

This document was archived on 3 November 2016

A STEPPED APPROACH TO ACHIEVING COMPLIANCE FACTSHEET



Home Office

Archived

This factsheet has been produced in partnership
with the Institute of Licensing



Purpose: To advise businesses and regulators of a stepped approach to achieving compliance in licensed premises

A stepped approach to enforcement is used to secure business compliance and bring about (where necessary) a change of behaviour towards licensing law, regulations and conditions.

Regulators should adopt the principles of better regulation and take a stepped approach to securing compliance in a way which is:

- Proportionate
- Accountable
- Consistent; and
- Transparent

Transparent:

- Advise licensed premises operators that inspections will be carried out. This does not mean informing them when you will be inspecting their premises.
- Ensure that licence holders know what you expect from them, and what you will be looking for when inspecting the premises, and the results of your inspections.

Consistent:

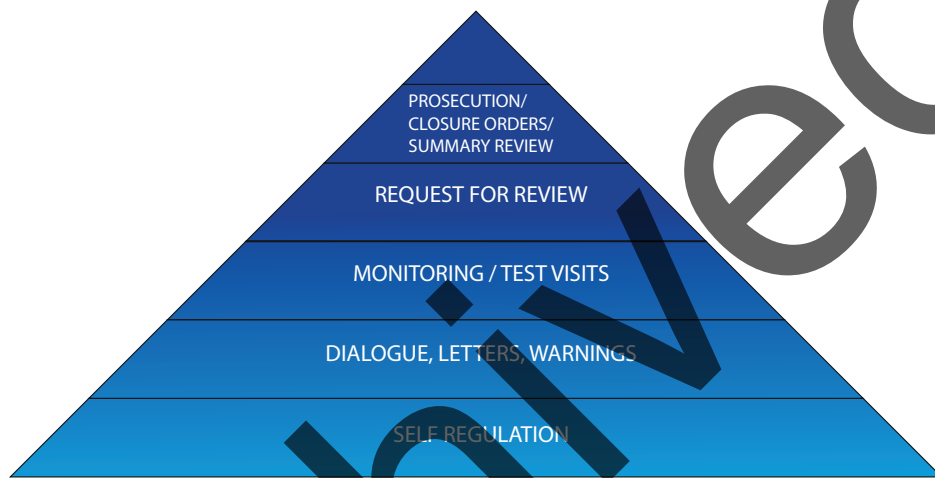
- Be clear about the outcomes you are working towards, and how your activities will contribute to those outcomes.
- Ensure that inspections are undertaken in a consistent manner, and that breaches or problems are addressed consistently from premises to premises depending on the nature and severity of the problem.
- Work collaboratively with other agencies undertaking inspections to ensure greater consistency in your approaches.

Accountable:

- Consider risk rating premises to determine the need and frequency of premises inspections, and make your risk rating methodology publically available, while reserving the right to inspect premises in response to information or intelligence which gives sufficient cause for concern to warrant reactive action.
- A risk rating of premises should show that premises which are well run and low risk will be self regulated unless issues arise.

In many cases, licensing authorities and responsible authorities initially become aware of a potential issue through a complaint by a member of the public, or a concern raised by other regulators about possible breaches of the licence conditions.

The authority should make a judgement based on the seriousness of the situation and respond accordingly using the minimum interference necessary to address the problem. For example, this might include dialogue with the licence holder, mediation between applicants / licence holders and residents, or a warning about future conduct of the premises.



In more serious cases, an investigation will be necessary and this may include inspections or test purchase operations.

In some cases the circumstances will be more serious and mediation or dialogue will not be sufficient or appropriate. In such cases, a responsible authority can request a review of the premises licence. In some cases the police can consider the use of closure powers or expedited reviews, and environmental health (under delegation from the local authority chief executive where the problem concerns noise nuisance) and trading standards have closure powers in certain circumstances. Relevant authorities can also prosecute the licence holder for offences under the Act.

In all cases where possible the responsible authority or the licensing authority should seek to achieve compliance or resolution through mediation and informal agreement before embarking on the more formal enforcement routes.

Premises licence reviews

Any person can request that the licensing authority reviews the premises licence where they consider (and have evidence) that the operation of the premises licence is undermining one or more of the licensing objectives, and it is serious enough to bring a review of the licence rather than looking to resolve the problem informally.

