



Public Document Pack
Boston Borough Council

Chief Executive
Rob Barlow

Municipal Buildings
Boston
Lincolnshire PE21 8QR
Tel: 01205 314200

Wednesday, 7 August 2024

Notice of meeting of the Licensing Sub-Committee

Dear Councillor

You are invited to attend a meeting of the Licensing Sub-Committee
on **Thursday, 22nd August, 2024 at 10.00 am**
in the Committee Room - Municipal Buildings, West Street, Boston, PE21 8QR

Rob Barlow
Chief Executive

Membership:

Councillors: Stuart Evans, Paul Gleeson and Suzanne Welberry

Members of the public are welcome to attend the committee meeting as observers except during the consideration of exempt or confidential items.

This meeting may be subject to being recorded.

Agenda

Part I - Preliminaries

A Apologies for Absence

To receive apologies for absence.

B Declarations of Interest

To receive declarations of interests in respect of any item on the agenda.

Part II - Agenda Items

1 Bombay Brasserie, 53 West Street, Boston

(Pages 1 - 80)

(A report by Anna McDowell, Senior Licensing Officer)

2 Exclusion of the Public and Press

To consider resolving - That under Section 100(A)(iv) of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, the public and press be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Order.

Appendix 3 - Review application

Appendix 4 - Representation - Lincolnshire Police

Notes:

Please contact Democratic Services (demservices@boston.gov.uk) if you have any queries about the agenda and documents for this meeting.

Council Members who are not able to attend the meeting should notify Democratic Services as soon as possible.

Alternative Versions

Should you wish to have the agenda or report in an alternative format such as larger text, Braille or a specific language, please telephone 07591 352534.

The procedures for the hearing appear overleaf.

Licensing Hearing Procedure

1. The Sub-Committee deals with the Preliminaries.
2. The Applicant and the Senior Licensing Officer are invited into the room.
3. The Chairman invites introductions.
4. The Legal Advisor explains the procedures.
5. The Senior Licensing Officer presents her report.
6. Members of the Sub-Committee ask any questions of the Senior Licensing Officer in respect of the information they have received.
7. The Applicant is invited to address the Sub-Committee to present their case.
8. Members of the Sub-Committee ask questions of the Applicant.
9. Persons who have submitted representations are invited to address the Sub-Committee to present their case.
10. All parties can ask questions of those persons.
11. The premises licence holder is invited to address the sub-committee to present their case.
12. All parties can ask questions of the Premises Licence holder.
13. If required, Members of the Sub-Committee may then ask further questions of all parties.
14. The Chairman asks the Legal Advisor whether there are any other matters to be raised or resolved before the Sub-Committee retires to begin its deliberations.
15. The Chairman advises the Applicant that the Members of the Sub-Committee will consider the report in private and make their decision. The Legal Representative will remain with them, but will at no point take part in the deliberations; the Legal Representative will give legal advice if required and the Applicant will be told what this advice is when the Hearing is re-convened.
16. All parties are then escorted from the room and the hearing will retire to make its decision.
17. The decision, the reasons for the decision, including any conditions that have been attached to the licence and the right of appeal, will be formally notified to the Applicant for the Review and the Premises Licence Holder or their representatives, in writing by the Senior Licensing Officer within 5 working days.

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Agenda Item 1

Report To:	Licensing Sub-Committee
Date:	22 nd August 2024 – 10.00 hours
Subject:	Bombay Brasserie, 53 West Street, Boston
Purpose:	To consider an application for the review of a premises licence
Key Decision:	No
Portfolio Holder:	Councillor Dale Broughton
Report Of:	Anna McDowell, Senior Licensing Officer
Report Author:	Anna McDowell, Senior Licensing Officer
Ward(s) Affected:	None
Exempt Report:	Appendices 3 and 4 of the representation submitted by Lincolnshire Police are exempt by virtue of Schedule 12A, Part 1, paragraphs 1 and 2 of the Local Government Act 1972

Summary

This is a hearing to consider an application for the review of the premises licence for Bombay Brasserie. The review application was submitted by The Home Office, Immigration Enforcement under the provisions of Section 51 of the Licensing Act 2003.

The application relates to the alleged failure of the premises licence holder to promote the licensing objective of the prevention of crime and disorder.

During the consultation period a relevant representation was received from the Chief Officer of Lincolnshire Police.

Recommendations

It is recommended that the sub-committee take into account all evidence received from the Home Office in connection with their review application, information within the representation submitted by Lincolnshire Police, any information submitted by, or on behalf of, the premises licence holder, and determine this matter, having due regard to the guidance issued under Section 182 of the Act and the Licensing Authority's Statement of Licensing Policy.

Reasons for Recommendations

Section 52 of the Licensing Act 2003 requires that where an application for the review of a licence is submitted:

“2. Before determining the application, the authority must hold a hearing to consider it and any relevant representations.”

The Sub-Committee must, having regard to all information presented, take such steps as considered appropriate for the promotion of the licensing objectives. The steps are set out in the Licensing Act 2003 Section 52 (4) and are detailed in the main body of the report.

Other Options Considered

None

1. Background

- 1.1 On 03 July 2024 an application for the review of the premises licence for Bombay Brasserie, was received from The Home Office Immigration Enforcement under the provisions of section 51 of the Licensing Act 2003,.
- 1.2 The Licensing Act requires that the applicant serves a copy of the application on the premises licence holder and all other relevant responsible authorities. The Licensing Authority must also publish a notice at the offices of the Council, on its website and place a notice in a public place in the vicinity of the premises. It is confirmed that these requirements were complied with.
- 1.3 A Responsible Authority or other person may submit a representation during the statutory 28-day consultation period which commences on the day after the day the review application is submitted.

2. Report

2.1 The premises

- 2.1.1 The premises is a small restaurant with takeaway facilities and is licensed for the sale of alcohol for consumption on and off the premises. It is located within Boston town centre, in a predominantly commercial area. A location plan is attached at **appendix 1**.
- 2.1.2 The premises has been licensed under the Licensing Act since November 2005. Since the grant of the licence, it has been transferred a number of times. In April 2023, applications were submitted by MD Lahin Miah under sections 37 and 42 of the Act for the transfer of the licence into his name and also to vary the licence to specify him as the Designated Premises Supervisor. A copy of the premises licence is attached at **appendix 2**.

2.2 Review application

- 2.2.1 On 03 July 2024 the Home Office Immigration Enforcement submitted an application for the review of the premises licence. The grounds of the review application are the premises licence holder's failure to promote the prevention of crime and disorder licensing objective. This comes in light of Mr Miah having been found to have employed two staff who did not have the appropriate settlement status to allow them to gain employment in the United Kingdom.

Full details of the grounds for review will be presented by the Home Office at the hearing. However, a copy of the review application and supporting evidence is attached at **appendix 3**.

2.3 Relevant representations

- 2.3.1 The Licensing Act 2003 states that relevant representations mean representations which are relevant to one or more of the licensing objectives, and are made by the premises licence holder, a responsible authority, or an interested party.
- 2.3.2 On 31 July 2024 a representation was received from the Chief Officer of Lincolnshire Police. The grounds for the representation are the premises licence holders' failure to promote the prevention of crime licensing objectives. Full details will be presented by Lincolnshire Police during the hearing. However, a full copy of the review application and supporting evidence is attached at **appendix 4**.

2.4 Options

- 2.4.1 With respect to the review the Sub-Committee must determine whether or not the licence holder has operated with a view to promoting the licensing objectives. In deciding any action to implement, it is expected that the sub-committee will, as far as possible, seek to establish the cause or causes of concern that the review application identifies. The remedial action taken should generally be directed at those concerns and should always, giving appropriate weight to any supporting evidence and the submission made by any party at the hearing, be no more than an appropriate and proportionate resolution. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder.
- 2.4.2 Having regard to the application the sub-committee must take such steps, if any, it considers appropriate for the promotion of the licensing objectives. The steps identified in the Act are:
- to modify the conditions of the licence (either permanently or for a period not exceeding 3 months)
 - to exclude a licensable activity from the scope of the licence (either permanently or for a period not exceeding 3 months)
 - to remove the designated premises supervisor from the licence
 - to suspend the licence for a period not exceeding 3 months
 - to revoke the licence

Alternatively, the sub-committee may consider that no action is required or that a warning should be issued and/or recommend improvement within a particular period of time.

The sub-committee must make its decision within 5 working days of the end of the hearing and must give full reasons for its decision.

2.5 Considerations

2.5.1 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what would be suitable to achieve that end. This does not require a licensing authority to decide that no lesser step will achieve the aim, but the authority should aim to consider the potential burden that the condition would impose on the Premises Licence holder as well as the potential benefit in terms of the promotion of the licensing objectives.

2.5.2 It is imperative that the Sub-Committee ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the licensing objectives and nothing outside of those parameters. Determination must be based on an assessment of the evidence of both the risks and benefits either for or against making the determination.

2.5.3 Conditions on a premises licence are important in setting the parameters within which premises can lawfully operate. Where consideration is given to attaching or amending conditions, the use of wording such as “must”, “shall” and “will” is encouraged. If conditions are attached or amended they:

- Must be appropriate for the promotion of the licensing objectives;
- Must be precise and enforceable;
- Must be unambiguous and clear in what they intend to achieve;
- Should not duplicate other statutory requirements or other duties or responsibilities placed on the licence holder by other legislation;
- Must be tailored to the individual type, location and characteristics of the premises and events concerned;
- Should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- Should not replicate offences set out in the 2003 Act or any other legislation;
- Should be proportionate, justifiable and capable of being met;
- Cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- Should be written in a prescriptive format.

