

Appendix 'F'

Statutory Guidance

The updated statutory guidance issued by the Home Secretary in accordance with section 182 of the Act refers to the consideration of applications for the grant or variation of premises licences in Chapter 9. Members may wish to consider the following extracts from the statutory guidance when determining this application:

Paragraph 9.37 " As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits".

Revised statutory guidance issued by the Home Office

Paragraph 9.42 "Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be."

Paragraph 9.43 "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."

Paragraph 9.44 "Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.

Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination."

Paragraph 10.8 "The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations."

Paragraph 10.9 "It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives."

Paragraph 10.13 "The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement.

Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.

However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

Paragraph 10.14 "Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

"Members are reminded about the review provisions contained in **chapter 11** of the guidance and, in particular:

Paragraph 11.1 "The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate."

Paragraph 11.2 "At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives."

Determination of an application

Where an application to vary a premises licence has been made in accordance with section 34 of the Act, and where relevant representations have been made, the licensing authority must hold a hearing to consider them, unless the applicant, each person who has made representations and the licensing authority agree that a hearing is unnecessary.

After having regard to the representations, the Committee may take such steps, if any, as it considers appropriate for the promotion of the licensing objectives which are:

- a) To modify the conditions of the licence
- b) To reject the whole or part of the application

And for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

In discharging its duty in accordance with the above, the Committee may vary a premises licence so that it has effect subject to different conditions in respect of:

- 1. different parts of the premises concerned;
- 2. different licensable activities.

Members are reminded of their obligation to give reasons for any decision(s) reached by further reference from the statutory guidance as follows:

Paragraph 13.10 "It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act."

A copy of the Statement of Licensing Policy, current statutory guidance and the Act

<https://www.rushcliffe.gov.uk/media/1/rushcliffe/media/documents/pdf/businessandlicensing/licensing/Statement%20of%20Licensing%20Policy.pdf>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

<https://www.legislation.gov.uk/ukpga/2003/17/contents>