



**Committee:** LICENSING ACT COMMITTEE  
**Date:** WEDNESDAY, 1 SEPTEMBER 2010  
**Venue:** LANCASTER TOWN HALL  
**Time:** 2.00 P.M.

## A G E N D A

1. **Apologies for Absence**
2. **Minutes**  
Minutes of meeting held on 15 July, 2010 (previously circulated).
3. **Items of Urgent Business Authorised by the Chairman**
4. **Declarations of Interest**
5. **Home Office Report on Rebalancing the Licensing Act 2003** (Pages 1 - 36)
6. **Consultation on the Draft Update of the Licensing Act Statement of Policy** (Pages 37 - 75)

## ADMINISTRATIVE ARRANGEMENTS

### (i) **Membership**

Councillors Joyce Taylor (Chairman), Bob Roe (Vice-Chairman), Anne Chapman, Chris Coates, Jane Fletcher, John Harrison, Helen Helme, Janie Kirkman, Ian McCulloch, Peter Robinson, Sylvia Rogerson, Roger Sherlock, Malcolm Thomas, Tony Wade and Paul Woodruff

### (ii) **Queries regarding this Agenda**

Please contact Tom Silvani, Democratic Services - 01524 582132 - email: [tsilvani@lancaster.gov.uk](mailto:tsilvani@lancaster.gov.uk).

### (iii) **Changes to Membership or apologies**

Please contact Members' Secretary, telephone 582170, or alternatively email [memberservices@lancaster.gov.uk](mailto:memberservices@lancaster.gov.uk).

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Published on 23 August 2010.

## LICENSING ACT COMMITTEE

### Home Office Consultation on Rebalancing the Licensing Act 2003

1st September 2010

### Report of the Licensing Manager

#### PURPOSE OF REPORT

This report is to seek members' views on the proposed responses to the questions posed by the Home Office as part of the consultation on Rebalancing the Licensing Act 2003 and to seek their approval to submit a response on behalf of Lancaster City Council to the consultation.

This report is public

#### RECOMMENDATIONS

**That members consider the Home Office Consultation on Rebalancing the Licensing Act 2003 and the draft response prepared by officers, and authorise the Licensing Manager to respond to the Home Office on behalf of the licensing authority.**

##### 1.0 Introduction

- 1.1 On 28<sup>th</sup> July 2010, the new Coalition Government issued a Consultation on 'Empowering Individuals, Families and Local Communities to Shape and Determine Local Licensing.' The Government are seeking the views of the licensed trade, interested parties and licensing authorities on an intended overhaul of the Licensing Act 2003.
- 1.2 The overall theme of the Consultation and the specific reform proposals is the Government's belief that local communities have not had a strong enough voice in determining licensing applications and an 'overly bureaucratic' licensing regime has restricted local authorities from adequately responding to local concerns. The Government believes that the changes will result in a fundamental shift in the licensing regime with "more emphasis on local accountability and less emphasis on central interference."
- 1.3 The Consultation asks a series of questions about the proposals with responses required by 8<sup>th</sup> September. The Consultation Document is attached as appendix 1 to this report.

1.4 Officers have considered the questions and have drafted responses for consideration by this Committee. These responses are attached as appendix 2 to this report.

**2.0 Conclusion**

In summary, members are requested to consider the consultation document and the proposed response, and to approve any amendments to the response that they see fit, and to authorise the Licensing Manager to submit a response to the Home Office.

**CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None.

**FINANCIAL IMPLICATIONS**

None

**LEGAL IMPLICATIONS**

The report has been prepared on behalf of the Head of Legal and Human Resources.

**BACKGROUND PAPERS**

Home Office Consultation Paper on Rebalancing the Licensing Act 2003.

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**Ref:** WP



Home Office

**REBALANCING THE LICENSING ACT**  
A CONSULTATION ON EMPOWERING  
INDIVIDUALS, FAMILIES AND LOCAL  
COMMUNITIES TO SHAPE AND  
DETERMINE LOCAL LICENSING

# MINISTERIAL FOREWORD



For too long town centres up and down the country have been blighted by crime and disorder driven by irresponsible binge drinking. Local communities have not had a strong enough voice in determining which pubs and clubs should be open

in their area and for how long they should trade. Local authorities have had their hands tied by an overly bureaucratic licensing regime meaning they have not been able to adequately respond to local concerns.

The majority of licensed premises are well run businesses, which provide a valuable service to their local communities and the Government recognises the important role which pubs can play as part of the fabric of neighbourhoods and villages. Whilst tackling alcohol-related crime is a priority for the Government, it will not be addressed at the expense of these responsible businesses. Instead, the Government's approach is to provide greater flexibility for communities to deal with the small minority of irresponsible premises that do not contribute to the well-being of local areas.

The Government believes that the Licensing Act is due an overhaul and that through this, the power to make licensing decisions needs to be rebalanced in favour of local communities. The presumption to approve all new licence applications that is embedded within the Licensing Act must be removed. And in its place a new licensing regime needs to be established with local authorities and the police better able to respond to local residents' concerns. If local communities don't want nightclubs open until six in the morning then the local authority should be able to respond flexibly to this concern. Similarly, if the local community does want a vibrant late-night economy, with premises open into the early hours, then the local authority should have the flexibility to charge a fee to pay for any additional policing this generates. Local tax payers shouldn't simply be left to pick up this cost.

Whilst the Government is determined to remove the bureaucracy behind licensing and to put local communities in the lead, it still has a role in setting the framework for responsible trading. For example, the Government is determined that irresponsible businesses which continue to flout the law by selling alcohol to children should no longer be able to trade. This will send a clear signal about individual behaviour and responsibility, and about what is and what isn't acceptable to the public. The Government is also concerned by those businesses that sell alcohol at a loss in order to gain wider trade. As evidenced by the Competition Commission's Groceries Market Inquiry in 2006-2008, all too often alcohol is sold at a price which simply doesn't reflect its cost. This sort of practice is irresponsible as it can lead to binge drinking and subsequent crime and disorder. The Government therefore intends to ban the sale of alcohol below cost price.

With the changes proposed in this consultation the Government believes the net result will be a fundamental shift in the licensing regime in this country, with more emphasis on local accountability and less emphasis on central interference. We welcome your views on these proposals, and on how they will support local decision making, local accountability, and vibrant local night-time economies.

A handwritten signature in black ink, appearing to read 'Vernon Renshaw'. The signature is fluid and cursive, written over a light blue horizontal line.

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# 1. EXECUTIVE SUMMARY

1.01 Alcohol plays an important part in the cultural life of this country, employing large numbers in production, retail and the hospitality industry. The industry as a whole contributes around £8.5bn to the Exchequer through excise duty alone, and over 200,000 premises have a licence to sell alcohol. Central to this is a system of alcohol licensing that is effective in regulating sales and reflective of local demands. This document sets out the Government's proposals for overhauling the current licensing regime to give more power to local authorities and the police to respond to local concerns about their night-time economy, whilst promoting responsible business. The Government will be consulting separately on the Coalition's proposals to deregulate live music and similar performances.

1.02 Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant "café culture" has failed to materialise. The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police, to clamp down on alcohol-related crime and disorder hot spots within local night-time economies. To rebalance the licensing regime the Government is proposing the following measures:

- a. Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority.
- b. Remove the need for licensing authorities to demonstrate their decisions on licences 'are necessary' for (rather than of benefit to) the promotion of the licensing objectives.
- c. Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- d. Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police.
- e. Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.
- f. Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises.
- g. Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective.
- h. Amend the process of appeal to avoid the costly practice of rehearing licensing decisions.
- i. Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
- j. Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.
- k. Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.
- l. Introduce tougher sentences for persistent underage sales.
- m. Trigger automatic licence reviews following persistent underage sales.
- n. Ban the sale of alcohol below cost price.
- o. Enable local authorities to increase licensing fees so that they are based on full cost recovery.
- p. Enable licensing authorities to revoke licences due to non-payment of fees.
- q. Consult on the impact of the Mandatory Licensing Conditions Order and whether the current conditions should be removed.

## 2. BACKGROUND

2.01 The police are fighting a constant and expensive battle against alcohol fuelled crime and anti-social behaviour. The last 5 years have introduced a new drinking culture in our towns and cities. The promised “café-culture” from 24 hour licences has not materialised, instead in 2009/10 almost one million violent crimes were alcohol-related and 47% of all violent crime was fuelled by alcohol. A fifth of all violent incidents took place in or around a pub or club, and almost two-thirds at night or in the evening. There are 6.6 million alcohol-related attendances at hospital accident and emergency (A&E) per year at a cost of £645 million. In addition, 1.2 million ambulance call outs each year costing £372 million are alcohol-related. The total costs of alcohol-related crime and disorder to the taxpayer are estimated to be between £8bn and £13bn.

2.02 The majority of people drink responsibly, but not enough has been done to enable local communities to take action against those that don't. It is vital that local communities – the public and their elected representatives – have the powers they need to tackle alcohol-related crime and anti-social behaviour whilst promoting local business and ensuring that those that drink responsibly are not unduly penalised. This challenge has to be achieved within the toughest economic climate for both the public sector and business that has been seen for decades.

2.03 In the past few years, legislation through the Licensing Act 2003, Violent Crime Reduction Act 2006 and Policing and Crime Act 2009 has been introduced to try and tackle the harms that arise from the misuse of alcohol. This legislation has not achieved the previous Government's objectives and has simultaneously introduced unnecessary additional burdens and bureaucracy in the system.

### COALITION AGREEMENT

2.04 In the Coalition Agreement, the Government set out a clear programme of reform around alcohol licensing to tackle the crime and anti-social behaviour that is too often associated with binge drinking in the night-time economy. In particular, the Government set out the following five commitments which are covered in this consultation.

- We will overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for under-age alcohol sales to £20,000.
- We will permit local councils to charge more for late-night licences to pay for additional policing.
- We will ban the sale of alcohol below cost price.

2.05 A sixth commitment to “review alcohol taxation and pricing to ensure it tackles binge drinking without unfairly penalising responsible drinkers, pubs and important local industries” is being taken forward separately by the Home Office and HM Treasury.



## **SHIFTING THE BALANCE OF RESPONSIBILITY FOR ALCOHOL RELATED CRIME AND DISORDER**

2.06 All too often high streets are filled on a Friday and Saturday night with revellers who are not encouraged to take responsibility for their own actions. They drink to excess and expect the taxpayer to meet the cost of their overindulgence. The Government wants a fundamental shift in responsibilities. Central Government will no longer be the primary driver for reducing and addressing the problems of alcohol-related crime and anti-social behaviour. Local authorities and local communities will have a greater say in what happens in their local area and individuals will become increasingly responsible for their own actions. The Government is committed to challenging the assumption that the only way to change people's behaviour is through adding to rules and regulations. In future, solutions to address alcohol-related problems will be found locally, and by encouraging individuals to take responsibility for their own actions.