2.5.4 In determining the application, the licensing authority must give appropriate weight to:

- The Licensing Authority’s Statement of Licensing Policy. Relevant extracts of which are attached at **appendix 5**.
- The statutory guidance issued under section 182 of the Licensing Act 2003. Relevant extracts of which, are attached at **appendix 6**.

2.5.5 In determining the review the Sub-Committee should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Human Rights Act it is unlawful for a public authority to act in a manner which is incompatible with the European Convention on Human Rights.

- 2.5.6 When determining the application, the Sub-Committee should be satisfied that any decision which interferes with the rights of the licence holder, or of any other person, only does so insofar as is necessary to protect the rights of others and that no alternative decision would be more appropriate.
- 2.5.7 The Sub-Committee, in its decision-making, must have due regard to its public sector equality duty under section 149 of the Equality Act 2010. A copy of section 149 of the Act is attached at **appendix 7**.

2.6 Appeal

- 2.6.1 The applicant may appeal the decision made by the Sub-Committee to the Magistrates Court. Any appeal must be made within 21 days of the day on which the appellant is notified, in writing, by the Licensing Authority of the decision to be appealed against.
- 2.6.2 The determination does not take effect until the end of the period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

3. Conclusion

- 3.1 The Committee must come to its determination based on an assessment of the evidence of both the risks and benefits either for or against making the determination.
- 3.2 When considering the evidence, the Sub-Committee must satisfy themselves whether or not the licensing objectives will be promoted as the licence stands.
- 3.3 The Sub-Committee should seek to focus the hearing on the review application, the representation and any information provided by the licence holder and avoid straying into undisputed areas.
- 3.4 The Sub-Committee must give full reasons for its decision.
- 3.5 In making its' determination, the Sub-Committee must evidence that they have had due regard for all that they have read and heard, to the Licensing Authority's Statement of Licensing Policy, the guidance issued under Section 182 of the Licensing Act 2003, and their public sector duty under Section 149 of the Equality Act 2010.

Implications

South and East Lincolnshire Councils Partnership

None

Corporate Priorities

None

Staffing

None

Workforce Capacity Implications

None

Constitutional and Legal Implications

There is a risk that an appeal is lodged with Lincolnshire Magistrate's Court against the decision of the Licensing Sub – Committee.

Data Protection

Certain personal details relating to the applicant have been redacted from the public agenda pack for data protection purposes.

Financial

None

Risk Management

There is a theoretical risk of civil action against the Licensing Authority if it is found not to have exercised due diligence in licensing matters.

Stakeholder / Consultation / Timescales

None

Reputation

There is a risk that the Council's reputation could be damaged if the requirements of licensing legislation are not implemented in the prescribed manner.

Contracts

None

Crime and Disorder

The Council has a duty to promote and ensure compliance with the licensing objectives of, the prevention of crime and disorder, public safety, prevention of public nuisance, and the protection of children from harm.

Equality and Diversity / Human Rights / Safeguarding

Equality Implications: Under the Human Rights Act 1998, it is unlawful for a public authority to act in a manner that is incompatible with the European Convention on Human Rights.

Human Rights: The licensing authority must have due regard to its public sector equality duty under section 149 of the Equality Act 2010.

Safeguarding Implications: None

Health and Wellbeing

None

Climate Change and Environmental Implications

None

Acronyms

None

Appendices

Appendices are listed below and attached to the back of the report:

Appendix 1	Location plan
Appendix 2	Premises licence application
Appendix 3	Review application
Appendix 4	Representation - Lincolnshire Police
Appendix 5	Extract - Statement of licensing policy
Appendix 6	Extract – Section 182 Guidance
Appendix 7	Section 149 – Equality Act 2010

Background Papers

None

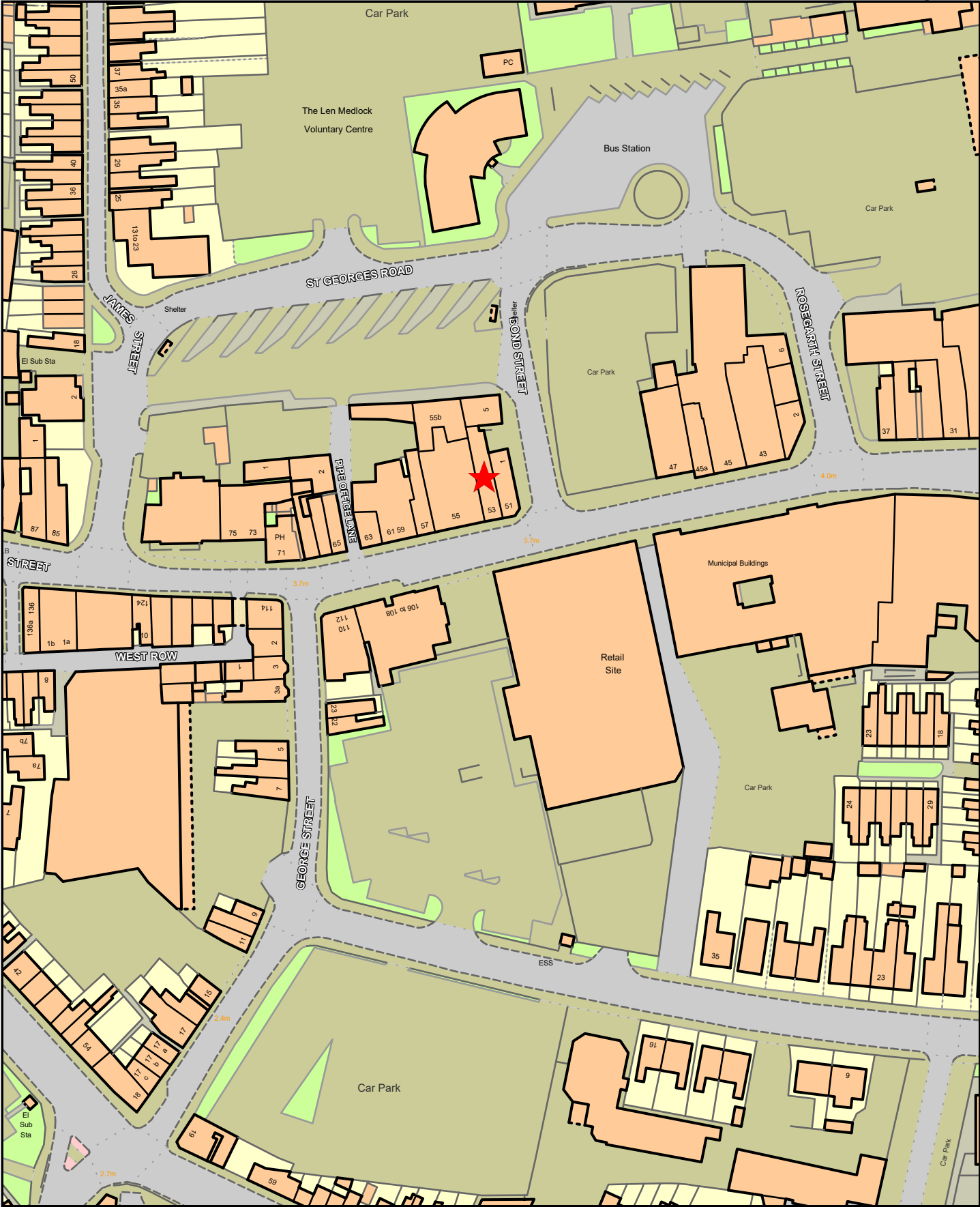
Chronological History of this Report

None

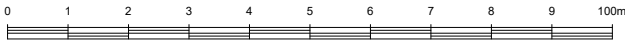
Report Approval

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**Premises Licence
Boston Borough Council**

Premises Licence No. 32UBB05188

Granted date: 15-Nov-2005

Part 1 – Premises details

Postal address of premises, or if none, ordnance survey map reference or description

Bombay Brasserie
53 West Street

Post town Boston **Post code** PE21 8QN

Telephone number 01205 359944

Where the licence is time limited the dates - Not applicable

Licensable activities authorised by the licence

Sale by retail of alcohol for consumption on & off the premises

The times the licence authorises the carrying out of licensable activities

Sale by retail of alcohol for consumption on and off the premises

Monday – Saturday: 11.00 hours until 00.00 hours

Sunday: 12.00 hours until 23.30 hours

The opening hours of the premises

Monday – Saturday: 11.00 hours until 01.00 hours the following day

Sunday: 12.00 hours until 12.30 hours the following day

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies

ON

Part 2 – Licensee Details

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Name: MD Lahin Miah

Address:

Postcode:

Telephone:

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Name: MD Lahin Miah

Address:

Postcode:

Telephone:

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Licence No: 32UBA18036

Issuing Authority: Boston Borough Council

ANNEX 1

(a) MANDATORY CONDITIONS

1. Supply of alcohol

(i) No supply of alcohol may be made under the premises licence:

(a) at a time when there is no designated premises supervisor in respect of the premises licence,
or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended

(ii) Every supply of alcohol under the Premises Licence must be made or authorised by a person who holds a Personal Licence.

