

To: **Licensing and Safety Committee**
02 February 2023

New Section 182 Guidance Under the Licensing Act 2003 Public Protection Manager

1 Introduction

- 1.1 Under Section 182 of the Licensing Act 2003, the Secretary of State is empowered to issue Guidance to licensing authorities on the discharge of their functions under that Act.
- 1.2 Section 4 of the Licensing Act 2003 stresses that in carrying out its functions, a Licensing Authority must “have regard to” guidance issued by the Secretary of State under Section 182. To this effect, the guidance is binding on all Licensing Authorities and to depart from the guidance could give rise to an appeal or judicial review. Therefore any reasons for departure need to be given clearly.
- 1.3 The Secretary of State issued revised guidance in December 2022 and this report highlights the key changes to the April 2018 version.

2 Supporting Information

- 2.1 Revision to the Section 182 Guidance document was issued by the Home Office just before Christmas. The previous guidance was issued in [April 2018](#). It is important that Members are kept abreast of these changes as Section 4 of the Licensing Act 2003 stresses that in carrying out its functions, a Licensing Authority must “have regard to” guidance issued by the Secretary of State under Section 182.
- 2.2 To this effect, the guidance is binding on all Licensing Authorities.
- 2.3 The Guidance cannot anticipate every possible scenario or set of circumstances that may arise. However, so long as licensing authorities have properly understood the Guidance, they may depart from it but only if they have good reason to do so and can provide full reasons. As any departure from the Guidance could give rise to an appeal or judicial review, the reasons given for any departure from the Guidance will be a key consideration for any Appellant or the Courts when considering the lawfulness and merits of any decision taken.

The key changes are set out below:

- 2.4 Change 1 - Entitlement to work in the UK for personal license holders. Changes from paragraphs 4.8 through to 4.49 (was 4.19) Criminal Record. Clarifying post Brexit right to work arrangements and how the Licensing authority check the individual has a right to work in the UK using a weblink.
- 2.5 Change 2 – Section 190 of the 2003 Act provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. It will be the premises at this location which needs to be licensed e.g. a warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser, would need to be licensed. Those premises licenses will be subject to mandatory licence conditions and, potentially, additional conditions as may be determined, including conditions as to the times of day when alcohol may be sold. The revised guidance advises that “Persons who run premises providing ‘alcohol delivery services’ should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can

properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, may consider contacting their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required”.

- 2.6 Change 3 – Paragraphs 4.82 - 4.84 are new and clarify the circumstances when a closure notice may be served and when an application may be made to a court to close the premises.
- 2.7 Change 4 – Paragraph 6.11 now has an additional sentence to clarify that Home Office Immigration Enforcement is not a responsible authority in relation to club premises certificates.
- 2.8 Change 5 – Paragraph 7.15 updating the TENS statutory limits. An increase in the number of TENS applied for by a premises increases from 15 to 20 and the maximum total duration of the events increases from 21 days per calendar year to 26 days in the 2022 to 2023 calendar years.
- 2.9 Change 6 – Paragraph 7.34 clarifying that there is no right to appeal if a late TENS application has an objection from the police or Environmental Health. In this case the event is invalid and cannot go ahead.
- 2.10 Change 7 – Paragraph 8.76 stating that full variations should not be used to vary substantially the premises to which the license relates. If there is a substantial change to the premises there should be a new license rather than use a variation.
- 2.11 Change 8 – Paragraph 10.5 a change in wording to clarify that conditions should be interpreted in accordance with the applicant’s intentions and should be appropriate and proportionate for the promotion of the licensing objectives.
- 2.12 Change 9 – Paragraph 14.66 has been added to bring licensing more in line with planning and refers to the agent of change. This means that someone responsible for a change in a vicinity, for example a developer, is also responsible for the impact of that change. This principle, which exists to a degree in planning policy already, is relevant to existing pubs, bars and other venues that host and play music but find themselves subject to complaints by residents who have moved in to residential developments that were built since the licensed premises was established.
- 2.13 Change 10 – Removal of Annex A – documents that demonstrate entitlement to work in the UK. This has now been covered in change 1 by using embedded links to government websites.

3 Equalities Impact Assessment

- 3.1 The council has a statutory duty to have regard to this guidance. Equality Impact Assessments will be undertaken on any policy decisions relating to these changes. Individual appeals under the Act will all be considered on their own merits.

4 Strategic Risk Management Issues

- 4.1 There are no risk management issues associated with this report albeit that to depart from the guidance could give rise to an appeal or judicial review.

Background Papers

- 5.1 A link to the full Revised Guidance can be found here- [December 2022 Section 182 Revised Guidance](#)
- 5.2 Appendix A - Revised Section 182 Guidance Summary produced by the Institute of Licensing

Contact for further information

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