Once the licensing authority receives a request for review (either from a responsible authority or any other person), it must follow a statutory process which includes advertising the review and allowing 28 days for further representations, and holding a hearing to determine the review.

Summary Reviews

- A summary review application can be made to the licensing authority by a local chief officer of police if supported by a certificate from a superintendent or higher ranking member of the police force stating that the premises (which must be licensed for the sale of alcohol) are associated with serious crime and/or serious disorder
 - 'serious crime' has the same meaning here as it does in the Regulation of Investigatory Powers Act 2000 – i.e. that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty one (eighteen in relation to England and Wales) and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- On receipt of a summary review application, the licensing authority must make a decision within 48 hours in relation to any interim steps which will be applied to the premises in question pending the determination of the review. Such steps (if any) can include modifying the licence conditions, preventing the sale of alcohol, removing the DPS, or suspension of the premises licence.
- If a licence holder makes representations against the interim steps, then the licensing authority must hold a hearing within 48 hours of receipt of those representations.
- A full review then follows (within 28 days of the initial review application) and the licensing authority will make a final decision on the licence.
- There is a right of appeal to the magistrates' court in relation to the determination of the review.
- The initial consideration by the licensing authority about the interim steps may take place without the licence holder being given the opportunity to make representations. As a result, the premises licence holder may be unaware of the situation until notified by the licensing authority of the interim steps which have been decided. It should be borne in mind that consideration of interim steps may be assisted by a full explanation by the licence holder. Engaging with them at the start of the process rather than once a decision has been made, may prevent a situation where, for example, the premises licence is suspended unnecessarily and successfully challenged by the licence holder on providing a full explanation of the situation a few days later, by which time the premises may have sustained significant financial loss due to temporary closure.

Closure Orders

Section 160 of the Licensing Act 2003

- Section 160 of the Licensing Act 2003 gives the police the power to apply to a magistrates' court for the closure of all licensed premises (but not clubs) in a given area for up to 24 hours. This power should only be used where they have specific intelligence which leads them to anticipate public order problems likely to be fuelled by alcohol e.g. football matches or potentially New Year's Eve.
- The application to the court is made by an officer of at least the rank of superintendent. The court may not make such an order unless it is satisfied that it is necessary to prevent disorder. The burden of proof is on the police to satisfy the court.
- A more informal, partnership approach where possible would be for the police to seek voluntary agreement from licence holders in a given area for closure negating the need for a court order.

Section 161 of the Licensing Act 2003

- Section 161 of the 2003 Act allows a police officer of at least the rank of inspector to make an order closing individual licensed premises (not including club premises) for up to 24 hours where **disorder is taking place, or is likely to take place imminently or a nuisance is being caused by noise emanating from the premises.**
- In considering whether to exercise this power, the police officer must take into account the conduct of the premises licence holder, manager, designated premises supervisor or premises user who has given a temporary event notice.
- There are further provisions allowing the cancellation or extension of a closure order by a police officer and all decisions should be taken in the interests of public safety or preventing noise nuisance whichever is relevant.
- Following the making of a Closure Order under this power, the police must apply to the magistrates' court for consideration of the Order, and notify the licensing authority of the position.
- The licensing authority will be notified by the magistrates' court of its decision in relation to the Closure Order and, once notification is received, the licensing authority must start the process to review the premises licence. The review must be determined by the licensing authority within 28 days of the court's notice.

Section 169A of the Licensing Act 2003

- It is an offence under section 147A of the Licensing Act 2003 where a person (who is a 'responsible person' in relation to the premises) sells alcohol to an underage person on two or more occasions within three consecutive months. The offence is 'persistently selling alcohol to children'.
- Section 169A provides a further closure power for police (superintendent or above) or trading standards officer (an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985) where a person has persistently sold alcohol to children and the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of his being convicted, and the offender is still, at the time when the notice is given, the holder of a premises licence in respect of those premises, or one of the holders of such a licence.
- A closure notice under this section proposes a prohibition (for a period specified in the notice of between 48 - 336 hours) on the sale of alcohol, and (where accepted) offers the opportunity to discharge all criminal liability for the alleged offence.