Conditions set out in The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010

1. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
 3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

From 01st October 2010 the following conditions will apply

4.
 - (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
 - (2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
5. The responsible person shall ensure that—
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25ml or 35ml; and
 - (iii) still wine in a glass: 125ml; and
 - (b) customers are made aware of the availability of these measures.

(b) EMBEDDED RESTRICTIONS/EXPRESS CONDITIONS

1. Credit Sales

Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied, except alcohol sold or supplied:

 - (i) with or for consumption at a meal supplied at the same time, consumed with the meal and paid for together with the meal;
 - (ii) for consumption by a person residing in the premises or his guest and paid for together with his accommodation;

(iii) to a canteen or mess.

2. Beverages other than alcohol

(i) Suitable beverages otherwise than alcohol (including drinking water) shall be equally available for consumption with or as an ancillary to a meal.

ANNEX 2 – CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE

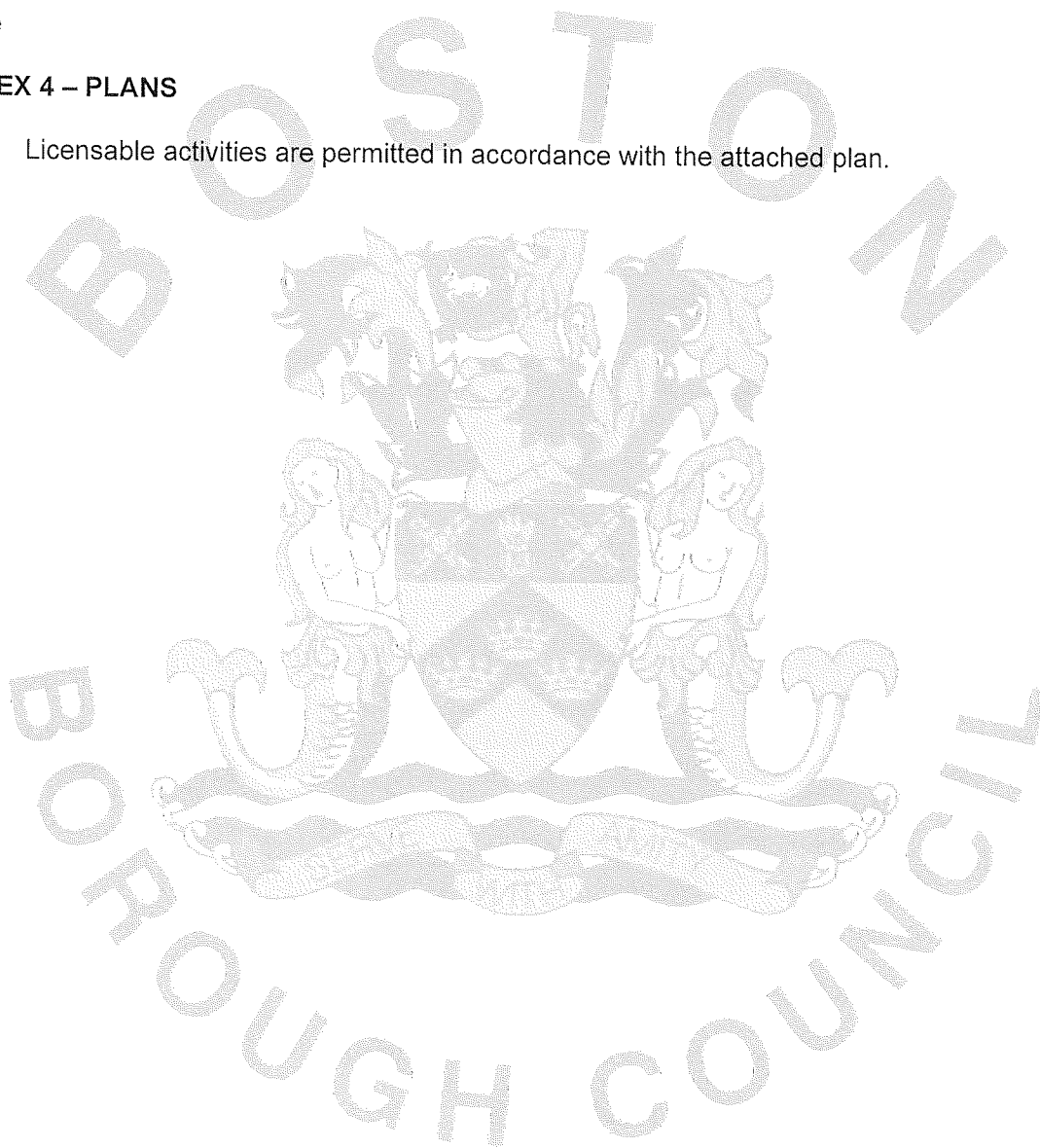
None

ANNEX 3 – CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY

None

ANNEX 4 – PLANS

1. Licensable activities are permitted in accordance with the attached plan.



Licensing Authority: Boston Borough Council
 By email: licensing@boston.gov.uk

Application for the review of a premises licence or club premises certificate under
 the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.
 If you are completing this form by hand, please write legibly in block capitals. In all cases
 ensure that your answers are inside the boxes and written in black ink. Use additional
 sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Home Office Immigration Enforcement

apply for the review of a premises licence under section 51 / apply for the review of
 a club premises certificate under section 87 of the Licensing Act 2003 for the
 premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Bombay Brasserie 53 West Street	
Post town Boston	Post code (if known) PE21 8QN
Name of premises licence holder or club holding club premises certificate (if known) MD Lahin Miah	
Number of premises licence or club premises certificate (if known) 32UBB05188	

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible
 authority (please read guidance note 1, and complete (A)
 or (B) below)

☐

2) a responsible authority (please complete (C) below)

☒

3) a member of the club to which this application relates
(please complete (A) below)

☐

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick ✓ yes

Mr ☐ Mrs ☐ Miss ☐ Ms ☐ Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick ✓ yes

☐

Current postal
address if
different from
premises
address

Post town

Post Code

Daytime contact telephone number

E-mail address
(optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) IE.Alcoholreviews@homeoffice.gov.uk

This application to review relates to the following licensing objective(s)

- Please tick one or more boxes ✓
- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 2)

Grounds for review:

We have grounds to believe the license holder has failed to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.

The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities (RA) in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences and applications to vary a Designated Premises Supervisor (DPS)), and in some limited circumstances personal licence applications. In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of a licence or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working.

Please provide as much information as possible to support the application (please read guidance note 3)

Please refer to accompanied review pack for detailed information.

Please tick ✓ yes

Have you made an application for review relating to the premises before?

☐

If yes, please state the date of that application

Day	Month	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>

If you have made representations before relating to the premises, please state what they were and when you made them

yes

Please tick ✓

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). If signing on behalf of the applicant, please state in what capacity.

Signature K Sooriyaarachchi

.....

Date 03 July 2024

.....

Capacity Responsible Authority

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

Alcohol Licensing Team

Lunar House

40 Wellesley Road

Post town

Croydon

Post Code

CR9 2BY

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) IE.Alcoholreviews@homeoffice.gov.uk

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.



Home Office

Premises Licence Review

Bombay Brasserie
53 West Street
Boston
PE21 8QN

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Case Summary

On 12 February 2024 immigration officers conducted a visit to Bombay Brasserie, 53, West Street, Boston, PE21 8QN. Entry was obtained by fully informed consent. A total of 7 people were encountered at the premises, 2 of which had no right to work in the UK.

A referral was made to the Home Office Civil Penalty Compliance Team and a civil penalty for £90,000 was issued to Well Spicy Ltd on 20 May 2024.

Licensed Premises History

Bombay Brasserie holds a premises license 32UBB05188, issued by Boston Borough Council on 15 November 2005. The license was issued to MD Lahin Miah on 24 April 2023. Mr Miah is also listed as the DPS.

Licensable activities authorised by the licence:

Sale by retail of alcohol for consumption on and off the premises.

The times the licence authorises the carrying out of licensable activities:

Sale by retail of alcohol for consumption on and off the premises

Monday - Saturday: 11.00 hours until 00.00 hours

Sunday: 12.00 hours until 23.30 hours

The opening hours of the premises

Monday - Saturday: 11.00 hours until 01.00 hours the following day

Sunday: 12.00 hours until 12.30 hours the following day

Enforcement visit: 12 February 2024

The premises was visited by Immigration Enforcement on 12 February 2024, where the following individuals with no right to work in the United Kingdom were encountered:

████████████████████

Immigration officers encountered ██████████ working in the kitchen of the premises cleaning pots in the sink. Home Office system checks confirmed ██████████ had applied for leave under the EU Settlement Scheme twice and was refused on both occasions, 03 December 2021 and 10 May 2023. ██████████ did not hold the right to work in the UK.

An illegal working interview was conducted with ██████████, where she stated she has been employed at the business for a year. Her roles and responsibilities include peeling onions and washing up. ██████████ claims that she only works 1 – 2 hours a day and works 3 days per week. ██████████ claims that she receives food and is paid £60 - £80 per day in cash by the owner in return for her work. She also stated that she had known the boss (Miah) for 10 years. ██████████ confirmed that no right to work checks were conducted and she did not show any documents or a share code prior to commencing work.

