

Guide to health and safety considerations for licensed premises

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Licensed premises owners and operators must consider and implement health and safety law in the workplace like all other employers. Undoubtedly, a licensed premises which provides activities including the sale or supply of alcohol, the provision of regulated entertainment and the supply of hot food and hot drink, may present risks to health and safety owing to the nature of these activities. This is both in terms of operation (eg for movement and storage of heavy barrels, glassware, hot crockery, music volume and crowded spaces) and in terms of the potential intoxication of customers, which may increase the likelihood of incidents.

There is a wide range of existing legislation concerning health and safety and in order to assist local authorities in reviewing these considerations in respect of licensed premises. This Practice Note is intended to provide an overview of the key legislative and policy considerations.

A licensing authority should consider health and safety issues when

- granting a licence—the promotion of public safety is a licensing objective under the Licensing Act 2003 (LA 2003). Public safety criteria may be reviewed on an initial application when considering the operating schedule submitted by the proposed licence holder

References:

LA 2003, ss 13(2)(c), 179

- monitoring compliance with a licence—local authorities and health and safety officers will also have powers of entry to inspect licensed premises and determine whether the conditions of a licence are being met
- when considering an application to review—any responsible authority (which includes the enforcing authority for the purposes of health and safety legislation) has the power to apply to the licensing authority for a review of the licence. Any application for a review must be relevant to the promotion of one or more of the licensing objectives and a review on the grounds of public safety would therefore be valid. See further Practice Note: Licensing of alcohol and entertainment

References:

LA 2003, s 13(4)(c)

HSWA 1974, s18

LA 2003, ss 51(1), 51(4)(a)

Health and safety is extremely important to the operation of licensed premises from the perspective of the operator, the licensing authority and the responsible authorities.

References:

LA 2003, s 13(4)(c)

HSWA 1974, s18

LA 2003, ss 51(1), 51(4)(a)

The Licensing Act 2003

Licensed premises in England and Wales are governed by the Licensing Act 2003 where any of the following licensable activities are taking place:

References:

LA 2003, s 1(1)

- the sale by retail of alcohol
- the supply of alcohol by or on behalf of a club to a club member and/or their guest(s)
- the provision of regulated entertainment (for example the playing of live or recorded music, performances of dance, performance of a play, an exhibit of a film, sporting event), and/or

References:

LA 2003, s 1(4), Sch 1

- the supply of hot food or drink between the hours of 11pm and 5am, for consumption on or off the premises (this will include mobile food vans)

References:

LA 2003, s 1(5), Sch 2

In deciding whether a licence should be granted, LA 2003 sets out four overarching aims or 'licensing objectives'

which the licensing authority is required by law to have regard to:

References:

LA 2003, s 4(2)

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

Public safety must therefore be promoted by the licence holder in order for the premises to obtain or retain a licence.

Health and safety regulations derive from a diverse range of legislative provisions ranging from fire safety, and asbestos to general risk assessment practices. For premises owners and operators, health and safety can therefore be a difficult area to manage without specialist experience. For the purposes of LA 2003, licensees must be able to demonstrate that they have considered and put into effect measures to protect the safety of any person visiting or working in their licensed premises.

The Guidance to Licensing Authorities issued by the Home Office under the authority of LA 2003, s 182 (Guidance) contains detailed guidance on the promotion of public safety as a licensing objective, including:

References:

Guidance to Licensing Authorities, paras 2.6–2.13

- the responsibilities of the licence holder
- matters which should be considered
- safe departure of persons
- maintenance and repair of premises and safe capacities

As the Guidance is statutory, licensing authorities must have regard to these provisions.

Inspections

For the purposes of ensuring licensing conditions are being met, LA 2003 enables licensing authorities and other responsible authorities (including health and safety officers) to enter licensed premises in order to make an assessment as detailed above. It is an offence under LA 2003 to intentionally obstruct an authorised person exercising this power.

The Code of Practice issued by the Home Office relating to Powers of Entry states that where it is appropriate and practicable to do so, reasonable notice (usually not less than 48 hours) should be provided to the operator of the premises. However, reasonable notice need not be given where the purpose of the entry is the initial safety investigation in the aftermath of an accident, incident or other emergency where there is an urgent need to

investigate the circumstances/causes of the accident, incident, or other emergency or to maintain public safety.

References:

Code of Practice, para 8.5

Fire safety legislation

Fire safety is an important consideration for licensed premises operators when promoting public safety, and must form part of any reviews undertaken by employers or premises owners. The Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 requires that the responsible person takes fire precautions to ensure that the premises are safe and to carry out a risk assessment and keep it updated, including putting in place procedures to comply with its recommendations.

References:

Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, regs 8–9

In relation to licensing, compliance with fire safety legislation must be met and the process for compliance with fire safety will be completed through the risk assessment process. The government has collated online a suite of documents and guidance relating to fire safety law for business which is a useful source of reference. A Guide has also been produced by the government for small and medium ‘places of assembly’ (which applies to premises accommodating up to 300 people) which includes a number of recommendations on fire risk assessments and fire precautions.

