
New Section 182 Guidance Under the Licensing Act 2003

Committee considering report:	Licensing Committee
Date of Committee:	23 January 2023
Chair of Committee:	Councillor James Cole
Report Author:	Ann Collins
Forward Plan Ref:	N/a

1. Purpose of the Briefing

- 1.1 This report informs Members of revised Guidance issued by the Secretary of State in December 2022 under Section 182 of the Licensing Act 2003 and highlights the key changes to the April 2018 version.

2. Background

- 2.1 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 the Act.
- 2.2 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.
- 2.3 To depart from the guidance could give rise to an appeal or judicial review, and therefore any reasons for departure need to be given clearly.

3. Implications and Impact

Implication	Commentary
Financial:	There are no specific financial implications arising from this report. Any follow up actions will be met from within existing resources.
Human Resource:	None
Legal:	Under Section 4 of the Licensing Act 2003, Members must have regard to the Guidance when making decisions under the Licensing Act 2003.
Risk Management:	There are no risk management issues associated with this report.
Property:	None
Policy:	This is a key document which licensing lawyers will refer to, along with any localised Statement of Licensing Policy, before drafting and submitting an application. It will also be referred to

	in licensing hearings before Licensing Sub-Committees, and also on appeals before the Magistrates' Court.
Consultation and Engagement	It is a statutory requirement for this guidance to be adhered to. No consultation will be undertaken. The key changes were set out in the December 2022 Members Bulletin. The revised guidance has been published on the PPP website.

4. Background Information

4.1 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.

4.2 To this effect, the guidance is binding on all Licensing Authorities.

4.3 To depart from the guidance could give rise to an appeal or judicial review, and therefore any reasons for departure need to be given clearly.

The key changes are set out below:

4.4 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.

4.5 Change 2 – Persons operating an alcohol delivery service. It is now suggested that they may consider contacting their licensing authority for its view on whether this form of alcohol sale is permitted, where previously they should contact their licensing authority.

4.6 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.

4.7 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.

4.8 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.

4.9 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.

4.10 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.

- 4.11 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.
- 4.12 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.
- 4.13 Change 10 – Removal of Annexe 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.

5. Supporting Information

- 5.1 A link to the full Revised Guidance can be found here- [December 2022 Section 182 Revised Guidance](#)

6. Conclusion

- 6.1 There are significant changes to the Guidance which are summarised for Members in Appendix A, and Members will need to be familiar with the revised Guidance when making decisions in Licensing Sub Committees and Committee.

7. Appendices

- 7.2 Appendix A - Revised Section 182 Guidance Summary produced by the Institute of Licensing