

Annex A : The Licensing Act 2003 and the Gambling Act 2005

1.

The Licensing Act 2003 introduces new laws on the sale and supply of alcohol, late night refreshments and public entertainment, and, in particular, gives responsibility for this to local authorities in England and Wales. The Gambling Act, in introducing new regulations for gambling, also gives responsibility for a number of important functions to local authorities in England and Wales. Common to both Acts is a system for authorising premises to be used permanently or on a temporary basis for licensable activities, and for giving permission to clubs.

2.

The 2003 and 2005 Acts take different approaches to the regulatory principles which underpin the functions of licensing alcohol and gambling. Therefore, the substantive rules that authorities must apply under the Acts are different in a number of respects. It is important that authorities do not confuse the two regimes. However, there are common procedural rules in the two systems, and this is intended to assist authorities to streamline procedures.

3.

This Annex describes the areas common to both Acts, and then sets out, in a table, the key differences. This cannot represent a comprehensive summary of the law under either Act, and reference should be made to the relevant guidance for each regime. The purpose of the table is to highlight where there are major differences requiring different approaches.

4.

This Annex does not deal with the transitional arrangements that applied to the 2003 Act, and will apply to the 2005 Act. Nothing in this Annex relates to Scotland, as the 2003 Act does not extend to Scotland.

5.

The focus of this Annex is premises licensing, which is a function common to both Acts. It does not deal with the permit-related functions under the 2005 Act, which have no counterpart in the 2003 Act.

Common Procedural Approaches

- (a) Both Acts transfer responsibilities from licensing justices (magistrates) to local authorities for premises-based regulation, and implement significant new licensing and regulatory regimes.
- (b) Both Acts contain a system of premises licensing.
- (c) Both Acts contain systems for authorising temporary use of premises (permitted temporary activities under Part 5 of the 2003 Act and temporary use of premises under Part 9 of the 2005 Act).
- (d) Both Acts apply to England and Wales, but the Gambling Act also applies to Scotland (where licensing boards have the equivalent responsibilities).

- (e) Both Acts define the same classes of local authority as the “licensing authority” for regulatory purposes i.e.
- district council;
 - county council where there are no district councils;
 - London borough council;
 - county or county borough council in Wales;
 - Common Council of the City of London; and
 - the council of the Isles of Scilly.
- (f) The only differences in definition of “licensing authority” are as follows:
- the 2003 Act includes the sub Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple. These authorities are only deemed licensing authorities under the 2005 Act for the purposes of Part 12 (in relation to Alcohol-licensed premises) and Schedule 13.
 - the territorial extent of the 2005 Act requires the Act to include licensing boards constituted under section 1 of the Licensing (Scotland) Act 1976.
- (g) The 2005 Act draws upon parts of the 2003 Act when establishing the delegation and procedural arrangements for the operation of licensing authorities. The licensing committees established under section 6 of the 2003 Act are also the relevant committees for the purpose of gambling functions under the 2005 Act. Therefore, the same committee that deals with applications and other issues in relation to alcohol premises licences will also be responsible for premises licence applications and other issues (i.e. permits) in relation to gambling.
- (h) The delegation arrangements for sub-committees and officers have a common basis under section 10 of the 2003 Act. The table in this Annex describes some functional differences.
- (i) The proceedings of the licensing committee are regulated by section 9 of the 2003 Act (and regulations made under that section). Particular provision can be made for proceedings in relation to just the 2003 Act functions or just the 2005 Act functions. Any such regulations will be consulted upon in due course.
- (j) Both Acts require authorities to maintain a register of the premises licences issued. This is likely to mean that in most cases, computer and database specifications used by the authority under the 2003 Act may also be used for the 2005 Act.
- (k) Both Acts require the licensing authority to publish a licensing policy statement.
- (l) Both Acts require advance publication of premises licence applications, and give local residents, businesses, and bodies such as the police rights to make representations. These representations are taken into account in the licensing process.
- (m) Under both Acts, appeals against decisions made by licensing authorities must be made to the Magistrates’ Court within 21 days of the decision (unless they are proceedings by way of judicial review).
- (n) Under both Acts, premises licences are issued in perpetuity. Authorities are able to review licences and impose a number of administrative sanctions, following a review (including the addition or modification of conditions, suspension or revocation of the licence).
- (o) Both Acts grant new powers to licensing authorities to initiate prosecutions in respect of certain offences.