## **STRIKING THE RIGHT BALANCE – PROMOTING BUSINESS AND CRIME PREVENTION**

2.07 The government is committed to striking an appropriate balance between supporting business and driving down alcohol-related crime and disorder. Encouraging innovation and supporting economic growth is vital during these challenging economic times. However, the two aims are not mutually exclusive as safer areas are more likely to be vibrant, attracting a greater range of people. There are numerous instances of local businesses working with the police and others to reduce alcohol-related harm whilst promoting their interests. Examples of this working in practice include the Retail of Alcohol Standards Group's Community Alcohol Partnerships which were successfully piloted in St Neots; Business Improvement Districts (BIDs); and the national Best Bar None (BBN) awards scheme.

2.08 BIDs are a public-private partnership in which businesses within a defined area pay a supplementary levy on their business rates, in

order to fund changes that will improve their trading environment and directly benefit their business. For many, this is achieved by implementing crime reduction initiatives that make the public feel safer and more inclined to visit. An excellent example of this initiative is Birmingham's Broad Street BID which covers the entertainment heart of the city. Amongst other things, the BID has developed town centre wardens, taxi marshalls and enhanced cleaning to tackle litter. During the BID's first year, police statistics showed a 60% reduction in general crime and a 28% reduction in violent crime (although it is not possible to conclude how much of the reduction was directly due to the BID).

2.09 The BBN award scheme was set up to acknowledge responsible and well run licensed premises. It provides an excellent way for the police to work with the licensed retail sector to raise standards and reduce crime. However, an additional benefit is that the high profile national awards ceremony attracts positive publicity for both the venue and the area. An excellent example of this is the Doncaster BBN scheme. An evaluation of the Doncaster scheme, carried out by the national BBN team, concluded that the scheme contributed to notable reductions in alcohol-related crime in Doncaster town centre, although the exact percentage amount could not be determined, because it was one of several evening economy measures that took place during this time. The evaluation noted that large reductions in violent offences were being recorded in the majority of BBN premises, and a number of additional benefits to licensed premises as a result of BBN accreditation were also noted.

2.10 Where these types of local schemes emerge the Government will encourage and support them, not interfere with them. Alongside this support, the role of Government is to ensure that the regulatory framework for alcohol reflects the needs of local communities, and empowers local agencies to act on their behalf. This is the focus of this consultation.

## 3. ABOUT THIS CONSULTATION

3.01 This consultation seeks views on proposals to deliver the Government's commitments on alcohol outlined in the Coalition Agreement. We are keen to hear from everyone who will be affected by the changes, including members of the public who are consumers of alcohol, those who are affected by alcohol-related crime, those that run or work in pubs, clubs, supermarkets and shops, criminal justice agencies, licensing authorities, and trade associations representing those who produce and sell alcohol. As the key commitments outlined have been published in the Coalition Agreement, this consultation primarily seeks views on the implications of implementing the proposals rather than inviting views on the commitments themselves.

3.02 This consultation runs for 6 weeks from 28 July to the 8 September and covers England and Wales, where these proposals apply. The Government has already consulted a number of key partners prior to publishing this consultation, which has included holding 8 meetings with over 55 stakeholders from the on and off trade, alcohol producers, police and local authorities, health and voluntary sectors.

3.03 Information on how to respond to this consultation can be found on the Home Office website at <http://www.homeoffice.gov.uk/about-us/consultations/>. Responses can be submitted online through the Home Office website or by post by sending responses to:

Home Office - Alcohol Strategy Unit,  
4<sup>th</sup> Floor Fry Building,  
2 Marsham Street,  
London,  
SW1P 4DF

You should contact the Home Office Alcohol Strategy Unit by email at [Alcohol.consultation@homeoffice.gsi.gov.uk](mailto:Alcohol.consultation@homeoffice.gsi.gov.uk) if you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.'

### DEVOLVED ADMINISTRATIONS

3.04 As most of these new measures will be introduced through the Police Reform and Social Responsibility Bill and include amendments to the Licensing Act 2003, they will only apply to England and Wales. We are yet to decide on how the ban on below cost sales of alcohol will be implemented. Were this ban to be implemented through the Mandatory Code of Practice for Alcohol Retailers or the Licensing Act 2003, it would only apply to alcohol sold in England and Wales. However, there is the possibility that the ban could be implemented across the whole of the United Kingdom if a more appropriate means of introduction is identified.

### IMPACT ASSESSMENT

3.05 The impact assessment which accompanies this consultation sets out further details of the estimated benefits and costs, including financial costs. Where costs have been estimated, these should be viewed as indicative only.

## 4. LICENSING LEGISLATION

4.01. The Licensing Act 2003 became law on 24 November 2005, and regulates licensable activities and qualifying club activities. These activities include:

- 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; and
- The sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place.

4.02. Licensable activities also include the provision of regulated entertainment and late night refreshment (Schedules 1 and 2). An authorisation is required in respect of any licensable activity; authorisation can comprise a premises licence, club premises certificate or temporary event notice and there can be one or more authorisations for the same premises. The processes and procedures governing each form of authorisation are contained in Part 3 (premises licences), Part 4 (club premises certificates) and Part 5 (permitted temporary activities) of the Act.

4.03. The Act introduced a single licence scheme for licensing premises and gave licensing authorities (in the form of a committee of not less than ten nor more than 15 members of the local authority which has responsibility for both personal licences to sell alcohol and premises licences) four licensing objectives, to ensure that licensable activities are carried out in the public interest.

4.04. A licensing authority can be a district or county council, London borough or one of the other bodies listed in section 3(1) of the Act, and its area is defined by reference to that of the corresponding local authority. The licensing authority must carry out its functions under the Act (licensing functions) with a view to:

- promoting the licensing objectives; and
- having regard to the statement of its licensing policy and licensing guidance issued by the Secretary of State.

4.05. The four licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

4.06. The Act enabled flexible opening hours for premises, consideration of the impact of opening hours on local residents and businesses, and gave local residents and businesses the right to make representations about applications. These representations must be based on the fact that one or more of the licensing objectives is being undermined.

4.07. A “responsible authority” (Police, Fire, Health & Safety, Planning, Environmental Health, Child Protection or Trading Standards) or an “interested party” (a person living or involved in business in the vicinity of the premises or a representative body of either) may make representations against an application or apply for a review of a licensed premises providing these objections pertain to the licensing objectives as listed above. A 28 day period is allowed for other responsible authorities or interested parties to also make representations. A hearing is held and those who expressed concerns are given the opportunity to present the issues in front of the licensing committee members. As a result of the hearing for either a licence application or review, the committee will make a decision; this may include refusing or revoking a licence or placing additional conditions on the licence.

## 5. GIVING MORE LOCAL POWERS TO REFUSE AND REVOKE LICENCES

5.01. Under the provisions in the 2003 Licensing Act there is a fundamental presumption in favour of granting an application for a licence to sell alcohol, which makes it difficult for local authorities to turn down applications. The Government wants to overhaul the licensing system to empower local councils and the police to clamp down on binge drinking hotspots and irresponsible retailers.

5.02. The Government proposes to change the balance of the Licensing Act to make licensing authorities more pro-active and empowered to take decisions. Currently under the Licensing Act a licensing authority can only refuse or remove a licence, or impose conditions on the licence upon review, if it can be proved that this 'is necessary' for the promotion of the licensing objectives and if a relevant representation has been made by a responsible authority. Refusals on this basis are rare partly because the licensing authority is not a responsible authority under the Act.

5.03. To make existing powers stronger and more responsive to local needs, it is proposed that relevant licensing authorities are made responsible authorities under the Licensing Act (or given equivalent powers). This would empower them to refuse, remove or review licences themselves without first having had to have received a representation from one of the other responsible authorities. This will also benefit the Cumulative Impact Policies (see next chapter) because licensing authorities will be able to refuse an application without representation.

**Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?**

5.04. In making determinations on new and existing licences, licensing authorities are currently required under the Licensing Act to demonstrate that these actions are 'necessary' for the promotion of the licensing objectives in their local area. This places a significant evidential burden on the licensing authority. The Government is considering amending the

Act to reduce the burden on licensing authorities from the requirement to prove that their actions are 'necessary', to empowering them to consider more widely what actions are most appropriate to promote the licensing objectives in their area. All decisions will remain within the framework of promoting the licensing objectives and not any area the licensing authority stipulates. The Government is also exploring possible changes to the licence application process, to shift the onus onto applicants to consider and demonstrate to the licensing authority in their application, how granting their licence application will impact on the local area, and how they will mitigate any potential negative impacts.

**Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?**

**Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?**

5.05. When determining an application for a premises licence, an application for a licence review or the granting of a personal licence, the licensing authority must have regard to relevant representations or objection notices (in the case of personal licence applications) from the chief officer of police. We propose to strengthen the weight that licensing authorities must give to police representations (including those voiced by the police at a hearing) and objection notices by amending the legislation to require licensing authorities to accept all representations and notices and adopt all recommendations from the police, unless there is clear evidence that these are not relevant.

**Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?**

## **INVOLVING THE COMMUNITY AND THEIR REPRESENTATIVES**

5.06. Licensing authorities currently have to produce and publish a statement of licensing policy for each three year period, which they then have to have regard to when making a determination on a licence application. In producing this statement, the Licensing Act states that the authority must consult the chief police officer for the area, the fire authority and such persons as the authority considers representative of holders of premises licences, club premises certificates, personal licences and local residents and businesses. In reality, some licensing authorities do not consult widely and practitioners have stated that as a result, licensing statements can be too narrowly defined and not representative of the views and needs of the local community.

5.07. To overcome this, the statutory guidance will be revised to encourage licensing authorities to consult more widely when determining their licensing policy statement, without prescribing from the Centre the parties they must consult with. To support licensing authorities in doing this, simple templates for self-assessment (e.g. Those used successfully for the Purple Flag scheme) will be provided within the guidance.

5.08. The Licensing Act 2003 allows local residents to raise concerns regarding new licence applications or existing licensed premises. Local residents are classified as interested parties within the Act, and as such are able to make relevant representations to licensing authorities about the impact of licensed premises on the promotion of the licensing objectives in their area. Relevant representations are considered in the determination of new licence applications and may lead to reviews of existing licences. To reduce any uncertainty amongst residents as to whether or not they are in the vicinity of a premises – and therefore whether they are an interested party – the legislation will be amended to remove the requirement to show vicinity. This means that any person, body or business will be able to make a relevant representation on any premises, regardless of their geographic proximity.

5.09. Currently each local authority is required to have a petition scheme outlining how residents can submit petitions and how the local authority will respond.

**Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?**

**Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?**

## **PUBLIC HEALTH**

5.10. The determination of licensing decisions gives little consideration to the views of local health bodies, such as Primary Care Trusts (or their equivalents), as they are not included as responsible authorities within the Licensing Act. This means that they are unable to make representations to the local licensing authorities regarding concerns about the impact of new licensed premises on NHS resources. Designating health bodies as a responsible authority under the Act would enable them to make representations about the impact of new or existing licensed premises on the local NHS (primarily A&E departments and ambulance services) or more generally the safety of the public within the night-time economy. The expectation is that such representations would be based on analysis of the types of data already used to identify problematic premises and local violence hot-spots (e.g. alcohol-related A&E attendances or emergency response statistics), which will reinforce the Coalition Agreement commitment to roll-out A&E data sharing.

**Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?**

5.11. Preventing harm to the health of the public is not currently a licensing objective. The Government would welcome views on making the prevention of health harm a material consideration for licensing authorities, either as a fifth licensing objective or as a discretionary power available to the authority where there is a particular local problem. This could allow licensing authorities to take account of local density of premises and hours of sale, and links to local alcohol-related illness and deaths. For example, this could mean restrictions on additional alcohol licences or additional hours of sale, whether within a defined area or within the local authority. Or it could mean encouraging or requiring premises to display sensible drinking messages or to promote low or non-alcoholic drinks.

5.12. This could mark a significant change in approach from the current Act and could have significant implications for businesses that incur additional costs or burden resulting from these decisions, and for their customers. The Government seeks views on how local areas might use this power, the implications for the public, businesses and local services, and whether this approach would be fair, targeted and proportionate.

**Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?**

5.13. The Government considers that there is a case to be made for including additional bodies as interested parties under the Licensing Act. While all individuals resident in the vicinity are entitled to make representations about licence applications or existing licensed premises, the Government considers the scope of interested parties should be increased to cover bodies such as school governors, housing associations and registered social landlords which may wish to make representations as a collective, rather than as individual citizens.

**Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?**

**OVERHAULING THE APPEALS PROCESS FOR LICENCE APPLICATION DETERMINATIONS**

5.14. The Licensing Act and accompanying guidance sets out the process by which an applicant can appeal against a licence determination. If the licensing authority rejects a new licence application, or an application to vary or transfer a premises licence, the applicant can lodge an appeal against the decision within 21 days of being notified of the determination. An applicant can also appeal against other licensing determinations including personal licence applications, Temporary Event Notices and closure orders. The appeal must be made to the magistrates' court for the petty sessions area. An appeal can be lodged if:

- the licensing authority has rejected the application or imposed conditions outside those specified in the operating schedule accompanying the application or imposed additional conditions necessary for the promotion of the licensing objectives; or,
- the licensing authority rejects an application or takes action to remove a licensable activity from the licence or refuses to specify an individual as a designated premises supervisor.

5.15. Section 181 and Schedule 5 of the Licensing Act 2003 provide for a right of appeal to the magistrates' court against the decisions of licensing authorities. The applicant can appeal a licensing determination on the above grounds. Under the Act, parties who have made relevant representations in regard to a licence application also have a right of appeal against the determination of the licensing authority if they believe that the licence should not have been granted, or that different or additional conditions should have been imposed. These grounds therefore give scope for appeals to be lodged for a number of reasons and increase the burden on both courts and licensing authorities to conduct the appeal.

5.16. If an appeal is lodged against a licence determination, currently the magistrates' court has a number of options when determining an appeal. They can dismiss the appeal, substitute for the decision any other decision the licensing authority could have made, or remit the case to the licensing authority to hear (and dispose of in accordance with the direction of the court).

5.17. If the magistrates' court hears the appeal, case law, which predates the Licensing Act 2003, indicates that the appeal is by way of rehearing (*Sagnata Investments Ltd v Norwich Corpn* [1971]). In doing so, the court will have to regard to the licensing authorities' statement of licensing policy and guidance issued under section 182 of the Licensing Act. The appeals process therefore often takes the power away from the licensing authority to make the final decision on the application.

5.18. The Government is considering options to tighten the appeals process and ensure that fewer appeals are heard in court and that, where possible, the power for determining licensing decisions remains with the licensing authority throughout, while retaining appropriate procedural safeguards. Therefore we propose that remitting the case back to the licensing authority to hear should become the default position although the court will need to retain the power to dismiss the appeal or re-hear it if seen to be necessary. Any proposals taken forward will include safeguards to ensure that Article 6 ECHR rights to a fair trial are not compromised.

**Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?**

## **APPEALS BY APPLICANTS ON LICENCE REVIEWS**

5.19. Reviews of a premises licence can be applied for by either responsible authorities or interested parties under the Licensing Act. Following the hearing, the licensing authority can take a number of actions including, modifying the licence conditions, removing the designated premises supervisor and

suspending the licence for a period of up to 3 months. However the decisions taken by the licensing authority at the review hearing do not take effect until any appeal is disposed of. There is evidence to suggest that some decisions are appealed against purely to ensure that the premises is able to trade during a profitable period (e.g. Christmas), and that the appeal may often be withdrawn once this period had passed. The Government considers that the sanctions imposed by a licensing authority should come into force when the holder of the premises licence receives the determination of the decision from the licensing authority, and that the sanctions should remain unless and until an appeal to the magistrates' court is successful.

**Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.**

## 6. DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING

6.01. The Government wants to make sure that all local authorities have the power to address the pressures caused by extensive late night drinking, and the 24 hour licensing culture. The introduction of the Licensing Act has not given local residents any more say in how late their licensed premises can stay open, so more local flexibility is needed in determining closing times and setting the fees to reflect the costs of policing the late night economy.

6.02. The latest figures show that at 31 March 2009 there were 7,178 premises holding licences to retail alcohol for up to 24 hours. Of these, 845 were pubs, bars and nightclubs able to sell alcohol for consumption on the premises for up to 24 hours. The number of premises open to sell alcohol after midnight or between 3am and 6am is not precisely known. Excluding hotels, many of these premises do not actually sell alcohol during these hours, but merely have the authorisation to do so.

### EARLY MORNING RESTRICTION ORDERS

6.03. The Crime and Security Act 2010 has an uncommenced power to allow licensing authorities to make Early Morning Restriction Orders (EMROs) which restrict the sale of alcohol between 3am and 6am by any outlet with a premises licence or club premises certificate, if it is considered necessary by the licensing authority for the promotion of the licensing objectives. The aim of EMROs is to provide licensing authorities with an additional tool to use to promote the licensing objectives in their local area, by restricting alcohol sales between certain times. The Government intends to commence this power with a significant amendment to allow local councils to decide between which hours (e.g. from midnight to 6am) they would like to prevent premises from opening, according to what they believe to be most appropriate for their local area. This differs from the current situation which limits local councils to issuing the order only between the hours of 3am and 6am. The change would ensure that licensing authorities are given the freedom to respond to the needs of their local community in determining when premises can sell alcohol.

6.04. The relevant legislation will also be amended so that an EMRO could be created if it was felt to be “beneficial” for the promotion of the licensing objectives rather than if it is felt to be “necessary” as is currently the case, in order to bring it in line with the proposed changes to the Licensing Act in the previous chapter.

**Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?**

### ALCOHOL DISORDER ZONES

6.05. Alcohol Disorder Zones (ADZs) were introduced via the Violent Crime Reduction Act 2006. They permit local authorities (with the consent of the police) to designate areas where there are problems with alcohol-related nuisance, crime and disorder as ADZs. In theory ADZs allowed councils to charge a levy on problem premises.

6.06. However, since the regulations for ADZs came into force in June 2008 no local authorities have chosen to establish one in their area. We have received feedback on ADZs from local authorities that indicates that this is due to the lengthy and costly process involved in setting up an ADZ, along with the negative impact creating an ADZ might have on an area’s image.

6.07. Local authorities have shown by not setting up any ADZs that they do not feel this policy is a suitable tool for tackling alcohol-related crime. Accordingly, the Government intends to repeal the legislation enabling ADZs. The policy intention behind ADZs will be met more effectively through the new late night levy, which is covered later in this consultation.

**Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?**



## CUMULATIVE IMPACT POLICIES

6.08. Cumulative Impact Policies were introduced as a tool for licensing authorities to limit the growth of licensed premises in a problem area. They are a potentially useful tool for licensing authorities to limit the number of licensed premises, but can be used only when they have received relevant representations from a responsible authority on the potential cumulative impact. They are often considered to be bureaucratic for licensing authorities (particularly smaller ones) as the link to the licensing objectives means there is a high evidential burden on responsible authorities before one can be introduced. As of March 2009 there were only 129 Cumulative Impact Policies in place in England and Wales, and when in place they do not necessarily make it easier to refuse licence applications as relevant representations are still required in order for an application to be refused.

6.09. The Government proposes to simplify Cumulative Impact Policies and make them more responsive to local needs. It intends to remove the evidential requirement in order to reduce the burden on licensing authorities and encourage greater use of them. This will give greater weight to the views of local people as the licensing authority will not be constrained by the requirement to provide detailed additional evidence where such evidence is unavailable.

**Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?**

## LATE NIGHT LEVY

6.10. The Government intends to legislate to enable licensing authorities to charge a late night levy to help pay for the cost of policing the local night-time economy, where this is deemed necessary.

6.11. It is intended that the levy would be introduced as an additional charge for licensed premises that local authorities have the discretion to introduce. This would apply to premises that have a licence to open beyond a specified time (e.g. all premises that open after midnight on any day of the week).

6.12. It may be possible to use the late night levy either as a means of recovering additional costs related to late night policing (in which case it would be determined by the additional cost of policing in the area it is applied, and the number of premises the cost is divided between). It may also be possible to allow the local authority some discretion over the amount that is charged for the levy.

**Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?**

6.13. It may be possible to charge different amounts for premises with reductions given to premises that are involved in schemes which reduce additional costs and which are deemed to be "best practice" (for example Best Bar None).

**Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?**

6.14. As well as policing, it would be possible to give local authorities the discretion to use the late night levy to fund the additional costs of other services related to the consequence of alcohol on the night time economy such as taxi-marshalling or street cleaning.

**Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?**

## AMENDING THE STATUTORY GUIDANCE TO MAKE IT CLEAR THAT MEASURES TO LIMIT OPENING HOURS CAN BE CONSIDERED

6.15. The Licensing Act 2003 introduced 24 hour alcohol licences, with the intention of allowing premises to adopt flexible opening hours. The objective was that consideration would be given to the impact of opening hours on local residents and businesses, and as part of this process, the Act gave local residents and businesses the right to make representations to the licensing authority to raise their concerns about new licence applications and the impact of existing licensed

premises on the local area. These representations must be based on the requirement that one or more of the licensing objectives is being undermined.

6.16. The aim behind introducing flexible opening hours was that through an extension of opening hours, concentrations of people leaving licensed premises at a set time should be reduced, with people dispersing more gradually from licensed premises at their different closing times. To this effect, in the guidance issued alongside the Licensing Act 2003, local areas were actively discouraged from implementing measures that could reduce this flexibility such as fixed closing times, staggered closing times and zoning; where fixed closing hours are set within a designated area. Many practitioners have reported that this advice is confusing and contrary to what local areas would like to do.

