

## Extracts of the Secretary of State's Guidance

### General Statement - ability for Licensing Authorities to depart from the Guidance

**1.9**           **LEGAL STATUS:** 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. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this 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.

1.11    Section 5 of the Act requires a licensing authority to determine and publish a statement of its licensing policy at least once every five years. The policy must be published before the authority carries out any licensing functions under the Act.

1.12    However, determining and publishing a statement of its policy is a licensing function and as such the authority must have regard to this Guidance when taking this step. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. But once again, it is important that it should be able to give full reasons for departing from its published statement of licensing policy. Where revisions to this Guidance are issued by the Secretary of State, there may be a period of time when the licensing policy statement is inconsistent with the Guidance (for example, during any consultation by the licensing authority). In these circumstances, the licensing authority should have regard, and give appropriate weight, to this Guidance and its own existing licensing policy statement.

### Temporary Events Notices - General

7.2     The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead, a person wishing to hold an event at which such activities are proposed to be carried on (the "premises user") gives notice to the licensing authority of the event (a "temporary event

notice” or “TEN”). 7.3 The TEN must be given to the licensing authority in the form prescribed in regulations made under the 2003 Act. The form requires the user to describe key aspects of the proposed event, including the general nature of the premises and the event, the licensable activities intended to be carried on at the proposed event, including whether they will include any relevant entertainment as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (i.e. displays of nudity designed to sexually stimulate any member of the audience including, but not limited to, lap dancing and pole dancing). Under the 2003 Act ‘premises’ can mean any place. Events authorised under a TEN will therefore not always be in a building with a formal address and can take place, for example, in public parks and plots within larger areas of land. In all cases, the premises user should provide a clear description of the area in which they propose to carry on licensable activities, including whether the premises are, for example, an open field or a beer tent. Local authorities and “relevant persons” (see below) may wish to make enquiries where appropriate to satisfy themselves of the exact location for where a TEN is being given.

- 7.6 The police or EHA (“relevant persons” for the purposes of TENs) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.36). If a relevant person sends an objection, this may Revised Guidance issued under section 182 of the Licensing Act 2003 I 49 result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded (see paragraphs 7.15-7.22).
- 7.7 A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required

### **Role of the Licensing Authority**

- 7.25 The licensing authority must check that the limitations set down in Part 5 of the 2003 Act are being observed and intervene if they are not (see paragraph 7.15). For example, a TEN would be void unless there is a minimum of 24 hours between events notified by the same

premises user, or an associate or someone who is in business with the relevant premises user in respect of the same premises. This is to prevent evasion of the seven day (or 168 hour) limit on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a TEN is treated as being from the same premises user if it is given by an associate.

- 7.26 Where the application is not within the statutory parameters described earlier, the licensing authority will issue a counter notice to the premises user.
- 7.27 Where the TEN is in order, the relevant fee paid and the event falls within the prescribed limits, the licensing authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically). The licensing authority must do so, no later than the end of the first working day following the day on which it was received (or by the end of the second working day if it was received 52 | Revised Guidance issued under section 182 of the Licensing Act 2003 on a non-working day), unless an objection notice is received beforehand from the police or EHA on the basis of any of the four licensing objectives (see paragraphs below).
- 7.28 If the licensing authority receives an objection notice from the police or EHA that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection unless all parties agree that this is unnecessary. The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence or certificate conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a "notice (statement of conditions)") and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the licensing authority must give a counter notice.
- 7.29 Premises users are not required to be on the premises during the event authorised by the TEN, but they will remain liable to prosecution for certain offences that may be committed at the premises during the period covered by it. These include, for example, the offences of the sale of alcohol to a person who is

drunk; persistently selling alcohol to children and allowing disorderly conduct on licensed premises.