Key differences between the 2003 and 2005 Acts

| Key differences | Licensing Act 2003 | Gambling Act 2005 |
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| <p>1. Extent of the legislation.</p> <p>2. The licensing objectives:</p> | <p>Applies in England and Wales only</p> <p>Set out in section 4 (2) of the 2003 Act, they are:</p> <ul style="list-style-type: none"> a) the prevention of crime and disorder; b) public safety; c) the prevention of public nuisance; and d) the protection of children from harm. <p>Note (b) and (c) are absent from the 2005 Act.</p> | <p>Applies in England, Wales and Scotland (and sections 43, 331, 340 and the related entry in Schedule 17 also apply to Northern Ireland)</p> <p>Set out in section 1 of the 2005 Act, they are:</p> <ul style="list-style-type: none"> a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; b) ensuring that gambling is conducted in a fair and open way; and c) protecting children and other vulnerable persons from being harmed or exploited by gambling. <p>Note the inclusion of vulnerable persons in the protection from harm objective.</p> |
| <p>3. 'Relevant licensing authority'</p> | <p>The relevant licensing authority is the authority for the area in which the premises are wholly or partly situated. Where the premises are across the boundary, it is the authority for the area in which the greater or greatest part of the premises is situated.</p> | <p>An application may be made to an authority in whose area the premises are wholly or partly situated. There are no provisions to differentiate between two licensing authorities where the premises straddle more than one area: it is for the applicant to choose which one he puts his application in to.</p> <p>The other authority will be a "responsible authority" in relation to the application</p> |

| Key differences | Licensing Act 2003 | Gambling Act 2005 |
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| <p>4. Structure of delegation See s.154 of the 2005 Act & ss.6,7,9 and 10 of the 2003 Act</p> | <p>All decisions are delegated to a licensing committee, except:</p> <ul style="list-style-type: none"> a) the statement of licensing policy; and b) matters that relate to the licensing functions of the authority and to another function of the authority, which may be referred to another committee of the licensing authority (but need not be). <p>Where a matter that relates to a licensing function is dealt with by the licensing authority, or a committee other than the licensing committee, the licensing authority/other committee must consider a report of the licensing committee before discharging the function concerned. Where it is dealt with by the licensing committee, the committee must consider any report of any of the licensing authority's other committees. There is no equivalent provision in the 2005 Act. Applications under both the 2003 Act and the 2005 Act are already required to be dealt with by the same s.6 licensing committee.</p> <p>Various matters may be sub-delegated to a sub-committee or officer of the authority, although certain specified decisions may not be taken by an officer. See section 10.</p> | <p>All decisions relating to premises licences are delegated to the licensing committee of the licensing authority except:</p> <ul style="list-style-type: none"> a) casino resolutions (which must be taken by the whole authority); b) three-year licensing policy (which must be made by the whole authority); and c) setting fees – these may be, but are not automatically, delegated to the licensing committee. <p>All other premises licence decisions may be further delegated to a sub-committee or an officer of the authority, except for the following, which may not be taken by an officer:</p> <ul style="list-style-type: none"> a) determination of an application for a premises licence where representations have been made and not withdrawn; b) determination of an application for variation of a licence where representations have been made and not withdrawn; c) determination of an application for transfer, following representations by the Commission; d) determination of an application for a provisional statement where representations have been made and not withdrawn; e) a review of a premises licence. <p>Decisions on temporary use notices are delegated to a licensing committee and may be sub-delegated to a sub-committee or an officer of the licensing committee. Any decision to give a counter notice cannot be sub-delegated to an officer, however.</p> |

| Key differences | Licensing Act 2003 | Gambling Act 2005 |
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| 5. Personal licences | Under Part 6 of the 2003 Act, personal licences are granted by the licensing authority. | Under the 2005 Act, personal licences are granted by the Gambling Commission (as are operating licences). Authorities have no “suitability” test to apply in relation to premises licences. |
| 6. Principles to be applied by the licensing authority when exercising its functions. | Section 4 of the 2003 Act requires an authority to carry out its functions under the Act with a view to promoting the licensing objectives. It is also to <i>have regard</i> to the following when carrying out its licensing functions: a) its licensing statement published under s.5; and b) any guidance issued by the Secretary of State under s.182 | Section 153 of the Act requires authorities to aim to permit the use of premises for gambling in so far as the authority think it: a) <i>in accordance with</i> any relevant code of practice under s.24; b) <i>in accordance with</i> any relevant guidance issued by the Commission under s.25; c) <i>reasonably consistent</i> with the licensing objectives (subject to (a) and (b)); and d) <i>in accordance with</i> the authority’s own licensing policy statement (subject to (a)-(c)) Note: there is no Secretary of State guidance |
| 7. Determination of the application for a premises licence | In the absence of relevant representations having been made, Section 18 of the 2003 Act requires the licensing authority to grant an application for a premises licence and to do so subject only to such conditions that are in accordance with the operating schedule submitted by the applicant. Special weight is given to representations made by the police that relate to the crime prevention objective (see section 18(9)). Note that relevant representations, for the purpose of deciding whether to hold a hearing, are those made within the relevant time limits that are not vexatious or frivolous. | Licensing authorities may reject an application for a premises licence (in accordance with the principles described above) or attach any conditions they think necessary (subject to the constraints of the Act) regardless of whether representations have been made. Note that representations that can be disregarded (for the purpose of deciding whether to hold a hearing) are those that are vexatious, frivolous or <i>will certainly not influence the authority’s determination of the application</i> . |