████████████████████

████████████████████ was encountered sitting at the back of the premises peeling onions. Immigration officers were concerned for ██████████ welfare as she was unable to communicate and was incoherent due to being intoxicated. Officers were unable to conduct an interview with ██████████ due to her being intoxicated. Home Office checks show that ██████████ has no leave to remain or right to work in the UK.

Immigration officers also noted that the kitchen was in a very unhygienic state and food was stored unprotected.

Md Lahin MIAH - Employer

Md Lahin Miah identified as the owner and manager was present during the enforcement visit and an illegal working interview as an employer was conducted. When questioned how long ██████ had been working he replied "Only for about 2 weeks she comes with ██████ they both just come and peel onions 2 or 3 times a week for 2 or 3 hours, they both get £11 an hour, they get paid cash in hand, they do not get a wage slip, or pay any taxes. That is both of them. But they have not been paid yet." This contrasted with ██████████ admission of working at the premises for one year during her interview.

Miah admitted that he did not conduct any right to work checks on both workers. He justified not conducting these checks simply because they were European citizens. Miah claimed that he had asked for proof of right to work documentation but was yet to receive them.

Reasons for Review

Section 36 and Schedule 4 of the Immigration Act 2016 amended the Licensing Act 2003 to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 06 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.

There were two illegal workers encountered at the premises at the time Immigration Enforcement attended on 12 February 2024. In this case Miah admitted that the workers were employed without any right to work checks being conducted.

It is concerning that one of the employees' encountered working was intoxicated and in a state that they were unable to communicate with immigration officers. The license holder either authorised the sale of alcohol to the staff member or did not have proper procedures in place to prevent staff from drinking at work. This calls in to question the license holder's ability to effectively uphold the licensing objectives and has fallen below the expected standards of a responsible licence holder. It is also noted that the member of staff was working in the kitchen, introducing further health and safety risks.

Whether by negligence or wilful blindness, illegal workers were engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person can work. All employers are dutybound by law to conduct these checks, and guidance can be found on the GOV.UK website or by using a search engine. Additional information on how to conduct these checks is available online, this includes the Home Office's official YouTube page. The information is readily available; however, the license holder has deliberately overlooked the rules and laws in place to prevent crime and disorder.

Md Lahin Miah has failed to comply with the relevant right to work procedures.

It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.

Section 182 guidance at point 11.27 states that certain activity should be treated particularly seriously, and this includes employing someone who is disqualified from that work by reason of their immigration status in the UK. 11.28 of the guidance states that it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Immigration Enforcement submits that for commercial reasons those engaged in the management of the premises employed illegal workers and a warning or other activity falling short of a review is inappropriate; therefore, Immigration Enforcement has proceeded to review the license.

Outcome Sought

The objective of the Licensing Act 2003 (the Act) is to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol or provide certain types of regulated entertainment and late-night refreshment.

There are four licensing objectives which underpin the Act, and which need to be taken into account and promoted throughout the licensing process.

The licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance and
- the protection of children from harm

Bombay Brasserie under the control of MD Lahin Miah has been found employing illegal workers. This business has clearly failed to meet the prevention of crime and disorder objective. The license holder would have been aware of their responsibilities to uphold the licensing objectives as they are clearly defined as part of the premises license application. There are additional concerns regarding the intoxicated worker.

The use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. A key draw for illegal immigration is work and low-skilled migrants are increasingly vulnerable to exploitation by criminal enterprises, finding themselves in sub-standard accommodation and toiling in poor working conditions for long hours for remuneration below the national minimum wage.

In this instance Immigration Enforcement propose that additional conditions are added to the premises licence.

The proposed conditions which the Home Office request are as follows:

- The employer must carry out checks relating to the right to work of their employees working at the premises at Bombay Brasserie, 53, West Street, Boston, PE21 8QN, and any prospective employees before entering into a contract of employment.
- The employer must retain copies of documents as a result of conducting checks relating to the right to work. These must be stored securely by the employer at the premises, or a digital copy must be immediately accessible from the premises for ease of inspection by immigration officials.

- The employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work at the request of an immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the Licensing Act 2003.

The Home Office asks for the removal of the DPS as the license holder/DPS has failed to uphold the licensing objectives. The Home Office also asks for a period of suspension to allow the period of change to successfully imbed.

Appendix A – Supporting Evidence

Illegal Working-Employee [REDACTED]

Encounter [REDACTED]

Illegal Working-Employer Md Lahin Miah [REDACTED]

Illegal Working - Employee

Details

Type of work	Visit
Visit reference	[REDACTED]
Created by	[REDACTED]
ProntoID	[REDACTED] - Poland
Subject CIDPID/CEPR	Unknown
Subject name	[REDACTED]
Subject DOB	[REDACTED]
Subject nationality	Poland
Subject gender	Female
Time	18:19
Created at geolocation	<div>Easting 532486</div> <div>Northing 343938</div>
Creation date	29-02-2024 18:19:23


Language of Interview

What language is the interview carried out in?	Polish
Interpreter used?	Yes
Details of interpreter	[REDACTED]
Does the individual understand the interpreter?	Yes

Obligation

How long have you been working at this business?	So I basically have worked here for a year, I usually come with my partner and help out. Usually for an hour.
What is your job role/ what are your duties?	I don't do much, peel the onions. I live with my boyfriend. We are bored at home so we come to help out. Washing up.
What days/ hours do you work each week?	5 o'clock for 1 hour, maybe 6 or 7 o'clock. Not everyday, just when it's busy no set days. 3 days a week.
Do you work the same hours/ days every week?	Yes, no set days. Depends on when it's busy, usually Thursday, Friday and Saturday. Usually the same.
You were encountered in the kitchen working at the kitchen, at the sink.	Yes

Control	
Who gave you this job (name and role in business)?	We don't have the name, I don't work here. I just help out, I've know the boss for 10 years and he pays me £60 / £80.
Is the boss Mr MiAh, the person here today?	Yes
Who tells you what days/ hours to work?	So basically Mr Miah, and we come when we need to. When it's busy.
Who tells you what tasks/ duties to do each day?	Same, Mr Miah. So basically nobody tells me what to do, basically I see onions I take it and I chop it. With my partner.
Remuneration	
How are you paid (money, accommodation, food)?	So not accommodation, I live with my boyfriend. He gets a place. Sometimes I get food and money.
If money, how much and how do you receive it?	£60.- £80 per day, not a week.
Who pays you?	The boss, Mr Miah.
Do you pay income tax or have a National Insurance number?	Yes, details confirmed.
Do you get any payslips and how are you paid?	No payslips here, what do toy mean not here. Paid by cash.
Pre-employment Checks	
What name does the employer know you as?	██████
Did the employer check your right to work or immigration status before they offered you the job?	No
Did you show documents or share a code with the employer to prove your right to work before being offered the job? If so, what did you show and were they originals?	No
Does your employer know you're not allowed to work in the UK?	I don't know if he does.

Additional Questions	
No details provided.	
Photographs	
No photographs.	
Declaration	
I confirm that I have understood all the questions and that the details are true and correct.	
Interviewee signature ([REDACTED])	 29-02-2024 18:38:52
Observations	
Observations	Person encountered working in the kitchen, washing and peeling vegetables. Wearing an apron.
Do you suspect this person of illegal working?	Yes

Encounter	
Details	
Type of work	Visit
Visit reference	[REDACTED]
Created by	[REDACTED]
ProntoID	[REDACTED] - Lithuania
Time	17:45
Created at geolocation	<div>Easting 532476</div> <div>Northing 343941</div>
Creation date	29-02-2024 17:45:10
Chosen Identity	
Identity source/type	Declared
Name	[REDACTED]
DOB	[REDACTED]
Gender	Female
Nationality	Lithuania
Languages	
Languages spoken	Lithuanian
Interpreter used?	No
Encounter	
Encountering officer	[REDACTED] - Officer
Is this encounter related to a Small Boats event?	No
Is this person the subject of the visit?	No
Do you suspect an immigration offence?	Yes
Why do you suspect the person of an immigration offence?	lady sat at the back of the shop outside peeling onions I was concerned for her welfare, when I tried to speak with her she just gave me details.
Declared immigration status	Been here 8 years
How and when did the subject last enter the UK?	Nk
CIDPID/CEPR	[REDACTED]
Are there any vulnerabilities/trafficking/safeguarding issues?	Yes
Section 55 issues?	Yes

Referral to social services?	No
Referral to NRM (National Referral Mechanism)?	No
Duty to Notify/MS1 referral made?	No
Where in the premises was the subject located?	Sat at back of shop peeling onions obviously in drink and incoherent.
Are you taking enforcement action?	No
References (Person ID, HO Ref, Port Ref, BRP)	
Biographic search results	<p>Systems checked CID, Person Check, Atlas</p> <p>Result of checks Mind to remove 2016 no evidence of leave or leave application.</p> <p>Does the person have an open absconder status on Atlas Person Alerts? No</p> <p>Status returned by system checks</p>
Photo of Subject	
Do you want to take a photograph of the subject?	No
Identity Documentation	
Document 1	<p>Document type</p> <p>Name in document (if different from above)</p> <p>Document reference</p> <p>Document expiry date</p> <p>Country of issue (if different from nationality above)</p> <p>Suspected fraudulent</p> <p>Notes</p> <p>Photos</p>
Notes	
This lady is intoxicated, unable to communicate with her, she is incoherent and unable to communicate	

