

LICENSING ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 2: Licensing authorities

General

32. *Part 2* lists the bodies which are to be licensing authorities under the Act, describes the licensing objectives which the licensing authority must promote, and places an obligation on licensing authorities to publish a statement of licensing policy.
33. It also sets out the requirement for a licensing authority to establish a licensing committee and covers the delegation of licensing functions to licensing committees, sub-committees or officers of the licensing authority. The sections also cover the obligation to maintain a licensing register.

Section 3 - Licensing authorities

34. This section lists the bodies which for the purposes of the Act will act as licensing authorities. Subsection (2) describes the geographical area in which the authority will act.

Section 4 - General duties of licensing authorities

35. This section sets out the licensing objectives that must be promoted by the licensing authority in carrying out its duties. These are: -
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance;
 - the protection of children from harm.
36. The four licensing objectives aim to ensure that the carrying on of licensable activities on or from premises is done in the public interest. The third licensing objective, the prevention of public nuisance, will not extend to every activity which annoys another person but will cover behaviour which, when balanced against the public interest, is found to be unacceptable. The fourth licensing objective relates to harm to children beyond matters relating to physical safety.
37. Subsection (3) provides that when discharging its functions, the licensing authority must have regard to its policy framework document under section 5 and to any guidance issued by the Secretary of State (section 182).

Section 5 - Statement of licensing policy

38. This section requires each licensing authority to determine and publish a statement of its licensing policy every three years. The first three-year period will begin with

a day appointed by the Secretary of State. Subsection (3) lists those whom the licensing authority must consult in preparing its licensing policy; these include the police, the local fire authority, people who represent holders of premises and personal licences and club premises certificates, and people representative of local businesses and residents. Schedule 8 makes transitional provision requiring holders of those representing licensees under the existing licensing regimes to be consulted until the new regime is in force. Subsection (4) imposes a duty on an authority to keep its licensing policy under review. Any revisions to it, following consultation with those listed in subsection (3), must be published. Subsection (7) provides that the Secretary of State may make regulations relating to the formation of licensing policy and the publication of licensing statements.

Section 6 - Licensing Committee

39. This section requires each licensing authority (with the exception of those which cover only the Inner and Middle Temples which consist, in each case, of only one person) to establish a licensing committee of between ten and fifteen members of the authority.

Section 7 - Exercise and delegation of functions

40. Subsections (1) and (2) of this section provide that the licensing committee will discharge all of the authority's licensing functions, except for the function of the determination and publication of its statement of licensing policy.
41. Subsection (3) provides that the authority may decide that its licensing committee must also discharge additional functions of the authority that are related to its licensing functions. If a licensing authority chooses to discharge such related functions itself rather than to arrange for the licensing committee to discharge them, it must consider any relevant report prepared by the licensing committee before acting in any such matter (unless it is urgent). This ensures that the licensing committee will have an input into any matter relating to the authority's licensing functions.
42. Subsections (5) to (8) provide that in cases where a matter concerns other functions in addition to licensing functions, a licensing authority may choose to refer the matter either to its licensing committee (having first consulted it) or to another of its committees. If the latter course is followed, then in considering the matter, that committee must consider any report (unless the matter is urgent) prepared by the licensing committee. If the former course is followed the licensing committee must, in considering the matter, consider any report about the matter prepared by any of the of the authority's other committees (again, unless the matter is urgent).
43. Subsection (9) makes provision that if a licensing committee is unable to discharge its functions because some of its members are prevented from considering or voting on a matter – for example, if they are disqualified under the licensing authority's standing orders because they have a financial interest in the matter – then the matter is instead referred back to the licensing authority for it to discharge its functions in relation to the matter.
44. Subsection (10) disapplies the provisions in the section with respect to the Inner Temple and the Middle Temple with the result that in those cases the licensing authority will discharge all its licensing functions.

Section 8 - Requirement to keep a register

45. Subsection (1) provides that each licensing authority must maintain a register which records details of the authorisations it issues, the temporary event notices it receives, other notices and applications to it as set out in Schedule 3, and any other information which the Secretary of State prescribes. Under subsection (2) the Secretary of State is given the power to make regulations as to how that register must be maintained. Subsections (3) to (5) provide that the information contained in the register must be

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made available for inspection by the public during office hours, free of charge, and that a copy of that information must be supplied on request (for a fee). Subsections (6) and (7) make provision for the Secretary of State to arrange, through administrative action, for the establishment of one or more central registers, in which case the licensing authorities may be required to pay for the cost of such arrangements.

Section 9 - Proceedings of licensing committee

46. By virtue of the provision of this section, a licensing committee may form one or more sub-committees, each comprising three members of the committee. The Secretary of State is given the power to make regulations relating to the committees and sub-committees' proceedings, public access to their meetings, publicity, agendas and records. Otherwise, licensing committees may regulate their own procedure and that of their sub-committees.

Section 10 - Sub-delegation of functions by licensing committee etc.

47. Subsection (1) provides that a licensing committee may sub-delegate the exercise of its functions to a sub-committee of the licensing committee, or to an officer of the licensing authority. Subsection (2) provides that in turn, the sub-committee can delegate functions to such an officer. Subsection (5) provides that such a delegation will, however, be subject to any direction made by the licensing committee. Subsection (3) provides that more than one such sub-committee or officer can discharge the same functions at the same time: thus, for example, a busy licensing committee which is faced with a high volume of licence applications could arrange for a number of licensing sub-committees to deal with them in parallel. However, subsection (4) sets out certain functions which may not be delegated to an officer. These are functions in respect of which representations or objections have been made and with which it is appropriate for the licensing committee or one of its licensing sub-committees to deal.