References:

Fire Safety Risk Assessment: Small and medium places of assembly

Fire and rescue authorities are responsible authorities under the LA 2003 and therefore can comment on any licence application or review in the same way as a health and safety officer. Licensing authorities should note though that maximum capacities for the purposes of fire safety are now determined by way of risk assessment in accordance with the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 and maximum occupancies are therefore not determined by the fire officer. See also Guidance to licensing authorities below in relation to the provisions in the Guidance regarding safe capacities.

References:

LA 2003, s 13(4)(b)

Health and safety legislation considerations for owners and operators

The owners and operators of licensed premises should have a health and safety policy and risk assessments in place to ensure they are compliant with their obligations as employers under the Health and Safety at Work

etc Act 1974 (HSWA 1974) and associated legislation. Licensing authorities should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation. Therefore, not all obligations under health and safety legislation, or all safeguards identified as a result of risk assessments, should be included within the licence application or attached as conditions to premises licences.

References:

HSWA 1974

Guidance to Licensing Authorities

In preparing and considering a licence application, it may be appropriate to have regard to the following legislation:

References:

HSWA 1974

Management of Health and Safety at Work Regulations 1999, SI 1999/3242

Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004

BA 1984

Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541

Control of Asbestos Regulations 2012, SI 2012/632

Provision and Use of Work Equipment Regulations 1998, SI 1998/2306

Smoke and Carbon Monoxide Alarm (England) Regulations 2015, SI 2015/1693

Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, SI 2013/1471

Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451

- HSWA 1974
- Management of Health and Safety at Work Regulations 1999, SI 1999/3242
- Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004
- Building Act 1984
- Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541
- Control of Asbestos Regulations 2012, SI 2012/632
- Provision and Use of Work Equipment Regulations 1998, SI 1998/2306
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015, SI 2015/1693
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, SI 2013/1471

- Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451

The Health and Safety Executive (HSE) publishes a short guide to health and safety regulation which includes a list of important pieces of health and safety legislation at Appendix 1, covering all workplaces and particular areas of risk. This covers the use of equipment, laws relating to the construction, maintenance and management of the premises eg, a licensed premises will be expected to be compliant with fire safety legislation as above.

References:

HSE guidance—short guide to health and safety regulation

Asbestos should be managed in compliance with CAR 2012 and practical guidance in relation to dealing with asbestos in licensed premises has been issued by the British Beer and Pub Association. A helpful guide on the duty to manage Asbestos has also been produced by the HSE.

References:

British Beer and Pub Association—practical guidance

Under health and safety legislation, owners and operators of licensed premises should take all reasonably practicable steps to ensure the safety of their employees and of persons not in their employment, including customers. The best way to safeguard a company's reputation and commercial success against breach of health and safety legislation is to ensure that a robust risk management strategy has been implemented. This should involve the following steps:

References:

HSWA 1974, ss 2–3

- identify all the possible hazards
- evaluate the risk and decide on the relevant precautions to be taken
- put identified precautions into practice, and
- monitor and regularly review assessments and actions

All employers are required under health and safety regulations to carry out risk assessments, make arrangements to implement necessary measures, appoint competent people and arrange for appropriate information and training. Other regulations require floors to be suitable, in good condition and free from obstruction, with people able to move around safely.

References:

Management of Health and Safety at Work Regulations 1999, SI 1999/3242

Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004

It is important to realise that the identity of the 'employer' who owes the duty under health and safety legislation may

not always be obvious, given the range and combination of ownership, management and franchise structures operating in the modern licensed industry. Any applicant, licence holder and/or operator of licensed premises should consider whether they are in fact the employer or whether the staff may actually be employed by other contractors, although there are also general duties on persons concerned with premises to persons other than their employees. Directors are expected to follow guidance issued by the HSE and the Institute of Directors (IoD), entitled *Leading Health and Safety at Work*.

References:

HSWA 1974, s 4

HSE and the Institute of Directors guidance—Leading Health and Safety at Work

Guidance to licensing authorities

Licensing authorities will be required to have regard to the promotion of public safety under LA 2003. The Guidance includes a section specifically dealing with the promotion of public safety to assist authorities with understanding the key issues with regard to health and safety for licensed premises.

The Guidance makes clear that ‘public safety concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation’. It comments that Public Safety includes physical safety, including performers, staff or customers at the relevant premises; and that this will include for example, the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. The Guidance also includes a list of potentially relevant issues for the purposes of public safety.

Where there is a requirement in other legislation for safety certificates, for example in relation to electrical equipment or furnishings, licence conditions should not require that such certificates are held. Licensing authorities are not given an exhaustive list of considerations in the guidance, as appropriate measures will vary between premises and its activities. Further consideration may need to be given to drugs and young people at dance events.

