

EXPLANATORY MEMORANDUM TO
REVISED GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT
2003, DATED MARCH 2015

1. This explanatory memorandum has been prepared by the Home Office 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 updated advice to licensing authorities and the public in relation to the implementation of the Legislative Reform (Entertainment Licensing) Order 2014 (“2014 Order”). The guidance is also being revised in respect of provisions in the Deregulation Act 2015 (“2015 Act”) which deregulate the exhibition of films in community premises, remove the offence in the Licensing Act 2003 of selling liqueur confectionery to those under the age of 16 and remove the requirement for personal licence holders to renew their personal licences.
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”). In addition, the sale of alcohol must be overseen by a personal licence holder. The 2003 Act requires (subject to limited exceptions) that any supply of alcohol, at premises authorised by a premises licence to carry on that activity, can only be made at a time when there is a designated premises supervisor (“DPS”) in respect of the licence. A DPS must hold a personal licence. Moreover, every supply of alcohol must be made or authorised by a personal licence holder, whether the holder or the DPS.
 - 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, if it is considered to be unjustified, 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 the 2014 Order, and the relevant provisions of the 2015 Act, 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

7.1 Legislative change is being implemented by means of the 2014 Order and the 2015 Act. This amending legislation requires revisions to the guidance to ensure that it is consistent with the new provisions being made, and that licensing authorities have appropriate advice in relation to the exercise of their functions.

7.2 Chapter 15 has been amended to reflect changes to the regulation of entertainment introduced by the 2014 Order. This explains that in certain circumstances, the provision of regulated entertainment may no longer need to be authorised under the 2003 Act. The revisions detail licensing exemptions in defined circumstances, including for: local authorities, hospital healthcare providers and school proprietors hosting entertainment on their own defined premises; music entertainment on community premises and on alcohol licensed premises; travelling circuses and performances of Greco-Roman and freestyle wrestling.

7.3 Chapter 15 of the guidance has also been amended in connection with the 2015 Act, in respect of the licensing exemption for the exhibition of film in community premises (defined as a church, village, parish or community hall or similar building) in defined circumstances.

7.4 The 2015 Act also repealed the offence in the 2003 Act of selling liqueur confectionery to those under the age of 16 and the requirement to renew personal licences. The guidance has also been amended to include specific reference to the protection of children from sexual exploitation.

7.5 Other measures introduced by the 2015 Act not referred to in the statutory guidance, include a measure which removes the requirement for holders of lost and stolen licences to report these to the police. This removes a burden on holders having to notify licensing authorities.

Consolidation

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

8. Consultation outcome

8.1 The Department for Culture Media and Sport (DCMS) carried out a consultation on the suitability and workability of a Legislative Reform Order from 22 October 2013 to 17 December 2013. 89 responses were received. A consultation response document was published on 9 July 2014, coinciding with the laying of the draft of the 2014 Order before Parliament. Details of the consultation and an explanatory document to the 2014 Order are available at <https://www.gov.uk/government/consultations/legislative-reform-order-changes-to-entertainment-licensing>

8.2 The House of Lords (HoL) Delegated Powers and Regulatory Reform Committee and the House of Commons (HoC) Regulatory Reform Committee subsequently published their reports on the draft 2014 Order on 25 July 2014 and 17 October 2014 respectively. The draft of the 2014 Order was approved by the HoL on 19 November 2014 and in the HoC on 24 November 2014.

8.3 DCMS carried out a consultation on community film exhibition from 4 July 2013 to 28 August 2013 and 48 replies were received. A consultation response document was published on 19 December 2013. Details of the consultation are available at <https://www.gov.uk/government/consultations/licensing-act-2003-community-film-exhibition-consultation>

8.4 DCMS published a draft of a planned revision to Chapter 15 of the Guidance on 24 November 2014.

8.5 The content of this revision to the guidance has not been the subject of separate consultation as the changes are consequent upon the commencement of the 2014 Order and the 2015 Act and the substantive policy issues have already been consulted upon.

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 revised statutory guidance will be made available on the gov.uk website. The changes have been communicated to licensing authorities in England and Wales.

10. Impact

10.1 There is no adverse impact on businesses, charities or voluntary bodies as a result of this guidance. This instrument is necessary for the administration of the 2003 Act.

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. As the revised guidance reflects deregulatory changes to the 2003 Act, it does not impose any additional burdens on business.

12. Monitoring and review

12.1 The Government will continue to review the guidance, including in relation to the changes made by the 2014 Order and the 2015 Act, and 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. For queries related to regulated entertainment, please contact Ian Jenkins at DCMS on 020 7211 2288 or ian.jenkins@culture.gov.uk .