

**EXPLANATORY MEMORANDUM TO
REVISED GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT
2003 DATED JUNE 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”) primarily in consequence of the Licensing Act 2003 (Mandatory Conditions) Order 2014 (“the Order”).
 - 2.2 Most of the revisions to the guidance are made in Chapter 10 (Conditions attached to premises licences and club premises certificates) in consequence of the Order, but a limited number of revisions and corrections are also made elsewhere in the guidance to improve its clarity and consistency.

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.
 - 4.2 The 2003 Act provides a framework within which licensing authorities process and determine applications and exercise other licensing functions. By 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 revised guidance to which this memorandum relates is being issued as a result of changes made under the 2003 Act by the Order.

5. Territorial extent and application

5.1 This instrument applies to 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 Section 182 of the 2003 Act provides that the Secretary of State must issue and, from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act.

7.2 The coming into force of the Licensing Act 2003 (Mandatory Conditions) Order 2014 requires a revision of the guidance to ensure that it is consistent with this new legislation.

- Revisions to the guidance

7.3 As a result of the legislative changes described above, the guidance has been revised to provide licensing authorities with advice in relation to their exercise of these new functions; see especially the revision of Chapter 10 in connection with the modifications made by the Order to the mandatory licensing conditions. Chapter 16 (Early Morning Alcohol Restriction Orders (EMROs)) has been revised to give greater clarity to licensing authorities on the process for introducing an EMRO. Moreover, the guidance has been subject to a number of additional minor revisions to improve clarity in some areas.

- Consolidation

7.4 Not applicable.

8. Consultation outcome

8.1 The revised statutory guidance issued under section 182 of the 2003 Act has not been the subject of a full public consultation because the revisions are necessary to reflect the changes made by the Order, which was the subject of earlier consultation.

8.2 The Department has carried out two separate public consultations in relation to proposals for alcohol pricing. From July to September 2010, the Government conducted a public consultation exercise on 'Rebalancing the Licensing Act'. A total of 1,089 responses to the consultation were received.

8.3 The most recent public consultation, on the Alcohol Strategy, ran from 28 November 2012 to 6 February 2013 and around 1,450 responses were received.

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

9. Guidance

9.1 Not applicable.

10. Impact

10.1 The substantial majority of the amendments to the section 182 guidance occur in Chapter 10 (Conditions attached to premises licences and club premises certificates) as a result of the changes made by the Order to the 2003 Act. A copy of the Impact Assessment prepared by the Department in connection with the Order is available on the Government website, [gov.uk](http://www.gov.uk).

10.2 An impact assessment has not been prepared for this revised guidance.

11. Regulating small business

11.1 The revised guidance applies to small businesses as the new mandatory condition will apply to all alcohol retailers and hence they will apply to many small businesses. However, the mandatory condition will only affect businesses that heavily discount alcohol products and it is therefore unlikely that all small businesses will be affected. It is unlikely that the on-trade will be affected.

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 the licensing authorities and other persons to whom this guidance is relevant (in particular).

13. Contact

13.1 In connection with the revised section 182 guidance:

- Debbie Goodier, Drugs and Alcohol Unit, the Home Office on 020 7035 0572 or Debbie.goodier2@homeoffice.gsi.gov.uk can answer any queries about the revised statutory guidance.

13.2 The statutory guidance is available on [gov.uk](https://www.gov.uk).