Promotion of public safety: key issues and best practice

When reviewing an application, a licensing authority should have regard to how the applicant plans on achieving the four objectives under LA 2003 and the steps proposed to promote public safety.

Every licensed premises will carry a different set of risks. However, there are some key issues which will be relevant for many licensed premises and some common steps that licence holders and owners/operators of licensed premises might take in the interests of best practice, such as:

- preparing a full risk assessment—taking into account fire safety and public safety to identify potential hazards posed to staff or customers, setting out precautions to manage the hazards and any appropriate limits on maximum capacity (only where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises)
- regular review of the risk assessment—at least every 12 months, and appropriate staff training. A copy of the risk assessment should be kept at the premises and be available for inspection if required
- appropriate and frequent waste disposal (particularly of glass bottles and having a glass collection policy)—staff must be made aware of the glass collection policy and their responsibility for the task
- maintaining a written policy to deal with all types of accidents and emergency incidents—the policy should be based on risk assessments and might include matters such as emergency management, contingency planning and evacuation procedures in the event of fire, bomb threats or suspect packages and when to contact emergency services. Evacuation responsibilities and roles should be clearly communicated to staff, routes and exits should be well defined and evacuation plans exercised regularly
- means of escape—in case of any emergency must be clearly visible, unobstructed and well maintained including areas outside exits leading to a place of ultimate safety such as the street.
- fire detection system—should be in place at the premises and should be fully functional at all times. The system should be tested regularly including firefighting equipment with records kept and made available for inspection
- staff training in fire safety—and any premises safety policy should be provided for all staff to deal with emergency situations, including location of equipment, utilities, services and layout of premises. Training should include how to use fire extinguishers. Records should be kept of the date and name of person trained and made available for inspection
- appropriate access for emergency services—such as ambulances and communication with local authorities and emergency services should be maintained
- provision of first aid boxes at the premises—maintained regularly and trained first aiders. At least one member of staff should have a recognised qualification in first aid. Keep an accident book to record all accidents or incidents and made available for inspection
- management arrangements to ensure adequate installation, testing maintenance and certification of appliances and safety precautions including

arrangements in relation to emergency lighting, electrical installations, portable electrical appliances, lifts, noise limiter equipment, fire-retardant treatments for materials, heating systems and cooking appliances

- adopting a zero tolerance policy to the use of drugs in the premises—advertised by posters other measures such as making anti drink-spiking products to customers may be appropriate in some cases
- making staff aware of their responsibilities regarding smoke-free legislation and for monitoring compliance
- discouraging drink driving and promoting schemes such as designated driver, with notices clearly displayed throughout the premises
- management controls to deal with specific activities such as drinks promotions
- ensuring the safety of people in and when leaving the premises—for example, through the provision of information on late-night transportation, use of competent and professional door supervisors, location of taxi pick-up points and use of CCTV in and around the premises
- ensuring adequate safety precautions for special effects—such as lasers, smoke machines, pyrotechnics, foam machines or fireworks. Appropriate control and monitoring of noise levels

The HSE has also produced a toolkit and guidance in relation to the risk of workplace violence in licensed premises such as pubs/clubs and retail premises, which contains a useful summary of potential issues and precautions that can be taken to guard against the risks identified.

Consideration of the key health and safety issues is likely to be useful to both licence holders and licensing authorities in assessing whether a licensed premises is complying with health and safety obligations.

The role of health and safety as a responsible authority

Health and Safety officers and the HSE may become involved in responding to an incident reported by a licensed premises owner under RIDDOR obligations imposed by Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, SI 2013/1471.

As set out above, under LA 2003, s 13(2), health and safety enforcement officers are also defined as a ‘responsible authority’ and will therefore have the ability to make representations in relation to new premises licence applications, variations or reviews of an existing licence on the grounds of the licensing objectives (including the promotion of public safety). They will work in conjunction with Licensing Authorities regarding health and safety matters and will have the power to enter premises to assess whether conditions of a licence are being complied with.

References:

LA 2003, s 13(2)

Under LA 2003, representations made by responsible authorities (or other parties) must be relevant and must not be vexatious or frivolous. Each licence application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy. Conditions sought by the health and safety officer as a responsible authority must be tailored to the individual type, location and characteristics of the premises and events concerned.

The Guidance is clear that 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. Conditions should also not duplicate other statutory regimes, for example, conditions should not be sought or imposed in relation to fire safety or food safety controls where the premises is required to be compliant by law, unless there have been specific issues in relation to those premises. This has also been considered by the courts in *R (on the application of Bristol City Council) v Bristol Magistrates’ Court*. Health and safety officers should not therefore propose ‘blanket’ conditions in their representations and a proportionate approach must be taken.

References:

R (on the application of Bristol City Council) v Bristol Magistrates’ Court [2009] EWHC 625 (Admin)

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