Gambling Act 2005

Licensing Act 2003

Key differences

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| <p>8. Responsible authorities: the list of responsible authorities differs between the two pieces of legislation.</p> | <p>Set out in section 13(4) of the Act, they are (in layman's terms):</p> <ul style="list-style-type: none"> a) the Police; b) the Fire authority; c) the enforcing authority within the meaning given by s.18 of the Health and Safety at Work Act; d) the local planning authority; e) Environmental Health (or similar body); f) A body competent to advise the authority in matters relating to the protection of children from harm; g) Any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated; and h) In relation to a vessel, a navigation authority, the Environment Agency, the British Waterways Board or the Secretary of State | <p>Set out in section 157 of the Act, they are (in layman's terms):</p> <ul style="list-style-type: none"> a) a licensing authority in England and Wales in whose area the premises is wholly/partly situated (nb. This means that the licensing authority (as in the issuing authority) is also a responsible authority); b) the Gambling Commission; c) the police; d) the fire authority; e) the local planning authority; f) the council constituted under section 2 of the Local Government etc (Scotland) Act 1994; g) Environmental health (or similar body); h) A body designated in writing that is competent to advise the authority in matters relating to the protection of children from harm; i) HM Revenue & Customs; and j) In relation to a vessel, a navigation authority, the Environment Agency, the British Waterways Board or the Secretary of State |
| <p>9. Interested parties: the definition of interested party differs between the two pieces of legislation.</p> | <p>Set out in section 13(3) of the Act, interested party means any of the following:</p> <ul style="list-style-type: none"> a) a person living in the vicinity of the premises; b) a body representing persons who live in that vicinity; c) a person involved in a business in that vicinity; d) a body representing persons involved in such businesses <p>Note that "in the vicinity of" is likely to mean something different from "be affected by". The former suggests a geographical limit, the second is a limit imposed in terms of the level of impact on a person or business.</p> | <p>Set out in section 158 of the Act, a person is an interested party if, in the opinion of the licensing authority, the person:</p> <ul style="list-style-type: none"> a) lives sufficiently close to the premises to be likely to be affected by the authorised activities; b) has business interests that might be affected by the authorised activities; or c) represents persons who satisfy a) or b) <p>See the main body of the guidance for further examination of this provision.</p> |

Gambling Act 2005

Licensing Act 2003

Key differences

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| <p>10. Operating Schedule</p> | <p>Section 17 of the 2003 Act requires an application for a premises licence to be accompanied by an operating schedule and a plan of the premises.</p> | <p>The Secretary of State will prescribe the information that must accompany a premises licence application. There is no equivalent to an operating schedule under the 2005 Act, since operating licences are determined by the Gambling Commission.</p> |
| <p>11. Provisional Statements</p> | <p>Provisional statements serve a similar purpose, but function in different ways under the two Acts.</p> <p>A licensing authority cannot refuse to issue a provisional statement under the 2003 Act, since the statement indicates what the authority will do when it receives a full premises licence application.</p> <p>Under section 31, if there are no relevant representations a licensing authority is required to issue a provisional statement stating so.</p> <p>Where relevant representations are made, a licensing authority (after any hearing) must issue the statement indicating what action (grant/reject/conditions) it would consider necessary upon any subsequent consideration of a premises licence application in relation to the proposal.</p> <p>When the full application for the licence is received, representations will be excluded if:</p> <ul style="list-style-type: none"> a) the same representations could have been made when the application for the provisional statement was made; and b) there has been no material change in circumstances relating either to the relevant premises or the area in the vicinity of those premises. | <p>Provisional statements serve a similar purpose, but function in different ways under the two Acts.</p> <p>The 2005 Act does not impose a statutory obligation on authorities to issue provisional statements. That is because the provisional statement serves the function of a provisional grant of a premises licence. Authorities apply the same tests for the provisional statement as would apply for the premises licence.</p> <p>When the full application for the premises licence comes in, the licensing authority must disregard any representations unless:</p> <ul style="list-style-type: none"> a) they address matters that could not have been addressed in representations relating to the application for the provisional statement; or b) they reflect a change in the <i>applicant's</i> circumstances. <p>Note this is different from a change to the premises or the area in the vicinity of those premises.</p> |

