

EXPLANATORY MEMORANDUM TO
REVISED GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT
2003, DATED OCTOBER 2014

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Secretary of State is revising the guidance issued under section 182 of the Licensing Act 2003 (“the 2003 Act”) to provide advice to licensing authorities in relation to the implementation of three statutory instruments (the Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014 (“the Order”), the Licensing Act 2003 (Hearings) (Amendment) Regulations 2014 and the Licensing Act 2003 (Permitted Temporary Activities) (Notices) (Amendment) Regulations 2014 and the matters described in paragraph 7.2.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative context

4.1 The 2003 Act provides a system of authorisation for the following activities (referred to as “licensable activities”): the sale by retail of alcohol; the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; the provision of regulated entertainment; and the provision of late night refreshment. It is a criminal offence to carry on, or attempt to carry on, a licensable activity on or from premises without an appropriate authorisation under the 2003 Act. Such an authorisation may comprise a premises licence, a club premises certificate or a temporary event notice (“TEN”).

4.2 The 2003 Act provides a framework within which licensing authorities process and determine applications and exercise other licensing functions. In accordance with section 182 of the 2003 Act, the Secretary of State must issue guidance to licensing authorities on the discharge of their functions under the 2003 Act. Licensing authorities must have regard to this guidance but may depart from it if they have good reason to do so, although any such departure may give rise to an appeal or judicial review. The Secretary of State may also issue revised guidance from time to time. The coming into force of three statutory instruments made under the 2003 Act and the matters described in paragraph 7.2 make it necessary to issue the revised guidance to which this memorandum relates.

5. Territorial extent and application

5.1 This revised guidance applies in England and Wales.

6. European Convention on Human Rights

6.1 As the guidance is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The coming into force of three new statutory instruments require revision to the guidance to ensure that it is consistent with the new provision they make, and that licensing authorities have appropriate advice about their application. As a result of these legislative changes, the guidance has been revised to provide licensing authorities with updated advice in relation to their exercise of functions relating to the changes. These include revision to:

- Chapter 7 in relation to a change to the TEN form which now requires the premises user to specifically state whether the premises are proposed to be used to provide relevant entertainment (for example, lap dancing) at the event in respect of which the TEN is given;
- Chapter 10 in connection with the changes to the mandatory conditions made by the Order; and
- Chapter 16 (Early Morning Alcohol Restriction Orders (EMROs)) to clarify aspects of the process by which licensing authorities introduce an EMRO (for example, by adding a flow chart at the end of Chapter 16).

7.2 Moreover, there are a number of minor revisions to clarify the advice to licensing authorities about some additional matters. These include revisions relating to the use of health data to underpin decisions based on what is appropriate to promote the licensing objectives and to protect children from harm (Chapters 2 and 9), a reference to the Portman Group's Retailer Alert Bulletins (Chapter 9) - which licensing authorities should consider imposing as a condition on licence holders where there is specific evidence of irresponsible naming, packaging or promotion of alcoholic drinks which are linked to the undermining of one of the licensing objectives, that licensing authorities may wish to consider whether conditions are appropriate to prevent the sale of New Psychoactive Substances (NPS) alongside the sale of alcohol at licensed premises (Chapter 10), clarification that it is an offence to store counterfeit alcohol on licensed premises (Chapter 11), clarification that cumulative impact policies can apply to any licensable activities including the sale of alcohol on or off the premises and the sale of late night refreshment - irrespective of whether that includes the sale

of alcohol (Chapter 13), and the powers available to licensing authorities to consider the staggering and zoning of closing times (Chapter 13).

- Consolidation

7.3 This does not apply to the guidance issued under section 182 of the 2003 Act.

8. Consultation outcome

8.1 The Department carried out a consultation on the Alcohol Strategy from 28 November 2012 to 6 February 2013, and around 1,450 responses were received. This consultation included questions on reviewing the mandatory licensing conditions. A number of suggestions were received, but in order to strike a balance between promotion of the licensing objectives and burdens on business, it was decided to restrict the changes to those which caused the most concern, namely:

- Simplifying and tightening the law on irresponsible promotions;
- Requiring on-trade premises to list the price of small measures (125ml glasses of still wine, 25ml measures of gin, rum, vodka and whisky and half pints of beer and cider) alongside other sizes on menus and price lists, and make customers aware of their existence where they do not specify a measure;
- Requiring availability of free, potable drinking water;
- Clarifying that responsibility for age-verification lies with the designated premises supervisor; and
- Allowing documents bearing ultra-violet fluorescent ink to be used as age verification documents.

8.2 Details of the consultation and the Government's response are available on the Department's website at <http://www.homeoffice.gov.uk/>.

9. Guidance

9.1 The purpose of this explanatory memorandum is to describe revisions to the guidance issued under section 182 of the 2003 Act.

9.2 The statutory guidance is available on gov.uk.

10. Impact

10.1 An impact assessment has not been produced for this instrument as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

11. Regulating small business

11.1 The revised guidance applies to small businesses as all licensed premises must comply with requirements imposed in accordance with the 2003 Act. It is not anticipated that it will have an adverse impact on small businesses.

12. Monitoring and review

12.1 The Government will continue to review the guidance, including in relation to the changes made by the Order, so as to monitor its impact both on the licensing objectives (in general) and on licensing authorities and other persons to which this guidance is relevant.

13. Contact

13.1 In connection with the revised section 182 guidance, please contact Sam Hardy, Drugs and Alcohol Unit, the Home Office on 020 7035 1784 or Sam.Hardy@homeoffice.gsi.gov.uk who can answer any queries about the revised statutory guidance.