- A closure notice must not be given more than 3 months after the time of the last of the sales to which the alleged offence relates.
- No proceedings may subsequently be brought against any such person for the alleged offence or any related offence

Closure Notices

Section 19 of the Criminal Justice and Police Act 2001

- Allows the police or local authority to serve a closure notice on any premises where they are satisfied that such premises are being or have been used (in the last 24 hours) for unauthorised sale of alcohol for consumption on, or in the vicinity of, the premises.
- Following the issue of a closure notice the police or local authority as appropriate can apply to a magistrates' court for a closure order unless the unauthorised sale has ceased and there is no reasonable likelihood that the premises will be so used in the future.
- The courts may then make a closure order requiring the premises to close immediately until certain conditions are satisfied.
- **It is important to note that closure notices do not require a premises to close. They are essentially warnings to the licensee to rectify any breach within 7 days. Failure to do so may result in an application to a magistrates' court for a closure order under Section 20 of the Criminal Justice and Police Act.**

Part 1A, Anti Social Behaviour Act 2003

- A police officer (superintendent or above) can authorise the issue of a Closure Notice under section 11A of the Act if they have reasonable grounds for believing that a person has engaged in anti-social behaviour on the premises (within the previous 3 months) and that the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public.
- The local authority has to be consulted before issuing a Closure Notice, and the police must take reasonable steps to establish the identity of any person living or having control/responsibility for, or an interest in the premises.
- The Closure Notice must be served by a police constable and must give notice that an application will be made under section 11B for closure of the premises, and state that access to the premises by any person other than a person who habitually resides in the premises or the owner of the premises is prohibited;
- The Closure Notice is served by fixing copies of the notice in a prominent place on the premises, at each normal access point, and any outbuildings, and by giving a copy of the notice of persons identified in connection with the premises.
- Once a Closure Notice has been issued, the police must (within 48 hours) apply to the Magistrates' Court for a Closure Notice (section 11B of the Anti-Social Behaviour Act 2003).
- The Magistrates' may then make a Part 1A Closure Order (closing the premises for up to 3 months) if satisfied that a person has engaged in anti-social behaviour on the premises in respect of which the Closure Notice was issued and the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public, and the making of the Order is necessary to prevent the occurrence of such disorder or nuisance for the period specified in the Order.

Section 40, Anti-Social Behaviour Act 2003 (closure of noisy premises)

- Allows a local authority Chief Executive to make a Closure Order for premises with a premises licence or TEN where a public nuisance is being caused by noise coming from the premises and the closure of the premise is necessary to prevent that nuisance.
- The notice must specify the period of closure (up to 24 hours).
- This power can be delegated to an Environmental Health Officer.
- The Closure Order must be cancelled as soon as it is no longer necessary to prevent the public nuisance.

Prosecution of offences

There are a number of offences under the Licensing Act 2003 which can be prosecuted by the appropriate authority, and which carry a maximum sentence (normally a fine and/or prison sentence).

Penalty notices for disorder offences

- A penalty notice for disorder (PND) is a fixed penalty notice that can be issued for specified offences.
- The police may issue a PND to anyone aged 16 years or over who has committed a specified penalty offence with a fixed penalty (and to those aged 10-15 in seven pilot police forces).

PND's under the Licensing Act 2003:

PND Offence Code	CCJS Code	Section	Description	Notifiable/ Recordable
DA16	LG03036	*Section 141 of the Licensing Act 2003 (c.17)	Sells or attempts to sell alcohol to a person who is drunk	Recordable (1/12/05)
DA17	LG03067	*s146(3) of the Licensing Act 2003	Supply of alcohol by or on behalf of a club to a person aged under 18	Recordable (1/12/05)
DA18	LG03064	*s146(1) of the Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable (1/12/05)
DA19	LG03081	*s149(3) of the Licensing Act 2003	Buys or attempts to buy alcohol on behalf of person under 18	Recordable (1/12/05)
DA20	LG03083	*s149(4) of the Licensing Act 2003	Buys or attempts to buy alcohol for consumption on relevant premises by person under 18	Recordable (1/12/05)
DA21	LG03088	*s151 of the Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable (1/12/05)
Upper Tier Penalty - £80 for 16 year olds and over (£40 for 10-15 year olds)				

Disclaimer

Nothing in this factsheet can be considered as legal advice. Independent legal advice should be sought in the event of queries, advice and information can also be obtained from the local licensing authority