Illegal Working - Employer

Details

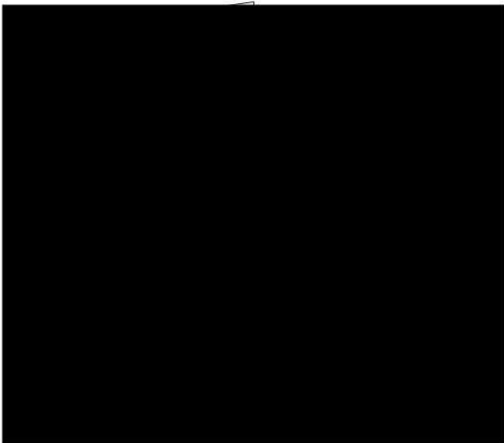
Type of work	Visit
Visit reference	██████████
Created by	██████████
ProntoID	Md Lahin Miah - ██████████
Subject CIDPID/CEPR	Unknown
Employer	Md Lahin Miah
Subject DOB	██████████
Subject nationality	██████████
Subject gender	Male
Time	18:10
Created at geolocation	<div>Easting 532488</div> <div>Northing 343941</div>
Creation date	29-02-2024 18:07:30

Language of Interview

What language is the interview carried out in?	English
Interpreter used?	No

Employer Details

What is the name of the business?	Bombay brasserie
What is your position here?	Owner and manager
the questions I am going to ask are just about █████ and █████	Ok
how long has █████ been working for you.	Only for about 2 weeks she comes with █████ they both just come and peel onions 2 or 3 times a week for 2 or 3 hours, they both get £11 an hour, they get paid cash in hand, they do not get a wage slip, or pay any taxes. That is both of them. But they have not been paid yet.
what checks have you done with the home office to confirm they are entitled to work ?	None I didn't do any checks because they are European.
have you asked them to prove they have any entitlement to work ? do you have copies of their documents.	No I asked but they have not bought them to us.

Declaration by Employer	
I confirm that I have understood all the questions and that the details are true and correct.	
Signed by Md Lahin Miah	 29-02-2024 18:33:05
Observations	
Observations	

Licensing Act 2003**Representation by a Responsible Authority**

Note: Please be aware that this form may be viewed by the Applicant or by a representative of the Applicant. It may also be read out in public at the Licensing Panel hearings.

Representations may be made at any time during a period of 28 consecutive days starting on the day after the application was given to the Licensing Authority.

Representations are only relevant to an application if they relate to at least one of the four Licensing Objectives listed below:

1. **The Prevention of Crime and Disorder**
2. **Public Safety**
3. **Prevention of Public Nuisance**
4. **The Protection of Children from Harm**

Please enter your details below:

Responsible Authority:	Lincolnshire Police
Contact Officer:	Pc 642 McConville
Address:	Lincolnshire Police – Licensing Lincolnshire Police HQ Po Box 999 Lincoln LN5 7PH
Telephone Number:	101 – Lincolnshire – Alcohol Licensing
E-mail:	countylicensing@lincs.police.uk

Please provide details of the application to which your representation refers:

Name:	Home Office Immigration
Address:	Bombay Brasserie, 53 West Street, Boston
Application Details:	Review Application
Date Application Received:	3/7/24

Please provide details of your representation in the box below. Indicate which of the Licensing Objectives your representation refers to by ticking the relevant box(es):

- **The Prevention of Crime and Disorder** **X**
- **Public Safety**
- **Prevention of Public Nuisance**
- **The Protection of Children from Harm**

In relation to this application, the following guidance, policies, and legislation has been considered.

Revised Guidance issued under Section 182 of the Licensing Act 2003

Section 2.1, Licensing authorities should look to the police as the main source of advice on crime and disorder.

Section 2.6, The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

Entitlement to work in the UK for EEA citizens since 1 July 2021

Section 4.21, References to 'EEA citizens' in this guidance means EU, EEA and Swiss citizens unless stated otherwise. The UK has left the European Union (EU) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement on 31 December 2020. There followed a grace period of six-months , during which relevant aspects of free movement were saved to allow eligible EEA citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme (EUSS). This period ended on 30 June 2021.

Section 4.22, Since 1 July 2021, EEA citizens and their family members require immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirms their nationality, to prove their right to work. They are required to provide evidence of lawful immigration status in the UK, in the same way as other foreign nationals.

Section 9.12, Each responsible authority will be an expert in their own field....for example the police have a key role in managing the night-time economy.....However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing Authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent.

Section 11.20, In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

Section 11.21, For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

Section 11.22, Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

Section 11.23, Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

Section 11.24, A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

Section 11.26, The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

Section 11.27, There is certain criminal activity that may arise in connection to licensed premises which should be treated particularly seriously –

- for employing a person who is disqualified from that work by reason of their immigration status.*

Section 11.28, It is envisaged that licensing authorities, the police, The Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determined that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Boston Borough Council Licensing Act 2003 Statement of Licensing Policy
Effective 24 November 2020 to 23 November 2025

3.1 The Boston Borough Council aims to make the Boston area a safer place to live, work and visit by reducing crime and the fear of crime and reducing antisocial behaviour.

3.4Licensing is concerned with the fitness of the operator and detailed issues concerning the operation and management of the premises that are not addressed by the planning control process.

3.6 In reaching a decision of whether or not to grant a licence, the Licensing Authority will take account of any non-compliance with other statutory requirements brought to its attention, particularly where these undermine the licensing objectives. Non-compliance with statutory requirements may demonstrate that the premises are unsuitable for the activities proposed or that the management of the premises is not adequate to protect the public from harm or nuisance.

4 Licensing Objectives. Each of the four licensing objectives is of equal importance and no one objective will take precedence over others when considering applications. The Licensing Authority considers the effective and responsible management of premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the licensing objectives. For this reason these elements should be specifically considered and addressed within the applicants operating schedule

11.1 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of regulated entertainment and late night refreshment. Because of this, the Licensing Authority will normally expect that the DPS for a licensed premise will be able to demonstrate that they are in day to day control of the premises and playing an active role in its operation through a regular personal presence.

11.2 The main purpose of the Designated Premises Supervisor is to ensure that there is always one specified individual, among the personal licence holders at the premises, who can be readily identified for the premises where the sale of alcohol is permitted. The premises licence holder will normally have given that person day-to-day responsibility for running the premises.

Crime and Disorder Act 1998 Section 17

Duty to consider crime and disorder implications.

(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and

(b) the misuse of drugs, alcohol and other substances in its area, and

(c) re-offending in its area

*(2) This section applies to each of the following—
a local authority*

This representation from Lincolnshire Police is in support of the review application from Home Office Immigration in respect to Bombay Brasserie, 53 West Street, Boston.

In 2012 illegal workers were encountered by Police and Immigration at the premises and a warning letter was sent to the premises licence holder (who is different to the one in place now – Mr Miah), which was common at the time, as the East Lindsey stated case regarding illegal working had yet to occur and the Licensing Act 2003 and Sec 182 Guidance was not as it is now regarding illegal working.

On 29th February 2024 a joint operation with officers from Lincolnshire Police, Trading Standards, Gangmasters and Labour Abuse Authority, and Immigration attended the Bombay Brasserie, 53 West Street, Boston. Front of house and kitchen staff were checked to see if they had the right to work, and whether they were being paid correctly. 2 female kitchen staff from EU countries who were performing functions of vegetable peeling and cleaning were found to not have applied to stay in the UK, and therefore did not have the right to work. They were paid cash and not documented as employees, getting wage slips, paying nation insurance, tax, nor were there employer contributions, they were also paid less than minimum wage.

The premises licence holder Mr Miah stated [REDACTED] was the company operating from the premises, which therefore benefited from the premises licence. A check showed this company is VAT registered to 53 West Street, Boston since January 2020, with the sole director being [REDACTED] with its nature of business being licenced restaurants. It seems other active companies are registered to the address, including one with Mr Miah is director but none are VAT registered. Mr Miah's business is Linx Way Ltd, with its nature of business being other food services. It is not VAT registered and its micro accounts show 1 employee in 2022 and 2023. Mr Miah stated his role was manager and he was paid to hold this position by [REDACTED]. If this is the case it appears that [REDACTED] or the company [REDACTED] would have fulfilled the criteria of premises licence holder, not Mr Miah.

It was for these reasons, with [REDACTED] being the only VAT registered company operating from 53 West Street that the civil penalty for employing workers without the correct permissions was issued to them.

It has been 3 years since the grace period ended with Brexit free movement. It can't be assumed that because someone is from an EU country that they have the right to work in the UK, even if they were living and working in the UK before Brexit.

There were no premises licence conditions on the premises licence for 53 West Street for the premises licence holder or DPS to be compliant with.

Mr Miah appears to have been involved with 53 West Street for some time. Having had the company Bombay Boston Ltd there from 14/2/2013 to 28/10/2014. The previous visit where 3 illegal workers were found occurred on 2/2/12, and the same premises licence holder that got the warning letter remained in position until 15/10/13 at a time when Mr Miah can also be placed there with a cross over period of 8 months. Mr Miah then went onto incorporate Linx Way Ltd at 53 West Street in April 2017. Mr Miah then became premises licence holder and DPS in April 2023. The premises licence had seen no changes since a transfer in 2013, having been granted in 2005, despite numerous companies in different names appearing to operate from there on Companies House.