6.17. The Government intends to amend the guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area. Licensing authorities will be encouraged to consider using measures including fixed closing times, staggered closing times and zoning where they are appropriate for the promotion of the licensing objectives in their area. This change acknowledges the fact that different licensing approaches may be best for different areas and will empower licensing authorities to implement a licensing strategy that is best placed to meet the needs of their local area, based on their local knowledge.

**Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?**

## 7. TEMPORARY EVENT NOTICES

7.01. A Temporary Event Notice (TEN) is a notification to the licensing authority that an individual intends to conduct licensable activities on a temporary basis for a period not exceeding 96 hours. There are several other statutory requirements which relate to a TEN, which restrict the number of persons allowed onto the premises, and the number of TENs that can be applied for in a year.

7.02. The TEN must be submitted to the licensing authority and the police at least ten working days in advance of the planned event. Only the police can object to a TEN, and only on crime prevention grounds. The police have 48 hours after the receipt of the TEN to object, and (unless the premises user agrees to modify the TEN) the licensing authority must hold a hearing to consider any objection that has been received. If the licensing authority decides that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead.

7.03. The Government has recently amended the Licensing Act by Legislative Reform Order (LRO) on 19 July 2010 to extend the police objection period from 48 hours to two working days. The new arrangements, which come into force in October this year, will ensure that the police always have two full days to object to a TEN, even when it is submitted at the weekend or over a Bank Holiday. Restrictions on the use of LROs meant that it was not possible to use this mechanism to make more wide-ranging changes.

7.04. However the Government now has the opportunity to make a number of further simple changes to TENs in order to improve their effectiveness and ensure that events held using TENs are properly regulated. The proposed changes are: giving discretion to licensing authorities to apply existing licensing conditions for the period of a TEN when the applicant is already a licensed premises; extending the period of time that the police have to object (from two to five working days); and extending the right to object to other responsible authorities under the Act, including the right to object under the three other licensing objectives.

7.05. The Government also proposes to give the licensing authority the power to prescribe the exact address to where the TEN should be sent, as there is evidence to suggest that the service of the TEN to 'the relevant chief officer of police' results in delays in the proper person within the police receiving the details of the TEN. The licensing authority would be able to require that the papers be sent to a specific address for each of the responsible authorities under the Act, ensuring that TENs can be dealt with more efficiently.

7.06. The Government intends to amend the TENs structure to increase the period of notice that has to be given to a licensing authority in advance of the event. Currently this is 10 working days, but it is the Government's view that this should be increased to take account of the fact that extending the time that the police have to object to a TEN will impact upon the licensing authority's ability to schedule a hearing in advance of the event to consider any objections. The Government proposes that the legislation be amended so that TENs applied for where an existing premises licence is in operation would have to give a longer period of notice than applications for a TEN where there is no current premises licence. This could mean for example, that premises such as a pub or an off-licence would have to provide notice (for example) one month in advance, whereas a village fete or community event would be required to provide notice (for example) 15 working days in advance of the event.

7.07. The Government also proposes to restrict the number of TENs that a personal licence holder could apply for to 12 in one year. This would correspond with the number of TENs permitted at the same venue. The Government further intends to address the issue of the number of TENs that may be applied for in a single vicinity. Currently, it is possible for a field (for example) to have an unlimited number of TEN applications, with each TEN permitting up to 499 persons at each one. The Government proposes to amend the legislation to ensure that only one TEN would be able to be applied for in events such as this.

**Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:**

- a. All the responsible authorities can object to a TEN on all of the licensing objectives?**
- b. The police (and other responsible authorities) have five working days to object to a TEN?**
- c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?**
- d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?**

**Consultation Question 20: What would be the consequences of**

- a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**
- b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?**

## 8. PROTECTING CHILDREN FROM THE HARM OF ALCOHOL

8.01. The quantity of alcohol consumed by children who drink alcohol has increased significantly in the past decade. The 2008 Smoking Drinking and Drug Use Survey found that the average weekly intake for pupils aged 11-15 who had drunk alcohol in the week before they were surveyed was 14.6 units, this figure has more than doubled since 1990. Beer accounted for half of pupils' weekly intake (7.6 units), followed by alcopops (2.8 units), spirits (2.1 units) and wine (1.8 units).

8.02. Children's drinking is putting increasing pressure on the police and the health services. High levels of alcohol consumption are associated with a range of health harms and high risk behaviours, including unprotected sex and offending. 12,718 children in England aged 11-17 were admitted to hospital in 2008/09 with an alcohol-related condition (3,554 aged 11-15 and 9,164 aged 16-17). The UK has one of the highest rates in the EU of admission to hospital or A&E due to alcohol use by 15-16 year olds.

8.03. Frequency of drinking is associated with offending in children and young people. The 2004 Offending, Crime and Justice Survey found those who drank alcohol once a week or more committed a disproportionate volume of crime, accounting for 37% of all offences reported by 10- to 17-year-olds but only 14% of respondents.

8.04. Despite the growing problem of children's alcohol misuse and the increasing impact on public services, not enough has been done at the local level to limit the availability of alcohol to children. The current powers do not go far enough to prevent selling alcohol to children. Although pupils' access to alcohol is typically by being given it by friends or parents, about half of pupils who have ever drunk also say that they do buy alcohol, despite being well below the age when they can legally do so.

8.05. The Government wants to take tougher action to penalise those premises found to be persistently selling alcohol to children. Currently, if a licence holder pleads not guilty to persistent underage selling and is prosecuted, then they face a fine of up to £10,000 and up to 3 months suspension of their alcohol licence. In

2008 there were 9 prosecutions with 4 fines issued. The average fine issued is £1,713. However, as an alternative to prosecution the police can give the licence holder the option to voluntarily accept a 48 hour closure notice which discharges criminal liability. The 48 hour suspension of alcohol sales was given 54 times in 2008/09. In addition, the police can ask the licensing authority to review the licence although it is not clear how many reviews have been conducted following a licence holder having been found persistently selling alcohol to children.

8.06. In the Coalition Agreement, the Government set out a commitment to double the fine for persistent under-age selling from £10,000 to £20,000. Alongside this, the Government is proposing to extend the period of voluntary closure that can be given by the police as an alternative to prosecution to bring this in line with the increased fine. Currently police can give a closure notice of up to 48 hours, but the Government is considering amending this closure period to set a minimum period of voluntary closure that can be given by the police of 168 hours (7 days) and is inviting feedback on this proposal and a suitable upper-limit for the voluntary closure period. The intention behind setting a minimum and upper limit for the period of voluntary closure is to give police the flexibility to decide upon an appropriate period of voluntary closure as an alternative to prosecution based on the type of premises being sanctioned. This could include consideration of the size of the premises and the type of business. This gives police the power to ensure that the sanction given is a proportionate penalty for the premises found to have committed the offence. Additional guidance will be issued to encourage police to use this sanction flexibly.

**Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?**

**Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?**

8.07. The Coalition Agreement also set out a commitment to allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children. Although licensing authorities already have the power to review a licence if a licence holder is found to be persistently selling alcohol to children, it is not clear in how many cases this review takes place. The Government is proposing amending the legislation to ensure that all premises found to be persistently selling alcohol to children will have their licence reviewed, regardless of whether they have opted for voluntary closure or prosecution. At the review process the licensing authority has the power to impose a 3 month licence suspension, impose further conditions on the licence or to revoke the licence. Ensuring that licence reviews are automatic in these circumstances gives licensing authorities the power to consider each case and if seen to be necessary, the power to make a decision to revoke the licence.

**Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?**

## 9. BANNING BELOW-COST SALES

9.01. There has been a growing concern over the last few years about how cheaply some alcoholic drinks are being sold. We are also aware of the public's unease and their perception of heavily discounted alcohol being a key contributory factor to unacceptable levels of alcohol-related crime and disorder – in many cases as a result of “pre-loading” in preparation for a night out.

9.02. According to the British Crime Survey, over a quarter of local residents perceive drunk and rowdy behaviour to be a problem in their area. There is a belief that most of the alcohol which contributes to this drunk and rowdy behaviour is irresponsibly priced and sold, allowing irresponsible drinkers to be able to get drunk cheaply. Examples of deals such as bottles of cider containing more than the weekly recommended unit guidelines but costing less than the price of a pint of beer in an average pub, continue to contribute to calls for action by Government. Victims of crime and anti-social behaviour, as well as senior figures from the enforcement and health sectors that have first hand experience of tackling the harms caused by excessive and irresponsible consumption, have long called on the Government to take firm action to tackle cheap sales of alcohol.

9.03. We are committed to ensuring that local people are able to enjoy all parts of their community without feeling intimidated by those who have drunk too much alcohol and to reducing the burden on frontline services of dealing with drunken behaviour. As set out in the Coalition Agreement, the government is carrying out a review of alcohol pricing and taxation and associated with this a ban on the sale of alcohol below cost. This consultation will inform the review. For more information go to: [http://www.hm-treasury.gov.uk/alcohol\\_taxation.htm](http://www.hm-treasury.gov.uk/alcohol_taxation.htm)

### LEGISLATIVE OPTIONS FOR BANNING BELOW-COST SALES

9.04. The definition of ‘cost’ has implications for the policy, powers required, enforcement and different incentives. The ‘cost’ of an alcoholic product differs between retail businesses as they negotiate their own prices with suppliers, have different internal cost structures and may

base overall profitability on a basket of goods. This can make it difficult for a retailer to prove, or an enforcement authority to check, whether a product has been sold ‘below cost’.

9.05. There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries which have tried similar policies have banned selling below ‘net invoice price’ where the reference price is broadly the unit price on the invoice.

9.06. One option would be to specifically define an ‘average cost’. This might be easier to enforce than determining the true cost of each product, but could be a barrier to trade. An alternative option might be to introduce a mandatory licence condition by amendment to the Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 through secondary legislation. Under these circumstances, it would be a breach of the licence condition to sell alcohol below what it cost the premises. This would have the advantage of not having to define what the cost is. Where responsible authorities or interested parties were concerned about the prices being offered in local premises this could trigger a licence review.

**Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.**

- a. **Simple and effective ways to define the ‘cost’ of alcohol**
- b. **Effective ways to enforce a ban on below cost selling and their costs**
- c. **The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

# 10. REDUCING BURDEN AND BUREAUCRACY OF LICENSING AND COVERING ITS COST

## INCREASES IN LICENCE FEES

10.01. Licence fees have not been increased since their introduction and therefore some sort of increase is long overdue. This would be hugely welcomed by local authorities who have long argued that their enforcement costs exceed their fee income. The government commissioned Elton Report in 2006 concluded that there was a £43m shortfall for the three year period 2004/05 to 2006/07 and recommended an increase of 7% for the three year period 2007/08 to 2009/10. This has never happened and the Government therefore proposes to enable local authorities to increase the licence fees so that they are based on full cost recovery.