- 7.30 In the case of an event authorised by a TEN, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.
- 7.31 Section 8 of the 2003 Act requires licensing authorities to keep a register containing certain matters, including a record of TENs received. Under Schedule 3 of the 2003 Act, the licensing authority must also keep a record of such matters including any notice of withdrawal of a TEN, any counter notice to a TEN given following an objection by a relevant person and any TEN received following modification. If requested to do so, a licensing authority must supply a person with a copy of the information contained in any entry in its register. Each licensing authority must also provide facilities for making the information contained in the entries in its register available for inspection by any person during office hours and without payment. Licensing authorities may wish to consider bringing TENs to the attention of local councillors and residents by making their register available online or including relevant details of a TEN when it is received, along with notice of licence applications on the authority's website. There is no requirement to record all the personal information given on a TEN

## **Police and Environmental Health intervention**

- 7.32 The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives.
- 7.33 If the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notice must be given within the period of three working days following the day on which they received the TEN.
- 7.34 Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings (or appeals) in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.
- 7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.
- 7.36 However, in most cases, where for example, alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (such as at weddings with a cash bar

or small social or sporting events) this should not usually give rise to the use of these powers.

### **Applying conditions to a TEN**

7.38 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The licensing authority can only do so: • if the police or the EHA have objected to the TEN; • if that objection has not been withdrawn; • if there is a licence or certificate in relation to at least a part of the premises in respect 54 | Revised Guidance issued under section 182 of the Licensing Act 2003 of which the TEN is given; • and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions. 7.39 This decision is one for the licensing authority alone, regardless of the premises user's views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

## **EXTRACTS FROM THE STATEMENT OF LICENSING POLICY**

### **Decisions of the Licensing Authority**

2.1 The Licensing Act 2003 requires this Licensing Authority to carry out its various licensing functions so as to promote the following four licensing objectives:

- 1) The prevention of crime and disorder**
- 2) Public safety**
- 3) The prevention of public nuisance**
- 4) The protection of children from harm.**

Each objective is of equal importance. It is important to note that there are no other licensing objectives, therefore these four are of paramount importance at all times.

The Licensing Authority must base its decisions, in relation to determining applications and attaching any conditions to licences, on the promotion of these licensing objectives. The Licensing Authority has taken full account of the guidance issued to it by the Secretary of State under section 182 of the Act: Where it is necessary to depart from that guidance, the Licensing Authority will give its reasons for doing so.

### **19. Temporary Event Notices (TENs)**

- 19.1 Section 100 of the Licensing Act 2003 states that the organiser of a Temporary Event must give the Licensing Authority, the police and the Council's Noise and Nuisance team notice of the event.
- 19.2 Section 100(7) states that the organiser must give a minimum of ten working days' notice, not including the day of receipt of the TEN or the day of the proposed event. However, in a significant number of cases this time period would not allow enough time for the organiser to liaise with the fire authority, the police and relevant Council officers to ensure that the event passes off safely and with minimum disturbance to local residents.
- 19.3 The Secretary of State's Guidance mentions in paragraph 7.11 that "Although ten clear working days is the minimum possible notice that may be given, licensing authorities should publicise their preferences in terms of advance notice and encourage premises users to provide the earliest possible notice of events planned by them. Licensing authorities should also consider publicising a preferred maximum time in advance of an event by when TENs should ideally be given to them"

In accordance with this section of the Guidance, this Licensing Authority would prefer that event organisers give at least 28 days notice of a planned event. In the case of events planned to take place within the Notting Hill Carnival 'footprint' during the Carnival weekend, this Authority recommends that TENs are submitted at least 12 weeks in advance (see Chapter 25). This will ensure that full discussion can occur between the organiser and any other interested parties in order that the event can take place with the minimum risk of crime and disorder, public nuisance and to the health and safety of staff and customers.

19.4 Additionally, the Licensing Authority prefers that Temporary Event Notices are **not normally** served on the Licensing Authority, the Metropolitan Police or the Noise and Nuisance Team any more than three months before the event is due to take place. (see paragraph 19.3 above for the Notting Hill Carnival exception)

19.6 It should be noted that the police and the Council's Noise and Nuisance team are the only bodies who may make representations to a Temporary Event Notice. However, these two bodies may object to a TEN on grounds that any of the licensing objectives would not be promoted should the event go ahead. Where objections are received the matter will be put before the Licensing Authority's Licensing Committee. The Licensing Committee may:

- i. Allow the TEN to go ahead
- ii. Reject the TEN
- iii. If the premises where the TEN is proposed to take place already has a premises licence the Committee may allow the TEN but impose some, or all, of the conditions on the premises licence onto the TEN if appropriate.