In 2022 53 West Street, Boston, with Mr Miah being on site appearing to be the operator, was visited by the Council Housing Team and Police Community Cohesion Officer PC Hurley-Rowe on a few occasions regarding the living accommodation above the premises and it was noted that he was operating the licenced premises and that the individuals on the premises licence were no longer involved and had moved on. Council Licensing were informed and this prompted the transfer of the premises licence to Mr Miah in 2023.

Regarding the living accommodation it is understood that remedial works needed to be done for the accommodation to be habitable. On subsequent visits, with 24hrs notice being given, no persons appeared to be living in the accommodation, the remedial work wasn't done, and there was no necessity for it to be done if no one was living in the accommodation. During the visit on 29/2/24, which was unannounced, there appeared to be workers living in the accommodation again, with personal items, clothes, washing items, made up beds, with one worker retrieving their passport from under the mattress. The Council Housing Team were informed.

*The Revised Guidance issued under section 182 of the Licensing Act 2003 states
Who can apply for a premises licence?*

8.15 Any person (if an individual aged 18 or over) who is carrying on or who proposes to carry on a business which involves the use of premises (any place including one in the open air) for licensable activities may apply for a premises licence either on a permanent basis or for a time-limited period.

8.16 "A person" in this context includes, for example, a business or a partnership. Licensing authorities should not require the nomination of an individual to hold the licence or determine the identity of the most appropriate person to hold the licence.

8.17 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(1)(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities. In the case of public houses, this would be easier for a tenant to demonstrate than for a pub owning company that is not itself carrying on licensable activities. Where licences are to be held by businesses, it is desirable that this should be a single business to avoid any lack of clarity in accountability.

8.18 A public house may be owned, or a tenancy held, jointly by a husband and wife, civil partners or other partnerships of a similar nature, and both may be actively involved in carrying on the licensable activities. In these cases, it is entirely possible for the husband and wife or the partners to apply jointly as applicant for the premises licence, even if they are not formally partners in

business terms. This is unlikely to lead to the same issues of clouded accountability that could arise where two separate businesses apply jointly for the licence. If the application is granted, the premises licence would identify the holder as comprising both names and any subsequent applications, for example for a variation of the licence, would need to be made jointly.

If Mr Miah (or his business) was not the individual carrying on a business which involves the use of the premises for licensable activities, it could be argued that he didn't fulfil the remit of premises licence holder and therefore shouldn't have held the premises licence. It's suspected that the 1 employee on Mr Miah's Linx Way Ltd business is Mr Miah and his business is his management role in hospitality.

If [REDACTED] or his business fulfilled this remit, then it could be argued that either should have been premises licence holder.

Following the Boston Bombay Brasserie visit on 29/2/24 a visit was also conducted on the same night to a connected licenced premises, [REDACTED] with the adjoining restaurant [REDACTED] in [REDACTED], within [REDACTED] area. Both premises operate under one premises licence. An individual was found working as a chef without the correct permissions, which Lincolnshire Police believe is also relevant to the review due to [REDACTED] connections to 53 West Street, Boston.

Enquiries on the night with staff and since have led Police and Immigration to believe [REDACTED] was operating both the [REDACTED] restaurant at [REDACTED]. There was non-compliance with premises licence conditions (Sec 136 Licensing Act 2003), an unsupervised 17 year old working behind the bar, when the only person who could supervise with the right to work was working in the kitchen and not dressed in a way which would have been acceptable front of house.

The premises licence holder for the [REDACTED] no longer operated from the premises and so surrendered the premises licence. Alcohol continued to be sold, despite being aware of the surrender, another breach of the premises licence (Sec 136 Licensing Act 2003). The premises licence was then transferred to [REDACTED], which through investigation Pc Braithwaite discovered was linked to [REDACTED] as his partner was the sole director. Lincolnshire Police objected to the transfer, and it was refused at hearing. The objection can be found at appendix A along with the minutes and decision notice at appendix B. It is not noted on the minutes who attended the hearing to represent [REDACTED] however Lincolnshire Police attended and can confirm [REDACTED] – Director of [REDACTED] partner of [REDACTED] and manager of [REDACTED] proposed DPS, all attended.

During the hearing to that objection to transfer [REDACTED] admitted to having another business of the same name in Boston, as per Pc Braithwaite's notes made during the hearing.

Regardless of who was and who should have been premises licence holder at 53 West Street, which in itself causes issues, it shows at best poor management and a lack of understanding and at most deliberate deceit and avoidance of accountability. It has had a premises licence and been

benefitting from it whilst employing people without the right to work. Mr Miah admitted employing the individuals without checks and paying them cash. [REDACTED] has a similar relevant history in a neighbouring council area along with concerning management regarding the sale of alcohol.

There appears to be a great lack of care of administration by all those involved, with no want to have the correct people in positions that fits their remit. Changes have only been brought about through Council, Immigration and Police involvement, driving that change.

The Lincolnshire Police are unable to offer any suitable conditions which would prevent the recurrence of such criminal activity. Not employing certain staff correctly, who also don't have the right to work and are less likely to complain, is a deliberate act, when other staff are employed correctly.

11.27 of Section 182 Guidance states that even in the first instance for illegal working, a revocation of the licence should be seriously considered. This is not the first instance of illegal working occurring under this premises licence. A warning was given to the premises licence holder who went on to be at the premises at a time Mr Miah can be linked there. Others also concerned with the premises have a history of the same elsewhere. Lincolnshire Police request that in this case revocation is seriously considered, as this employment was not a mistake, there is a deliberate intention to work outside of the law, these two staff members were not on the books, no payment of NI contributions by them or the employer and no payment of tax, no set up of PAYE, no wage slips, giving an unfair advantage over other businesses as the employer benefits financially for the work done, whilst also benefiting from a premises licence. Section 11.23 of the 182 Guidance states *'But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.'*

If possible, please suggest alterations to the application that would resolve the problem mentioned above, again paying attention to the **Licensing Objectives**:

None.

Have you contacted the applicant to discuss this representation?

Yes

No

X

Do you consider mediation could resolve the issue?

Yes

No

X

Do you propose to attend or be represented at any Licensing Panel hearing?

Yes

X

No

Please tick this box if you consent to any notice of any hearing being sent to you to via the e-mail address provided by you above.

X

(Please note if any notice is sent to you by electronic means, you will also receive confirmation of the same in writing).

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4 Licensing Objectives

Each of the four licensing objectives is of equal importance and no one objective will take precedence over others when considering applications.

The Licensing Authority considers the effective and responsible management of premises, instruction, training and supervision of staff and the adoption of best practice to

be amongst the most essential control measures for the achievement of all the licensing objectives. For this reason these elements should be specifically considered and addressed within the applicants operating schedule.

The Licensing Authority recommends that applicants carry out their own risk assessments in relation to the four licensing objectives in order to assist them in deciding whether any steps are required to be taken in order to meet those objectives.

In accordance with the Home Office Guidance to Licensing Authorities, this Authority expects applicants to demonstrate knowledge of the area within which the licensed premises is situated. This would include, for example, proximity to residential properties, areas where children congregate and any risk posed to the local area by the applicant's proposed licensable activity.

4.1 Prevention of crime and disorder

4.1.1 The Licensing Authority will carry out its licensing functions with a view to promoting the prevention of crime and disorder and will seek to ensure that licensees/certificate holders/designated premises supervisors take measures to regulate the behaviour of persons whilst on their premises, or in the immediate vicinity of the premises.

4.1.2 In addition to the requirement for the Licensing Authority to promote this licensing objective, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to exercise its functions with due regard to the likely effect on, and do all it reasonably can to prevent, crime and disorder in the Borough.

4.1.3 When addressing crime and disorder the applicant should initially identify any particular issues (having regard to their type of premises and/or activities) which are likely to adversely affect the promotion of the crime and disorder objective. Such steps as are required to deal with these identified issues should be included within the applicant's operating schedule.

The Licensing Authority encourages applicants to include in their operating schedule the steps they propose to take to reduce/deter crime and disorder. These steps will vary from premises to premises according to the type of licensable activities that are to be carried on. Examples of measures the Licensing Authority encourage applicants to consider and address include

- Physical security features e.g. use of toughened, polycarbonate or plastic drinking glasses
- Procedure for risk assessment of alcohol promotions to ensure they do not promote irresponsible drinking or potentially breach the mandatory condition on irresponsible drinks promotions
- The use and number of Security Industry Authority (SIA) registered door supervisors
- Amount of seating to be provided to reduce the risk of high volume vertical drinking
- Training given to staff in crime prevention and drug awareness measures
- Measures agreed with the Police to reduce crime and disorder
- Measures to prevent the use or supply of illegal drugs
- Search procedures
- Formalisation of a dispersal policy
- Measures to prevent customers taking glasses and bottles away from the premises

- CCTV remains one of the most effective measures for reducing crime and disorder. The Licensing Authority expects premises that retail alcohol for consumption on or off the premises will have an effective CCTV system installed that operates in compliance with the requirements of Lincolnshire Police
- 4.1.4 The British Beer and Pub Association (BBPA) has consolidated good practice on combating violence in licensed premises into a guide to risk assessment. This is available on the BBPA's website: www.beerandpub.com.