10.02. The Government also acknowledges that adopting a tougher licensing regime as outlined in these proposals may lead to an increase in the number of licence reviews conducted, and a subsequent risk of increased burden on local licensing authorities. Any additional burdens on licensing authorities should also be reflected in the level of licensing fees.

**Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?**

## AUTOMATIC REVOCATION OF LICENCE FOR NON-PAYMENT OF FEES.

10.03. The automatic revocation of licences for non-payment of fees is a simple change that could save local authorities many thousands of pounds currently spent in recovering unpaid annual fees through councils' own recovery sections and bailiffs. A precedent can be found for it in the Gambling Act. The Government proposes to amend the legislation so that a premises licence is automatically revoked if the premises has failed to pay the annual fees.

**Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?**

## DEREGULATION

10.04. In April 2010, the previous administration enacted a Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 for Alcohol Retailers, which was intended to be introduced in two stages. The first stage, which took place in April 2010, imposed conditions on licensed premises to:

- (a) Ban irresponsible promotions in the on-trade
- (b) Ban dispensing alcohol directly into the mouths of customers
- (c) Ensure that free tap water was available in all licensed premises in the on-trade

10.05. The legislation for the Mandatory Code contained two further conditions for licensed premises. These will be introduced on 1 October 2010. These conditions were delayed to give business more time to prepare and will mandate all licensed premises to:

- (d) Ensure they have an age verification policy in place
- (e) Ensure they are able to offer smaller servings of beer, wine and spirits.

10.06. As the regulations have been enacted, it is not possible to prevent d) and e) coming into force in October. However, the Government believes strongly that regulation should only be used as a last resort, and that alternatives to regulation should be used wherever possible. We want to take the opportunity of this consultation to give people the chance to comment on the necessity, cost, and impact of the provisions outlined in the mandatory code.

**Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?**



**Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e) above)?**

10.07. The Government is also interested in further de-regulating the Licensing Act in order to reduce the administrative burden both on business and licensing authorities. For example the application forms for both a premises licence and a TEN could be reduced, and the requirement on the licensing authority to determine and publish a statement of licensing policy every three years could be removed.

**Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?**

# 11. RESPONSES TO CONSULTATION

11.01. A list of the consultation questions included in this document is below.

- Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?
- Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?
- Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?
- Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?
- Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?
- Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?
- Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?
- Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?
- Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?
- Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?
- Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.
- Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?
- Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?
- Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?
- Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?
- Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?
- Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?
- Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?
- Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:
  - a. All the responsible authorities can object to a TEN on all of the licensing objectives?
  - b. The police (and other responsible authorities) have five working days to object to a TEN?
  - c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?
  - d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

- Consultation Question 20: What would be the consequences of:
    - a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?
    - b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?
  - Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?
  - Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?
  - Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?
  - Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.
    - a. Simple and effective ways to define the 'cost' of alcohol
    - b. Effective ways to enforce a ban on below cost selling and their costs
    - c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.
  - Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?
  - Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?
  - Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?
  - Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?
  - Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?
- 11.02. The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.
- 11.03. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000, the Data Protection Act (DPA) 1998 and the Environmental Information Regulations 2004.
- 11.04. If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 11.05. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 11.06. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

# ANNEX A

## CONSULTATION CRITERIA

The Consultation follows the Government's Code of Practice on Consultation – the criteria for which are set out below:

*Criterion 1 – When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.*

*Criterion 2 – Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*

*Criterion 3 – Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

*Criterion 4 – Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

*Criterion 5 – The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.*

*Criterion 6 – Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

*Criterion 7 – Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

The full Code of Practice on Consultation is available at: <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

## CONSULTATION CO-ORDINATOR

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. Please DO NOT send your response to this consultation to Nigel Lawrence. The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at: [Nigel.Lawrence@homeoffice.gsi.gov.uk](mailto:Nigel.Lawrence@homeoffice.gsi.gov.uk) or alternatively write to him at:

Nigel Lawrence, Consultation Co-ordinator  
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SW1P 4DF



Lancaster City Council suggested responses to Home Office Consultation – Rebalancing The Licensing Act

<p><b>Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?</b></p>	<p>This provision will remove the independence of the Sub-Committee when determining a licensing application if the Licensing Act Committee itself is the instigator of the 'representation' (if that is what it is) against a particular applicant.</p> <p>What will be the evidential basis for a refusal, revocation or review of a premises licence if no other representation is made and will powers be delegated to a licensing officer (as is the case with applications under the Gambling Act 2005) to make a representation so that the matter is then referred to the committee?</p> <p>We do think it would be reasonable for relevant applications that fall within a cumulative impact area to be automatically referred to a committee in the absence of any representations from the authorities or residents, so the onus is then on the applicant to demonstrate that his application will not add to that impact. However, on the face of it, the proposal to empower licensing authorities to revoke licences or refuse applications in their own right goes much further and potentially offends natural justice and established case law that a decision must be based on relevant evidence.</p>
<p><b>Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?</b></p>	<p>Reducing the burden of proof on licensing authorities could lead to more challenges in the courts against their decisions.</p>
<p><b>Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?</b></p>	<p>In order to ensure applicants consider the impact of their licence application on the local area, the licensing authority should have the ability/power to reject applications where the applicant has not provided any details in their operating schedule or their operating schedule is incomplete. In addition the licensing authority should have the ability/power to reject applications where, after considering the information presented in the operating schedule they feel the applicant has not given proper consideration to the local authority's statement of licensing policy or they have failed to adequately and comprehensively consider the impact of their application on the local area.</p>
<p><b>Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?</b></p>	<p>This proposal is likely to offend principles of natural justice. It cannot be right for there to be a presumption in favour of police evidence which would have the effect of treating them as a 'superior' witness. Tribunals determining applications are required to assess the reliability as well as the relevance of evidence from all witnesses without fear or</p>

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	<p>favour. In our view, the Higher Courts are likely to uphold a challenge to a decision which is based solely on the fact that police evidence is to receive preferential treatment.</p> <p>We would always expect all representations, notices and recommendations from the police and indeed all other responsible authorities to be relevant having regard to the implications of the application in respect of the licensing objectives. We maintain that any conditions being imposed in response to submissions made by responsible authorities should be proportionate, enforceable, necessary and clear in their meaning</p>
<p><b>Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?</b></p>	<p>Based on the assumption that this question relates to consulting on a Statement of Licensing Policy, some authorities already consult a wider audience than is stipulated in the Act and the decision on whether to do this or not should be left at a local level.</p>
<p><b>Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?</b></p>	<p>This proposal could open the door to 'persistent objectors' who may live in the community but will not be directly affected by particular applications. Licensing Officers will still presumably need to be satisfied of the relevance of their representation, but it may be difficult for them to refuse to accept it if reference is made to some impact on the licensing objectives.</p> <p>Furthermore, the Government have said that they intend to encourage a greater say by local communities on licensed premises in their area and remove the 'presumption' in favour of applications being granted. The result of these proposals is likely to lead to an increase in Interested Party representations that will be treated as valid and therefore hearings before the licensing committee.</p>
<p><b>Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?</b></p>	<p>No</p>

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<p>Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?</p>	<p>We feel that including prevention of health harm as a licensing objective would have positive implications in that it would provide the possibility for a more rounded view in the overall implications of a licensing application</p> <p>The significance of these proposals if implemented is that representations could be made by Primary Care Trusts, supported by some statistical evidence of hospital admissions where alcohol consumption is involved, for the purpose of opposing an application for a new premises licence or extension of hours by existing premises.</p> <p>As with all other licensing objectives representations in relation to harm should be evidence based.</p>
<p><b>Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?</b></p>	<p>The measure may seem populist but is in our view superfluous as anyone living or working (including a business owner) in the community would already be entitled to raise representations.</p> <p>Community groups are already able to make representations on an application if they represent the views of residents or businesses in the vicinity.</p>
<p><b>Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?</b></p>	<p>The Consultation document states that the Government wish to tighten the appeals process and ensure that "fewer appeals are heard in court" and also, where possible, seek to ensure that licensing decisions remain with the licensing authority.</p> <p>In our view, this proposal will offend natural justice and is unnecessary. An appeal tribunal as to the facts of a case should have an unfettered discretion as to how it deals with the appeal, which at present includes whether to remit the case back to the licensing authority to be dealt with rather than substitute its own decision.</p> <p>Remitting the case back to the authority as a default position would inevitably lead to unnecessary cost and delays and is also more likely to lead to 'boomerang' decisions where the licensing committee reinforce their original decision and the case goes back again to the appeal court.</p>



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	<p><b>Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.</b></p> <p>We feel that this is a positive suggestion, however it should be dealt with in a way that is similar to Section 61(2)(b) of the Local Government(Miscellaneous Provisions) Act 1976, whereby the licensing authority has the power to invoke revocations/suspensions for taxi drivers that have immediate effect, but only where it is necessary in the interests of public safety.</p> <p>If immediate suspension/revocation was applied automatically without any qualification it may be considered to be contrary to Article 6 or Article 1 of the First Protocol.</p> <p>A suspension of the premises licence for up to three months, for example, has very serious implications for a business and can of course be catastrophic. This would invariably be the case if the licence is revoked. It would be too late for this decision to be reversed on appeal if the revocation or suspension had immediate effect on a business because of the time delay before an appeal is heard.</p>
<p><b>Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?</b></p>	<p>We feel this would be beneficial, however a provision for some exemptions should be allowed.</p> <p>If an Order is made, it would affect existing premises trading beyond the specified hour that happen to be located in the wrong area even if there is no evidence of any crime or disorder associated with them. There is no current exemption for individual exemplary premises and this must be wrong in principle.</p>
<p><b>Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?</b></p> <p><b>Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?</b></p>	<p>No</p> <p>The Consultation document in this section states that the licensing authority should not be "constrained by the requirement to provide</p>

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<p>detailed additional evidence where such evidence is unavailable". However we feel that all decisions should be based on relevant evidence otherwise decisions may as well be taken on assumptions</p> <p>Currently having to evidentially justify a Cumulative Impact Policy (CIP) helps the licensing authority to defend any challenge to that policy.</p> <p>This authority would like to see the guidance on CIP's extended to premises with off licences. Some areas where there are a large concentration of shops selling alcohol for consumption off the premises, in our experience can have an adverse effect on the licensing objectives. Where there is evidence that a concentration of these premises in a particular area is causing problems, we would like to be able to utilise a special policy in order to negate the cumulative impact.</p> <p>We also think it would be reasonable for relevant applications that fall within a cumulative impact area to be automatically referred to a committee in the absence of any representations from the authorities or residents, so the onus is then on the applicant to demonstrate that his application will not add to that impact</p>	
<p>On the understanding that 'Policing' is intended to include the work of licensing authority enforcement teams, then yes the late night levy should be limited to these additional costs.</p> <p>We agree that the local authority should be given some discretion on how much they can charge based on an appropriate costing analysis, ensuring that such levy was justified</p>	<p><b>Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?</b></p>
<p>Appropriate reductions could be offered as an incentive to premises that maintain appropriate industry standards</p>	<p><b>Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?</b></p>
<p>Yes we agree that some discretion should be allowed for local authorities to use a portion of the late night levy to fund additional costs of other services including taxi marshals and street cleaning.</p>	<p><b>Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?</b></p>
<p>Yes, subject to consultation with partner agencies and stakeholders.</p>	<p><b>Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would</b></p>