| Key differences | Licensing Act 2003 | Gambling Act 2005 |
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| <p>12. Premises Licence Conditions: the regime for attaching conditions to a premises licence differs between the two Acts.</p> | <p>The 2003 Act sets out all mandatory conditions to be applied to a premises licence on the face of the Act. In addition, section 18 of the 2003 Act enables authorities to impose conditions to individual premises licences where there have been relevant representations made (but the conditions that can be attached are only those that are consistent with the operating schedule, modified to such extent as the authority considers necessary for the promotion of the licensing objectives)</p> | <p>The 2005 Act sets out three types of conditions that can be attached to premises licences:</p> <ul style="list-style-type: none"> ● Mandatory - set by the Secretary of State (some set out on the face of the Act- s.176, 177, 179, 180, 182, 183) and some to be prescribed in Regulations, for all, or classes of licence; ● Default - to be prescribed in Regulations made by the Secretary of State, to be attached to all or classes of premises licence unless excluded by the licensing authority; and ● Specific - conditions that can be attached to an individual premises licence by the licensing authority. <p>Licensing authorities are not limited to conditions that are consistent with anything in the application in the same way that they are with operating schedules under the 2003 Act; however, they cannot impose conditions that would prevent compliance with operating licence conditions.</p> |
| <p>13. Right of freeholder to be notified of licensing matters</p> | <p>Section 178 of the 2003 Act enables a person with a property interest in any premises to give notice to the authority to enable him to be notified of any changes made to the register of premises in relation to that premises.</p> | <p>There is no such provision in the Gambling Act 2005, although authorities are still required to keep a register of premises licences and other permissions and provide copies of the registers when requested.</p> |

| Key differences | Licensing Act 2003 | Gambling Act 2005 |
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| <p>14. Vessels and Vehicles</p> | <p>Definition of vehicle in 2003 Act: “vehicle means a vehicle intended or adapted for use on roads” The 2003 Act prohibits the sale of alcohol on moving vehicles, but an authority may consider applications for a vehicle that is parked or stationary. Definition of vessel under 2003 Act: “vessel includes a ship, boat, raft, or other apparatus constructed or adapted for floating on water”. The 2003 Act applies in relation to a vessel which is not permanently moored or berthed as if it were premises situated in the place where it is usually moored or berthed. Under the 2003 Act, railway vehicles, aircraft engaged on journeys and vessels engaged on international journeys are exempt from the licensing regime of the 2003 Act</p> | <p>Definition of vehicle in 2005 Act: “vehicle includes a train, an aircraft, a seaplane and an amphibious vehicle (other than a hovercraft)” Premises licences may not be issued in relation to a vehicle (or part of a vehicle)- section 211 (1) of the 2005 Act refers. Definition of vessel under 2005 Act: “ vessel includes anything, other than a seaplane or an amphibious vehicle, designed or adapted for navigation or other use in, on or over water, a hovercraft, and anything or any part of any place, situated in or on water.” The 2005 Act enables a premises licence to be issued in relation to all or part of a vessel. A licensing authority may attach a condition to a premises licence issued in respect of a vessel that relates to its location. The following permits may not be issued to a vessel or a vehicle under the 2005 Act: a) An FEC permit (Schedule 10); b) A Prize Gaming permit (Schedule 14); c) A Club Gaming/Club Machine permit (Schedule 12); A Licensed Premises Gaming Machine permit may be issued to a vessel, but not a vehicle under the 2005 Act. Aircraft whilst in international airspace and vessels on an journey outside British waters are exempt from the licensing regime of the 2005 Act. See sections 211, 353(1), 359, and 360</p> |
| <p>15. Fees</p> | <p>Prescribed by the Secretary of State</p> | <p>Prescribed by the Secretary of State but may be devolved to authorities (wholly or to a limited extent), subject to cost recovery principle.</p> |

| Key differences | Licensing Act 2003 | Gambling Act 2005 |
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| 16. Temporary Use Notices | Where premises are situated in the area of two or more licensing authorities, each authority is the relevant licensing authority | The relevant licensing authority is the authority for the area in which the premises are situated. |
| 17. Licensing policy statement | <p>List of consultees set out in section 5(3):</p> <ul style="list-style-type: none"> ● Police ● Fire authority ● Representatives of licence holders ● Representatives of club premises certificates ● Representatives of personal licence holders ● Other persons representative of business and residents in the area | <p>List of consultees set out in section 349:</p> <ul style="list-style-type: none"> ● Police ● Representatives of gambling businesses in the area ● Representatives of those likely to be affected by the exercise of licensing authority's functions. |
| 18. Other functions | Licensing authorities also regulate clubs (club premises certificates) and issue personal licences. | <p>Licensing authorities also issue:</p> <ul style="list-style-type: none"> ● Family Entertainment Centre permits; ● Club Gaming and Club Machine Permits; ● Licensed Premises Gaming Machine Permits; and ● Prize gaming permits; <p>They may also register small society lotteries, and will take responsibility for occasional use notices, and various automatic notifications and authorisations.</p> |