant licensable activities,

(b) the times during which it is proposed that the relevant licensable activities are to take place,

(c) any other times during which it is proposed that the premises are to be open to the public,

(d) where the applicant wishes the licence to have effect for a limited period, that period,

(e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,

(f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,

(g) the steps which it is proposed to take to promote the licensing objectives,

(h) such other matters as may be prescribed."

23. Section 18 deals with the determination of an application for a premises licence. Section 35 deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of s 18.

24. Section 18(2) provides that, subject to subsection (3), the authority must grant the licence in accordance with the application subject only to:

"(a) such conditions as are consistent with the operating schedule accompanying the application,

and

(b) any conditions which must under section 19, 20 or 21 be included in the licence."

25. Section 19 deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. Sections 20 and 21 are not relevant to this claim.

26. Section 18(3) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal "relevant representations" are defined in section 18(6) as follows:

"(6) For the purposes of this section, "relevant representations" means representations which—

(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,

(b) meet the requirements of subsection (7),

(c) ...."

27. Subsection (7) provides:

(7) The requirements of this subsection are—

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

28. Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of section 18(3)(b), the authority must also:

> "(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives."

29. Section 18(4) provides:

> "(4) The steps are—
>
> (a) to grant the licence subject to—
>
> (i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
>
> (ii) any condition which must under section 19, 20 or 21 be included in the licence;
>
> (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
>
> (c) to refuse to specify a person in the licence as the premises supervisor;
>
> (d) to reject the application."

30. Conditions are modified for the purposes of subsection (4)(a)(i) if any of them is altered or omitted or any new condition is added.

31. During the currency of a premises licence, by virtue of section 51, an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc.) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of section 52, a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

32. The Act makes provision in Part 5 for "permitted temporary activity" which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

33. Section 181 provides for appeals to be made against decisions of the licensing authority to a magistrates' court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

The detail of the claim

34. The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates' Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the

approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

35. There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, section 4(3) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

> "10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

36. Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

37. Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in J. D. Weatherspoon plc v Guildford Borough Council [2006] EWHC 815 (Admin), he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".

38. There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As paragraph 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

> "When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a magistrates' court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

39. In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

40. The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in section 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, section 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives" (the steps in subsection (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:

> "Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose."

41. The Guidance also refers a number of times to the need for regulation to be "proportionate". This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being "necessary", it must in my view be confined to that which is "proportionate" and one can understand why the Guidance spells this out.

42. Mr Pickup submits, and I accept, that the Act anticipates that a "light touch bureaucracy" (a phrase used in paragraph 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, s 18(2) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as

the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the Anti-Social Behaviour Act 2003. The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

> "7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives."

43. The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with paragraph 6.1 which reads:

> "This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply."

44. It continues:

> "6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.
>
> 6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions."

45. The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.

46. The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated

without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

> "1 reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises."

47. To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to "make hay while the sun shines" and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of "little evidential value" in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

48. It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

> "The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

> "We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

49. They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

50. The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.

51. Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

52. Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said,

> "We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00 a.m. to 1.00 a.m.. 1.00 a.m. closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue*." [my italics]

53. I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting:

> "We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms."

In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

54. It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the

magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

55. It is clear from the Guidance that drawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.

56. The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

57. Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at paragraph 6.8:

> "The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times."

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

58. I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

59. What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours

sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading "Flexibility" under which the magistrates say simply:

> "We have considered the concept of Flexibility."

In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in paragraph 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

60. The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, "the application for extended hours was to allow *flexibility* to open later on certain occasions". As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

61. The magistrates' comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

62. There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

My overall conclusions

63. It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was "necessary" to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be "an inevitable consequence" of leaving the hours as granted by the Local Authority. However, in my view their approach to what was "necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

64. I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, "....there is also the question of Police resources

and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake".

65. Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is "a village pub and not a night spot in the centre of town". For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

66. Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, "I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises.". Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

67. I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in section 17(4) and these include not only the times when it is proposed that the licensable activities are to take place but also "any other times during which it is proposed that the premises are to be open to the public". On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of

closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

The costs argument

68. In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.