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<p>be advantageous to cutting alcohol-related crime?</p>	<p>Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:</p> <ul style="list-style-type: none"> <li>a. All the responsible authorities can object to a TEN on all of the licensing objectives?</li> <li>b. The police (and other responsible authorities) have five working days to object to a TEN?</li> <li>c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?</li> <li>d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?</li> </ul>	<p>This would prolong a process which was initially introduced as a 'light touch'</p> <p>We feel that 2 working days is sufficient.</p> <p>This would produce an inconsistency, and the responsible authorities would already be aware of any problems relating to a particular premise. There does not appear to be any valid reason for this proposal.</p> <p>This would be advantageous and would ensure that applicants comply with the licensing objectives</p>
<p>Consultation Question 20: What would be the consequences of</p> <ul style="list-style-type: none"> <li>a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?</li> <li>b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?</li> </ul> <p>Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?</p> <p>Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can</p>	<p>This would take away a business opportunity from someone with a personal licence who for instance caters at weddings and outside venues.</p> <p>This would close a common loophole</p> <p>Yes, but the power should be extended to trading standards.</p> <p>Up to 28 days, and again the power should be extended to trading standards</p>	<p>Up to 28 days, and again the power should be extended to trading standards</p>

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<p>be flexibly applied by police for persistent underage selling?</p>	<p>Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?</p>	<p>This would have a positive impact and could act as a deterrent</p>
<p>Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.</p> <p>a. Simple and effective ways to define the 'cost' of alcohol</p> <p>b. Effective ways to enforce a ban on below cost selling and their costs</p> <p>c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.</p>	<p>This is likely to prove extremely problematic as each retailer applies a different 'cost' basis and implementation of the proposal could lead to either a minimum unit price for alcohol or a definition which is unenforceable.</p> <p>If the measures are implemented they are likely to impact primarily on supermarkets although the main difficulty remains how to regulate pricing in a consistent and effective way that avoids any restraint of trade difficulties.</p>	<p>Yes the licence fees should be based on full cost recovery.</p>
<p>Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?</p>	<p>Yes, however, it is not in fact compulsory at present for reminders to be sent and if an automatic revocation provision is included then this should be a requirement as a matter of fairness.</p>	<p>Yes, however, it is not in fact compulsory at present for reminders to be sent and if an automatic revocation provision is included then this should be a requirement as a matter of fairness.</p>
<p>Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?</p>	<p>We feel that as the 'Mandatory Conditions' have only just been enacted, it is too early to evaluate the impact they have had. We feel it would be more beneficial to hold a separate review/consultation in twelve months time.</p>	<p>We feel that as the 'Mandatory Conditions' have only just been enacted, it is too early to evaluate the impact they have had. We feel it would be more beneficial to hold a separate review/consultation in twelve months time.</p>
<p>Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?</p>	<p>Please refer to our response to question 27</p>	<p>Please refer to our response to question 27</p>
<p>Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e) above)?</p>	<p>Interim authority notices following death – the time period should be extended from 7 days to 28 days.</p>	<p>Interim authority notices following death – the time period should be extended from 7 days to 28 days.</p>
<p>Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the</p>		

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**Act in your view could be removed or simplified?**

We do not think that the requirement to have a provisional statement is necessary.

Someone with a personal licence should be on the premise at all times while alcohol is being sold.

**LICENSING ACT COMMITTEE****Consultation on the Draft Update of the Licensing Act Statement of Policy****1<sup>st</sup> September 2010****Report of the Licensing Manager****PURPOSE OF REPORT**

This report is to inform Members that the consultation process for the Licensing Act 2003 revised Statement of Policy as required by Section 5 of the Act has begun.

**This report is public**

**RECOMMENDATIONS**

**That the report be noted.**

**1.0 Introduction**

- 1.1 The Statement of Licensing Policy is a requirement of Section 5 of the Licensing Act 2003 and has been prepared in accordance with the provisions of the Act and Guidance issued by Secretary of State for Culture Media and Sport under Section 182 of the Act (currently dated 20<sup>th</sup> March 2010). The Licensing Authority is therefore, bound by the Act, any regulations made under it, and the Section 182 Guidance.
- 1.2 The Licensing Authority is required by regulations to update its Statement of Licensing Policy every 3 years. The current policy came into force in January 2008. A revised Draft Statement of Licensing Policy and a summary of the proposed changes has been prepared by the licensing manager and is attached at appendix 1 to this report.
- 1.3 For the purpose of reviewing the Licensing Policy, in accordance with the requirements of the Act, Lancaster City Council will consult with:
- The Police
  - The Fire Authority
  - Representatives of existing holders of premises and personal licences
  - Representatives of existing holders of club premises certificates
  - Local businesses and their representatives
  - Local residents and their representatives

**1.4 Consultation Process**

Letters have been sent to all licence holders, and all other stakeholders, requesting responses by 2<sup>nd</sup> November 2010. Appendix 2 to this report.

Copies of the Draft revised policy have been placed on the Lancaster City Council website on the licensing page, as well as in the Town Halls in Morecambe and Lancaster

A press release has been published in the Lancaster Guardian. Appendix 3 to this report

1.5 Any responses from the consultation will be reported back to this Committee on the 25th November 2010, when the Committee will have the opportunity to consider the final draft.

1.6 The Policy will then be considered and approved by full Council on 15th December 2010, for implementation in January 2011, as required by the statutory time frames.

**2.0 Conclusion**

2.1 The Licensing Authority is required by the Act to revise its Statement of Licensing Policy every 3 years, and to consult with stakeholders, before publishing and implementing the updated Policy. This report is intended to inform members that the consultation process has started.

<p><b>CONCLUSION OF IMPACT ASSESSMENT</b>                  (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p> <p>None.</p>	
<p><b>FINANCIAL IMPLICATIONS</b></p> <p>None</p>	
<p><b>LEGAL IMPLICATIONS</b></p> <p>The report has been prepared on behalf of the Head of Legal and Human Resources.</p>	
<p><b>BACKGROUND PAPERS</b></p> <p>None</p>	<p><b>Contact Officer:</b> Ms W Peck  <b>Telephone:</b> 01524 582317  <b>E-mail:</b> wpeck@lancaster.gov.uk  <b>Ref:</b> WP</p>



**LANCASTER CITY COUNCIL  
LICENSING ACT 2003**

**STATEMENT OF  
LICENSING POLICY**

**FOR THE PERIOD 2011 – 2014**

Licensing Manager  
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**CITY OF LANCASTER**  
**STATEMENT OF LICENSING POLICY**  
**LICENSING ACT 2003**

**1 Introduction**

- 1.1 This document sets out the revised Licensing Policy of the Lancaster City Council, which is the Licensing Authority, under the Act.
- 1.2 Licensing is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs, and at temporary events within the terms of the Act. Conditions attached to various authorisations will focus on matters which are within the control of individual licensees and others in possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises.
- 1.3 **This statement of licensing policy is a requirement of Section 5 of the Licensing Act 2003 (the Act) and has been prepared in accordance with the provisions of the Act and the Guidance issued by Secretary of State for Culture Media and Sport under Section 182 of the Act (currently dated 20<sup>th</sup> March 2010). The Licensing Authority is, therefore, bound by the Act, any regulations made under it and the Section 182 guidance.**
- 1.4 For the purpose of reviewing its Licensing Policy, in accordance with the requirements the Act, the Licensing Authority has consulted with:
- The Police
  - The Fire Authority
  - Representatives of existing holders of premises licences and personal licences
  - Representatives of existing holders of club premises certificates
  - Local businesses and their representatives
  - Local residents and their representatives
- 1.5 The Licensing Authority is grateful for the responses received, and has given proper weight to the views expressed by those consultees.
- 1.6 The Licensing Authority will consider all applications under the Licensing Act 2003 in accordance with the Act, Government Guidance, and in the light of this policy. It will expect applicants to comply with the procedural requirements of the Act and Regulations thereunder, and would encourage applicants to make themselves aware of the contents of this Policy, and to discuss their applications in advance with the Licensing Authority's administrative staff, and with relevant responsible authorities (see below) and interested parties.

## **2. Scope of the Licensing Act 2003**

2.1 Subject to exemptions set out in the Act, the Act and this Policy apply to applications for:

- Retail sale of alcohol
- Supply of alcohol to club members
- Provision of 'regulated entertainment' – to the public, to club members or with a view to profit
- The performance of a play
- Exhibition of a film
- An indoor sporting event
- Boxing or wrestling entertainment (indoor or outdoor)
- A performance of live music
- Any playing of recorded music
- A performance of dance
- Provision of facilities for making music
- Provision of facilities for dancing where the entertainment takes place in the presence of an audience and is provided for the purpose of entertaining the audience
- The supply of hot food and/or drink from any premises between 11.00 p.m. and 5.00 a.m.

**The policy covers new applications, transfers, variations of licences and certificates and provisional statements as well as renewals of personal licences. It also includes the review of licences and certificates.**

## **3. The Area of the Lancaster City Council**

3.1 The Lancaster City Council covers the historic, university city of Lancaster, the coastal resort of Morecambe, and the town of Carnforth and the surrounding rural areas. The premises within the area which will require to be licensed under the new legislation are many and varied, catering for diverse tastes and consumer demands.

3.2 The Licensing Authority recognises that the entertainment, hospitality and leisure industry within its area is a major contributor to the economy of the area. It attracts tourists and visitors, makes for vibrant towns and communities, and is a major employer.

3.3 However, the area has a substantial residential population, whose amenity the Licensing Authority has a duty to protect. In particular, there are many residential properties within the town centres of Lancaster, Morecambe and Carnforth and also in the rural areas. Occupiers of commercial premises also have a legitimate expectation of an environment that is attractive and sustainable for their businesses.

3.4 It is necessary to balance all these competing interests, and especially at night time.

3.5 In addition, the Licensing Authority will have regard to wider considerations affecting the amenity of any area. These include littering and fouling, noise and street crime, and the capacity of the infrastructure and resources to cope with the influx of visitors, particularly at night.

3.6 This policy sets out the general approach that the Licensing Authority will take in considering licence applications, both for new licences and for variations of existing licences. However, it is important to recognise that all applications will be considered on

their individual merits. It is also important to recognise that if no relevant representations are received from responsible authorities or interested parties, the application must and will be granted in the terms sought and no additional conditions imposed.