[illegible]

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13 Review of Premises Licences and Club Premises Certificates

- 13.1 The Licensing Authority will consider the full range of powers available to it when an application for review of a licence or club premises certificate is heard. It will however be mindful of the need to prevent the review process being used as an opportunity by Responsible Authorities and other persons to re-run earlier representations without due cause. The power to review premises licences represents a crucial protection for the community, especially with regards to the promotion of the four licensing objectives. Reviews of licences may be triggered at any stage by Responsible Authorities or other persons due to a matter arising at the licensed premises and relating to one of the four licensing objectives. It is the Licensing Authority's belief that the promotion of the licensing objectives is best achieved in an atmosphere of mutual co-operation between all stakeholders. Reviews should therefore be mainly reserved for circumstances where early warnings of concerns, where appropriate, and the need for improvement have gone unheeded by the management of the licensed premises.
- 13.2 This Authority emphasises the importance of all parties working in partnership to achieve the promotion of licensing objectives; the Authority expects that Responsible Authorities will aim to give licensees early warning of any concerns identified at a premises.
- 13.3 Responsible Authorities and other persons (e.g. local residents, local organisations and Boston Borough Council Councillors) can apply for the review of a licence; the Licensing Authority itself can also initiate the review process.

31.5 The statutory prevention of crime and disorder licensing objective in the Licensing Act 2003 includes the prevention of immigration crime and the prevention of illegal working in licensed premises. The licensing authority will work in partnership with the Home Office (Immigration Enforcement) and Lincolnshire Police with a view to preventing illegal working in premises licensed for the sale of alcohol and/or late night refreshment.

31.6 The licensing authority will have regard to any guidance issued by the Home Office in relation to the immigration related provisions now contained in the Licensing Act 2003.

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1. Introduction

The Licensing Act 2003

- 1.1 The Licensing Act 2003 (referred to in this Guidance as the 2003 Act), its explanatory notes and any statutory instruments made under it may be viewed online at www.legislation.gov.uk. The statutory instruments include regulations setting out the content and format of application forms and notices. The Home Office has responsibility for the 2003 Act. However, the Department for Culture, Media and Sport (DCMS) is responsible for regulated entertainment, for which there is provision in Schedule 1 to the 2003 Act (see Chapter 16).

Licensing objectives and aims

- 1.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.
- 1.3 The licensing objectives are:
- The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.
- 1.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.
- 1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
 - giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
 - recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
 - providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
 - encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

The guidance

- 1.6 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. This revised guidance takes effect as soon as it is published. Where a licence application was made prior to the publication of the revised guidance, it should be processed in accordance with the guidance in effect at the time at which the application was made; the revised guidance does not apply retrospectively. However, all applications received by the licensing authority on or after the date the revised guidance was published should be processed in accordance with the revised guidance.

Purpose

- 1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.
- 1.8 The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

Legal status

- 1.9 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.
- 1.10 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). This Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation.

Licensing policies

- 1.11 Section 5 of the 2003 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 it carries out any licensing functions under the 2003 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.

Licensable activities

- 1.13 For the purposes of the 2003 Act, the following are 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.

Further explanation of these terms is provided in Chapter 3.

Authorisations or permissions

- 1.14 The 2003 Act provides for four different types of authorisation or permission, as follows:
- Premises licence – to use premises for licensable activities.
 - Club premises certificate – to allow a qualifying club to engage in qualifying club activities as set out in Section 1 of the Act.
 - Temporary event notice – to carry out licensable activities at a temporary event.
 - Personal licence – to sell or authorise the sale of alcohol from premises in respect of which there is a premises licence.

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Licence conditions – general principles

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Additional guidance

1.18 From time to time, the Home Office may issue additional supporting guidance to licensing authorities and other persons on the Gov.uk website. This supporting guidance is good practice guidance and should be viewed as indicative and subject to change. Such supporting guidance will broadly reflect but will not be part of the statutory guidance issued by the Secretary of State under section 182 of the 2003 Act. Licensing authorities may wish to refer to, but are under no statutory duty to have regard to such supporting guidance issued by the Home Office.

Other relevant legislation

1.19 While licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation. Legislation which may be relevant includes:

- The Gambling Act 2005
- The Environmental Protection Act 1990
- The Noise Act 1996
- The Clean Neighbourhoods and Environmental Act 2005
- The Regulatory Reform (Fire Safety) Order 2005
- The Health and Safety at Work etc. Act 1974
- The Equality Act 2010
- The Immigration Act 2016
- Regulators' Code under the Legislative and Regulatory Reform Act 2006

2. The licensing objectives

Crime and disorder

- 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).
- 2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.
- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.4 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

8. Applications for premises licences

Relevant licensing authority

- 8.1 Premises licences are issued by the licensing authority in which the premises are situated or, in the case of premises straddling an area boundary, the licensing authority where the greater part of the premises is situated. Where the premises is located equally in two or more areas, the applicant may choose but, in these rare cases, it is important that each of the licensing authorities involved maintain close contact.
- 8.2 Section 13 of the 2003 Act defines the parties holding important roles in the context of applications, inspection, monitoring and reviews of premises licences.

Authorised persons

- 8.3 The first group –“authorised persons”– are bodies empowered by the 2003 Act to carry out inspection and enforcement roles. The police and immigration officers are not included because they are separately empowered by the 2003 Act to carry out their duties.
- 8.4 For all premises, the authorised persons include:
- officers of the licensing authority;
 - fire inspectors;
 - inspectors with responsibility in the licensing authority’s area for the enforcement of the Health and Safety at Work etc Act 1974;
 - officers of the local authority exercising environmental health functions
- 8.5 Local authority officers will most commonly have responsibility for the enforcement of health and safety legislation, but the Health and Safety Executive is responsible for certain premises. In relation to vessels, authorised persons also include an inspector or a surveyor of ships appointed under section 256 of the Merchant Shipping Act 1995. These would normally be officers acting on behalf of the Maritime and Coastguard Agency. The Secretary of State may prescribe other authorised persons by means of regulations, but has not currently prescribed any additional bodies. If any are prescribed, details will be made available on the GOV.UK website.
- 8.6 Where an immigration officer has reason to believe that any premises are being used for a licensable activity, the officer may enter the premises with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the licensable activity.

Responsible authorities

- 8.7 The second group –“responsible authorities”– are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. These representations must still be considered ‘relevant’ by the licensing authority and relate to one or more of the licensing objectives. For all premises, responsible authorities include:
- the relevant licensing authority and any other licensing authority in whose area part of

the premises is situated;

- the chief officer of police;
- the local fire and rescue authority;
- the relevant enforcing authority under the Health and Safety at Work etc Act 1974;
- the local authority with responsibility for environmental health;
- the local planning authority;
- a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm;
- each local authority's Director of Public Health (DPH) in England⁴ and Local Health Boards (in Wales);
- the local weights and measures authority (trading standards); and
- Home Office Immigration Enforcement (on behalf of the Secretary of State).

[REDACTED]

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[REDACTED]

[REDACTED]

⁴ This change was made as a result of the commencement of measures in the Health and Social Care Act 2012 which amended the 2003 Act and further provision in the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

[REDACTED]

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Who can apply for a premises licence?

- 8.15 Any person (if an individual aged 18 or over) who is carrying on or who proposes to carry on a business which involves the use of premises (any place including one in the open air) for licensable activities may apply for a premises licence either on a permanent basis or for a time-limited period.
- 8.16 “A person” in this context includes, for example, a business or a partnership. Licensing authorities should not require the nomination of an individual to hold the licence or determine the identity of the most appropriate person to hold the licence.
- 8.17 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(1)(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities. In the case of public houses, this would be easier for a tenant to demonstrate than for a pub owning company that is not itself carrying on licensable activities. Where licences are to be held by businesses, it is desirable that this should be a single business to avoid any lack of clarity in accountability.
- 8.18 A public house may be owned, or a tenancy held, jointly by a husband and wife, civil partners or other partnerships of a similar nature, and both may be actively involved in carrying on the licensable activities. In these cases, it is entirely possible for the husband and wife or the partners to apply jointly as applicant for the premises licence, even if they are not formally partners in business terms. This is unlikely to lead to the same issues of clouded accountability that could arise where two separate businesses

application form requires the applicant to provide a description of where the place is and its proximity to the premises.

Entitlement to work in the UK

- 8.38 Individuals applying for a premises licence for the sale of alcohol or late night refreshment must be entitled to work in the UK. From 6 April 2017 licensing authorities must be satisfied that an individual who applies for a premises licence is entitled to work in the UK. This includes applications made by more than one individual applicant. An application made by an individual without the entitlement to work in the UK must be rejected. This applies to applications which include the sale of alcohol and the provisions of late night refreshment, but does not include applications which apply to regulated entertainment only. For example, a person applying for a licence for a music venue who does not intend to sell alcohol or late night refreshment is not prohibited from applying for a licence on grounds of immigration status. However, they will commit a criminal offence if they work illegally.
- 8.39 The documents which may be relied on in support of an application demonstrating an entitlement to work in the UK are the same as for personal licence applicants see paragraph 4.8. Where there is sufficient evidence that the applicant is not resident in the UK there is no requirement that the applicant has an entitlement to work in the UK.
- 8.40 Where an applicant's permission to work in the UK is time-limited the licensing authority may issue a premises licence for an indefinite period, but the licence will become invalid when the immigration permission expires. The individual's entitlement to work in the UK may be extended or made permanent by the Home Office, and granting the licence for an indefinite period prevents the licensee from having to re-apply for a new licence. In the event that the Home Office cuts short or ends a person's immigration permission (referred to a curtailment or revocation), any licence issued on or after 6 April 2017 which authorises the sale of alcohol or provision of late night refreshment will automatically lapse. As with personal licences, the licensing authority is under no duty to carry out on going immigration checks to see whether a licence holder's permission to be in the UK has been brought to an end. For further details on entitlement to work see paragraphs 4.8 to 4.18.