- 3.7 The purpose of the policy is to assist officers and members in reaching a decision on a particular application, setting out those matters that will normally be taken into account. In addition, the policy seeks to provide clarity for applicants, residents and other occupiers of property and investors, enabling them to make plans to move to, remain or invest in the area with some measure of certainty.
- 3.8 The major aim of the Licensing Authority is to promote the City, Coast and Countryside within its boundary in a safe environment.

#### **4. Responsible Authorities and Interested Parties**

4.1 The Act defines “responsible authorities”, for the purposes of the Act.

4.2 For the purposes of the area of the Lancaster City Council, these are:

Police – The Licensing Officer, Lancashire Constabulary, Divisional Headquarters, Thurnham Street, Lancaster LA1 1YB

Fire Authority – Fire Safety Department, Lancaster Fire Station, Cable Street, Lancaster LA1 1HH

Health and Safety at Work – Head of Health and Strategic Housing, Town Hall, Morecambe LA4 5AF

Environmental Pollution – Head of Health and Strategic Housing, Town Hall, Morecambe LA4 5AF

**Regeneration and Policy** – The Head of **Regeneration and Policy** Services, Palatine Hall, Dalton Square, Lancaster LA1 1PW

Protection of Children from Harm - Area Child Protection Committee, Quality and Review Manager, Social Services Directorate, PO Box 162 East Cliff County Offices, Preston PR1 3EA

**Trading Standards – Metrology Section, 58-60 Guldhall Street, Preston, PR1 3NU**

For information about the responsible authority in respect of the licensing of a vessel, applicants should seek further advice from the Licensing Authority.

- 4.3 Interested parties are persons living or involved in a business in the vicinity of the premises, or bodies representing such persons.
- 4.4 **S33 of the Policing and crime Act 2009 has amended the definition of an interested party to include a member of the relevant Licensing Authority. As such, a Councillor of Lancaster City Council may now make representations as an interested party. This means that they could call for a review of a premise licence or continue to act in a representative capacity on behalf of ward residents for any new applications, or applications to vary.**

## **5.0 APPLICATIONS FOR A PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

- 5.1 The Licensing Authority requires that all applications for the grant, variation or transfer of any licence, permit or certificate detailed in the Act are made in accordance with the statutory requirements and any guidance issued from time to time by the Council. In particular, all such applications must be accompanied by the appropriate fee, where applicable, for them to be deemed to be properly made. Where such applications are statutorily required to be advertised, or notified to other specified persons, applicants are advised to confirm that such advertising or notification has been properly made. Applicants should be aware that failure to make an application in accordance with the statutory requirements will result in the application being returned and that the period for determination will not commence until a valid application has been submitted. Applications will not, however, be returned because of small administrative errors which can be easily corrected
- 5.2 It is important to ensure that the application accurately reflects the intended operation of the premises. The application must be accompanied by a plan of the premises which shows certain information as required by the Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005. This includes marking the areas of the premises which are proposed to be used for each licensable activity. It is important to note that, although consumption of alcohol is not itself a licensable activity, if the plan does not show outside areas (e.g. beer gardens or similar) then any premises licence which authorises the sale of alcohol 'for consumption ON the premises' only, as opposed to 'on and off the premises' would not authorise the use of such areas. In other words, the plan which is submitted as part of the application defines the 'premises' for the purpose of the licence.
- 5.3 As indicated above, the Act requires licence applicants to publicise their applications. This is to enable interested parties and responsible authorities to make a representation if they wish. Our experience as a Licensing Authority is that statutory publicity may not always bring applications to the attention of all parties. Therefore, in addition to putting applications on our web site, we will notify all members of the Council of applications for premises licences, club premises certificates and variations received on a weekly basis.
- 5.4 The Licensing Authority will offer guidance as appropriate to applicants on the completion of necessary documentation. It will issue and make readily available guidance notes on the procedures it requires for making applications for licences and will from time to time review such guidance.

## **6.0 APPLICATIONS MADE BY THE LOCAL AUTHORITY**

- 6.1 The Council has sought premises licences for public spaces in the community in its own name and will continue to do so. This could include, for example, open spaces, town centre squares, community halls and similar public spaces. With regard to those places, performers and entertainers will not need to obtain a licence or give a temporary event notice themselves in order to perform. Instead they would simply require permission from the Council as the premises licence holder.

- 6.2** When one part of the Council seeks a premises licence from the Licensing Authority, the Licensing officers will consider the matter from an entirely neutral standpoint. If relevant representations are made, for example, by local residents or the police, they will be considered fairly. Those making representations genuinely aggrieved by a positive decision in favour of a local authority application by the Licensing Authority will generally be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision made.

## **7.0 VARIATIONS**

- 7.1** Where a premises licence holder wishes to make changes to their licence or to their premises, the Act allows, in most cases, for an application to vary the licence to be made rather than requiring an application for a new premises licence. The Licensing Authority considers that, in general, any changes to the licence which may impact on one or more of the licensing objectives requires an application under section 34 of the Act.
- 7.2** The Act does, however, allow for a simplified procedure for varying a licence where the changes do not have a detrimental effect on the licensing objectives. These are:
- Changes to the name or address of anyone mentioned on the licence
  - Variations to specify a new individual as the designated premises supervisor
  - To disapply the mandatory condition requiring the sale of alcohol to be carried out under the authority of a personal licence holder and the need to have a designated premises supervisor in community premises.
  - Minor variations which do not impact on the licensing objectives
- 7.3** Minor variations can include the following:
- Minor changes to the structure or layout of a premises
  - Small adjustments to the licensing hours
  - The removal of out of date irrelevant or unenforceable conditions
  - Adding certain licensable activities including live music
- 7.4** Changes to the structure of the premises will not fall within the definition of a minor variation if they have an adverse impact on the licensing objectives. For example:
- If it increases the capacity for drinking on the premises;
  - Affects access between the public part of the premises and the rest of the premises or the street or public way e.g. block emergency exits or routes to emergency exits;
  - Impedes the effective operation of a noise reduction measure such as an acoustic lobby
- 7.5** The following alterations to licensing hours are excluded from the minor variation procedures:
- Extending licensing hours for the sale of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or

- To increase the amount of time on any day during which alcohol may be sold or supplied for consumption off or on the premises.

**7.6** Application to alter the times of other licensable activities under the minor variation procedure will be considered on a case by case basis but the following will be some of the matters considered:

- The nature of the licensable activity;
- The extent of the additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;
- Proximity of the premises to residential areas;
- Any licence conditions in already place to mitigate the impact of the activity and any additional conditions volunteered by the applicant;
- Arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance near the venue? Is the only means of dispersal a single route through residential areas?
- Whether the proposed extension applies only at weekends;
- Whether there will be any new admittances during the extended period;
- The track record of the premises;
- Whether the premises is already open during the extended period for other licensable activities;
- Proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activities in large numbers. For example, people visiting a takeaway after leaving a public house

**7.7** Applicants for minor variations may volunteer conditions to remove the risk of an adverse impact on the licensing objectives either as a result of their own risk assessments or after informal discussions with the responsible authorities. The Licensing Authority cannot, however, impose their own conditions during a minor variation procedure.

**7.8** Where the Licensing Authority believes that a proposed minor variation will have an adverse effect on the licensing objectives the application will be refused. Any refusal of a minor variation application does not prevent an application for a full variation under section 34 of the Act being made.

## **8.0 ADULT ENTERTAINMENT**

**8.1** Following the introduction of the Police and Crime Act 2009, schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 has been amended to incorporate Sexual Entertainment Venues and this council will be considering whether to adopt this legislation on the 15<sup>th</sup> September.

**8.2** Premises offering lap dancing or any live performance or display of nudity on more than 11 occasions within a 12 month period, in addition to any relevant entertainment, will be required to obtain a Sex Establishment Licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (if adopted) from the Authority authorising such activity. Applications for such premises will be considered on their individual merits.

**8.3** It is the view of the Licensing Authority that children should not be exposed to entertainments of a sexual nature or to strong language at a too early an age. Conditions may be imposed, if representations are received, aimed at preventing

such exposure either intentionally or accidentally. In some premises entertainment of an adult nature may be occasional or restricted to certain times of the day. In these cases, any restrictive conditions to protect children will apply only at these times. When submitting an application, if no reference is made to the provision of adult entertainment or services within an operating schedule at “Box N”, then the Authority will interpret this to mean that such entertainment will not be provided and a condition to this effect will be applied to the licence.

## **9.0 THE OPERATING SCHEDULE & CONDITIONS**

- 9.1 Part of the application form requires that an ‘operating schedule’ is submitted for all applications and variation applications. The operating schedule which must be submitted in a prescribed form, should be completed for all relevant applications. Where the application is for a variation to an existing licence, the operating schedule should detail any additional steps required in relation to that variation. It should outline how the premises will be operated, and the arrangements for promoting the four licensing objectives
- 9.2 The operating schedule must include all information necessary to enable the responsible authorities or interested parties to assess whether the steps outlined for the promotion of the licensing objectives are satisfactory. This will generally mean that applicants will need to complete their own detailed risk assessments on their businesses. Where the operating schedule does not provide enough details, there is an increased likelihood that representations will be made. Where these representations are relevant to the promotion of the licensing objectives, a hearing will follow, unless all parties agree that this is unnecessary.
- 9.3 The Department of Culture Media and Sport (DCMS) have produced a pool of model conditions that may be applied. Where any control measure is not relevant in respect of particular premises or activities, the Licensing Authority will not expect that measure to be mentioned in the operating schedule. Some measures will clearly not all be relevant in every case, and are not to be treated as absolute requirements and will not be used by the Licensing Authority to create standard conditions. Indeed, it is possible that, in respect of some premises no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation.
- 9.4 The Licensing Authority acknowledges that where the responsible authorities and interested parties do not raise any representations about an application, it is the duty of the Licensing Authority to grant the application subject only to conditions that are consistent with the operating schedule and any mandatory conditions prescribed by the Licensing Act 2003.
- 9.3 Applicants should have regard to this licensing policy when preparing their operating schedules so that they are aware of the expectations of the Licensing Authority and of the other responsible authorities. Specific requirements to be met are detailed in this policy document. Other specific requirements are detailed in relevant legislation and in guidance documents.
- 9.4 In order to minimise problems and the necessity for hearings, applicants should consult with responsible authorities when operating schedules are being prepared. This would allow for proper liaison before representations prove necessary.