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Government	Percentage
Current government	85%
Previous government	15%

Country	Share of GDP
United States	10.2%
Germany	10.0%
France	9.8%
Japan	9.5%
United Kingdom	9.3%
Canada	8.9%
Italy	8.7%
Spain	8.5%
Sweden	8.3%
South Korea	8.1%
China	7.9%
India	7.7%
Brazil	7.5%
Russia	7.3%
South Africa	7.1%
Argentina	6.9%
Mexico	6.7%
Indonesia	6.5%
Australia	6.3%
Israel	6.1%
Ukraine	5.9%
Poland	5.7%
Belgium	5.5%
Portugal	5.3%
Switzerland	5.1%
Denmark	4.9%
Netherlands	4.7%
Belarus	4.5%
Uzbekistan	4.3%
Georgia	4.1%
Armenia	3.9%
Azerbaijan	3.7%
Algeria	3.5%
Libya	3.3%
Yemen	3.1%
Sudan	2.9%
Egypt	2.7%
Iran	2.5%
Pakistan	2.3%
Bangladesh	2.1%
India	1.9%
China	1.7%
United States	1.5%
Germany	1.3%
France	1.1%
Japan	0.9%
United Kingdom	0.7%
Canada	0.5%
Italy	0.3%
Spain	0.1%
Sweden	0.0%
South Korea	0.0%
China	0.0%
India	0.0%
Brazil	0.0%
Russia	0.0%
South Africa	0.0%
Argentina	0.0%
Mexico	0.0%
Indonesia	0.0%
Australia	0.0%
Israel	0.0%
Ukraine	0.0%
Poland	0.0%
Belgium	0.0%
Portugal	0.0%
Switzerland	0.0%
Denmark	0.0%
Netherlands	0.0%
Belarus	0.0%
Uzbekistan	0.0%
Georgia	0.0%
Armenia	0.0%
Azerbaijan	0.0%
Algeria	0.0%
Libya	0.0%
Yemen	0.0%
Sudan	0.0%
Egypt	0.0%
Iran	0.0%
Pakistan	0.0%
Bangladesh	0.0%
India	0.0%
China	0.0%
United States	0.0%
Germany	0.0%
France	0.0%
Japan	0.0%
United Kingdom	0.0%
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Italy	0.0%
Spain	0.0%
Sweden	0.0%
South Korea	0.0%
China	0.0%
India	0.0%
Brazil	0.0%
Russia	0.0%
South Africa	0.0%
Argentina	0.0%
Mexico	0.0%
Indonesia	0.0%
Australia	0.0%
Israel	0.0%
Ukraine	0.0%
Poland	0.0%
Belgium	0.0%
Portugal	0.0%
Switzerland	0.0%
Denmark	0.0%
Netherlands	0.0%
Belarus	0.0%
Uzbekistan	0.0%
Georgia	0.0%
Armenia	0.0%
Azerbaijan	0.0%
Algeria	0.0%
Libya	0.0%
Yemen	0.0%
Sudan	0.0%
Egypt	0.0%
Iran	0.0%
Pakistan	0.0%
Bangladesh	0.0%
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China	0.0%
United States	0.0%
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Poland	0.0%
Belgium	0.0%
Portugal	0.0%
Switzerland	0.0%
Denmark	0.0%
Netherlands	0.0%
Belarus	0.0%
Uzbekistan	0.0%
Georgia	0.0%
Armenia	0.0%
Azerbaijan	0.0%
Algeria	0.0%
Libya	0.0%
Yemen	0.0%
Sudan	0.0%
Egypt	0.0%
Iran	0.0%
Pakistan	0.0%
Bangladesh	0.0%
India	0.0%
China	0.0%
United States	0.0%
Germany	0.0%
France	0.0%
Japan	0.0%
United Kingdom	

The role of responsible authorities

9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

Home Office Immigration Enforcement acting as a responsible authority

9.25 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

A horizontal bar chart with 10 groups of bars. Each group is preceded by a small black square. The bars within each group are of varying lengths, representing different values. The bars are arranged in a descending order of length within each group.

Hearings

9.31 The Licensing Act 2003 (Hearings) Regulations 2005 governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, where the applicant and all of the persons who made relevant representations have given notice to the authority that they consider a hearing to be unnecessary. Where this is the case and the authority agrees that a hearing is unnecessary, it must forthwith give notice to the parties that the hearing has been dispensed with. Notwithstanding those regulatory provisions, in cases where the licensing authority believes that a hearing is still necessary, it is recommended that the authority should, as soon as possible, provide the parties with reasons in writing for the need to hold the hearing. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

- 9.32 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. The 2005 Hearings Regulations permit licensing authorities to extend a time limit provided for by those Regulations for a specified period where it considers this to be necessary in the public interest. For example, if the application is amended at the last moment, the licensing committee should consider giving other persons time to address the revised application before the hearing commences. Where the authority has extended a time limit it must forthwith give a notice to the parties involved stating the period of the extension and the reasons for it.
- 9.33 The 2005 Hearings Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed and the representations may be withdrawn orally at that hearing. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.34 Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by the application before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.35 There is no requirement in the 2003 Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees in reaching more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer, but only if this licensing officer is acting as a responsible authority on behalf of the licensing authority and has had no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an independent officer separate from the licensing determination process.
- 9.36 As noted in paragraphs 9.13 to 9.19 above, where the licensing officer is acting as a responsible authority the relevant steps should be followed to ensure that this individual has no role in the decision making process regarding the licensing determination.
- 9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.
- 9.38 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

- 9.39 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.
- 9.40 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.
- 9.41 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

Determining actions that are appropriate for the promotion of the licensing objectives

- 9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is

imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. Conditions attached to premises licences and club premises certificates

General

- 10.1 This chapter provides further guidance in relation to conditions attached to premises licences and club premises certificates. General principles on licence conditions are set out in Chapter 1 (see paragraph 1.16).
- 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.
- 10.3 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

Proposed conditions

- 10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.
- 10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

Consistency with steps described in operating schedule

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

Imposed conditions

- 10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.
- 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

Proportionality

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 14 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was granted; or
 - representations which would have been made when the application for the premises

licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

¹⁰ See chapter 15 in relation to the licensing of live and recorded music.

Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;

Annex A – documents which demonstrate entitlement to work in the UK

Applicants may be asked to demonstrate that they have the right to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity. They can do this by providing with their application, copies or scanned copies of the documents listed below (which do not need to be certified). The documents that demonstrate an entitlement to work in the licensing regime are based on existing prescribed document lists for checks undertaken by employers. They are set out in the following regulations: The Immigration (Restrictions on Employment) Order 2007 and the Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014.

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK. See note below about which sections of the passport must be provided].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of an European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **full** birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity .
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to work relating to the carrying on of a licensable activity.
- A **current** Residence Card issued by the Home Office to a person who is not a national of an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity. **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A Certificate of Application, **less than 6 months old**, issued by the Home Office under regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office, such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
 - evidence of the applicant's own identity – such as a passport,
 - evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - a) working e.g. employment contract, wage slips, letter from the employer,
 - b) self-employed e.g. contracts, invoices, or audited accounts with a bank,
 - c) studying e.g. letter from the school, college or university and evidence of sufficient

funds, or

d) self-sufficient e.g. bank statements.

Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or an S1, S2 or S3 form.

Original documents must not be sent to licensing authorities. If the document copied is a passport, a copy of the following pages should be provided:-

- any page containing the holder's personal details including nationality;
- any page containing the holder's photograph;
- any page containing the holder's signature;
- any page containing the date of expiry; and
- any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

If the document is not a passport, a copy of the whole document should be provided.



Equality Act 2010

2010 CHAPTER 15

PART 11

ADVANCEMENT OF EQUALITY

CHAPTER 1

PUBLIC SECTOR EQUALITY DUTY

149 Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Status: This is the original version (as it was originally enacted).

- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are—
 - age;
 - disability;
 - gender reassignment;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- (8) A reference to conduct that is prohibited by or under this Act includes a reference to—
 - (a) a breach of an equality clause or rule;
 - (b) a breach of a non-discrimination rule.
- (9) Schedule 18 (exceptions) has effect.

150 Public authorities and public functions

- (1) A public authority is a person who is specified in Schedule 19.
- (2) In that Schedule—
 - Part 1 specifies public authorities generally;
 - Part 2 specifies relevant Welsh authorities;
 - Part 3 specifies relevant Scottish authorities.
- (3) A public authority specified in Schedule 19 is subject to the duty imposed by section 149(1) in relation to the exercise of all of its functions unless subsection (4) applies.
- (4) A public authority specified in that Schedule in respect of certain specified functions is subject to that duty only in respect of the exercise of those functions.
- (5) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

151 Power to specify public authorities

- (1) A Minister of the Crown may by order amend Part 1, 2 or 3 of Schedule 19.