- 9.5 In the context of the above, the Licensing Authority will, as far as it is possible to do so, avoid imposing disproportionate and over-burdensome conditions on premises unless it is considered necessary to do so. Conditions will be tailored to the individual style and characteristics of the premises and events concerned. The Licensing Authority does not propose to implement standard conditions of licence as a matter of course, but may draw upon the pool of model conditions issued by the DCMS, a copy of which will be available to applicants from the Licensing Office. The Licensing Authority is aware that the Lancashire Constabulary have produced an additional pool of licence conditions which they may request the Licensing Authority to use in appropriate circumstances. These are available from the Lancashire Constabulary. However, the Licensing Authority emphasises that it will only attach conditions as appropriate given the circumstances of each individual case and to achieve the licensing objectives. References to the DCMS and Lancashire Constabulary pools of conditions are included for the information and assistance of applicants, and the inclusion of a condition in either “pool” does not imply that the Licensing Authority will necessarily consider it appropriate to impose.
- 9.6 Applicants may include any of the conditions from the “pools” in their operating schedules.
- 9.7 Conditions not listed in either “pool” may be specifically tailored by the Council and attached to licences as appropriate.
- 9.8 The model conditions cover, among other things, issues surrounding:
- crime and disorder
  - public safety
  - cinemas and fire safety
  - public nuisance
  - protection of children from harm.
- 9.9 Where no representations have been made, the power to impose conditions exists only when the Licensing Act 2003 makes them compulsory or when they reflect the operating schedule proposed by the applicant. The Licensing Authority acknowledges that it may not itself impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied of the necessity to impose conditions due to the representations made. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations
- 9.10 There are a number of mandatory conditions that are attached to licences, strengthened in April 2010 with the addition of conditions that govern irresponsible drinks promotions. A further addition is a condition that requires venues to provide water to customers upon request. For a full list of all the mandatory conditions refer to Appendix 4.

## **10.0 Licensing Objectives**

- 10.1 Section 4 of the Act sets out the licensing objectives, which the Licensing Authority is under a duty to promote when carrying out its functions under the Act. The objectives are as follows:
- the prevention of crime and disorder;



- public safety;
  - the prevention of public nuisance;
  - the protection of children from harm
- 10.2 These four objectives are the only matters that may be taken into account in considering an application, and any licence conditions attached following the consideration of relevant representations must be necessary to achieve these four objectives
- 10.3 The Licensing Authority considers that each of the licensing objectives is of equal importance for the purposes of this policy.
- 10.4 The Licensing Authority is of the view that the objective of the licensing process is to allow for the provision of alcohol, regulated entertainment and late night refreshment in a way which prevents crime and disorder, public nuisance and harm to children, ensures public safety and is not a detriment to the amenity of residents or businesses. This policy statement is therefore designed to deal with matters within the control of the licence holder and will focus on the impact of activities taking place on those living, working or otherwise engaged in the vicinity.
- 10.5 The Licensing Authority recognises that it is ultimately for the Designated Premises Supervisor to decide how best to manage the premises. However, the Authority expects that the DPS or another personal licence holder should normally be on the premises when alcohol is supplied.**(except where in a case of a community premises the mandatory licence condition in S19 of the Act has been disapplied)** If they are absent from the premises, they will still be ultimately responsible for the actions of those they authorise to permit sales of alcohol. It is considered good practice that any such authorisations should be in writing. Where any person who does not hold a personal licence is authorised to sell alcohol, the DPS is encouraged to provide, or ensure that, the authorised person has received some training on the requirements of the Licensing Act, and any conditions attached to the licence for the premises concerned. It is recommended that a record of such training be maintained.
- 10.6 The Licensing Authority recognises that Licensing functions are only one means of securing the delivery of the objectives. Delivery must therefore involve partnership working with local authorities, the Police, local businesses and local people working together towards the common promotion of the four objectives.
- 10.7 In particular, the Licensing Authority believes that this partnership working must involve the entertainment, hospitality and leisure industries. Co-operation and partnership are the best means of promoting the licensing objectives.
- 10.8 Each application will be considered on its individual merits. This policy does not seek to introduce 'zones' within the area where specific activities are concentrated.
- 11.0. Opening Hours**
- 11.1 The Licensing Authority recognises that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance due to large concentrations of people leaving the premises at the same time.
- 11.2 This policy will not be used to fix those hours during which alcohol can be sold. In general, and subject to consideration by the Licensing Authority of any relevant representations, any licensed premises will be permitted to sell alcohol during the hours that they have applied for, provided that this is consistent with the licensing objectives.

- 11.3 However as stated above, there may be premises that are known to experience disorder and disturbance. Subject to representations from a responsible authority or other interested party a limitation on licensing hours for those premises may be appropriate.
- 11.4 The Licensing Authority recognises that longer licensing hours can contribute to easing disorder and other problems that often occur at late night food premises, taxi ranks, private hire offices and other transport sources.
- 11.5 However, a limitation on licensing hours may be imposed in relation to individual premises if representations are received from a responsible authority or interested party and the premises are identified as a focus for disorder and disturbance.
- 11.6 As stated, the Licensing Authority will deal with applications on their individual merits. However as far as premises in residential areas are concerned, where relevant representations are received, stricter controls may be imposed in respect of opening hours to ensure that disturbance to local residents is minimised.

## **12.0 Protection of Children**

- 12.1 The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, take-aways, community halls and schools. Access by children to all types of premises will not be limited in any way unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm. Equally, no premises will be obliged to allow access by children.
- 12.2 If relevant representations are received in relation to limiting access to children, the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children would include premises:-
- where entertainment of an adult or sexual nature is provided
  - where there is a strong element of gambling taking place (but not, for example, the simple presence of a small number of cash prize gaming machines)
  - with a known association with drug taking or dealing
  - where there have been convictions of current members of staff for serving alcohol to those under 18
  - with a reputation for under age drinking
- 12.3 In the case of premises which are used for film exhibitions, conditions will be imposed restricting access only to those who meet the required age limit in line with any certificate granted by the British Board of Film Classification or, in specific cases, a certificate given to the film by the Licensing Authority itself.
- 12.4 The options available for limiting access by children would include:-
- a limit on the hours when children may be present
  - a limitation or exclusion when certain activities are taking place
  - the requirement to be accompanied by an adult
  - access may be limited to parts of the premises but not the whole
  - an age limitation (for under 18s)
- 12.5 The Licensing Authority will not impose any condition which specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed

the issue of access will remain a matter for the discretion of the individual licensee or club.

- 12.6 Under the Act, certain “responsible authorities” must be notified of and are entitled to make representations about applications for premises licences or club premises certificates or major variations of such licences or certificates, or to ask the licensing authority to review a licence or certificate. Applicants for premises licences and club premises certificates are required to send details of their applications to these bodies. In connection with the protection of children the Licensing Authority considers the local Area Child Protection Committee to be the responsible body to which applications should be copied.
- 12.7 Where a large number of children are likely to be present on any licensed premises, for example a children’s show or disco, the applicant may wish to consider including in the operating schedule arrangements for the presence of an appropriate number of adult staff to ensure public safety and the protection of the children from harm. The applicant should also consider whether employees working at the premises for such events and having unsupervised contact with children should have an enhanced Criminal Records Bureau check.
- 12.8 Children may also be present at an event as entertainers, and where they are not accompanied by a parent or guardian, the applicant may wish to consider nominating an adult responsible for such child performers at such performances. The applicant should also consider whether a nominated adult should have had an enhanced CRB check.
- 12.9 Applicants may wish to include in their operating schedules arrangements to ensure that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the Licensing Authority itself. The Act provides that it is mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films for the admission of children to the exhibition of any film to be restricted in accordance with the recommendations given to films either by the British Board of Film Classification or by the licensing authority itself.
- 12.10 The following matters will also be considered in relation to the protection of children from harm:
- Whether access of children to cigarette machines is restricted
  - Whether access of children to any gaming machines is restricted
  - Where appropriate, the procedures for ensuring that any customer coming onto the premises is over the age of 18
  - The steps taken to ensure that, where appropriate, all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to protect children from harm
- 12.11 Applicants may wish to indicate in the operating schedule how the protection of children from harm will be addressed. The above items are not intended to be exhaustive, and the applicant should have considered all relevant aspects of the protection of children from harm applicable to the particular premises.

**12.12 It is the view of the Licensing Authority that children should not be exposed to entertainments of a sexual nature or to strong language at a too early an age. Conditions may be imposed, if representations are received, aimed at preventing such exposure either intentionally or accidentally. In some premises entertainment of an adult nature may be occasional or restricted to certain times of the day. In these cases, any restrictive conditions to protect children will apply only at these times. When submitting an application, if no reference is made to the provision of adult entertainment or services within an operating schedule at "Box N", then the Authority will interpret this to mean that such entertainment will not be provided and a condition to this effect will be applied to the licence.**

### **13.0 Prevention of public nuisance**

13.1 The most obvious aspect of public nuisance is noise. The primary source of noise is amplified music, either uncontained outdoors or emanating from premises, which do not have sufficient measures in place to contain the sound. Late at night or in the early hours of the morning, individuals shouting in the street or groups of people talking in an animated fashion generate a substantial level of noise and in some cases this is aggravated by offensive language.

13.2 As customers leave licensed premises, the sound of their conversation can disturb residents. Potentially greater problems arise when customers congregate or accumulate outside the licensed premises. However, it is clear that the person in control of the premises has a responsibility to ensure that disturbance to residents and businesses is kept to a minimum.

13.3 In considering licence applications where relevant representations are received, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and disorder having regard to all the circumstances of the application. When addressing public nuisance, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent public nuisance, taking account of the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant's operating schedule, and may include:

- The steps the applicant has taken or proposes to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment and human voices. Such measures may include the installation of soundproofing, air conditioning, noise limitation devices and keeping windows closed during specified hours.
- The steps taken to ensure that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent public nuisance
- The steps the applicant has taken or proposes to prevent disturbance by patrons arriving at or leaving the premises, for example warning signs at exits, and warning announcements within the premises, and the use of door supervisors to pass on the message
- The steps the applicant has taken or proposes to prevent queuing, or if queuing is inevitable, to divert queues away from neighbouring premises, or otherwise manage and monitor the queue to prevent disturbance of obstruction, and to prevent patrons congregating outside the premises.

- The implementation of a last admission time, and how the last admission time relates to the closing time of the premises
- The steps the applicant has taken or proposes to take to manage queues so that patrons who will not gain admission before any last admission time are advised accordingly
- The steps the applicant has taken to reduce queuing outside the premises and to minimise the length of time people have to queue at the premises
- The steps the applicant has taken to advise patrons that they will not be admitted if they are causing a disturbance, and the steps taken to implement a procedure for banning patrons who continually leave or arrive at the premises in a manner which causes a public nuisance or disturbance.
- The arrangements made or proposed for parking by patrons and the effect of parking on local residents.
- The arrangements the applicant has made or proposes to make for security lighting at the premises, and the steps the applicant has taken or proposes to take to ensure that lighting will not cause a nuisance to residents.
- Whether there is sufficient provision for public transport for patrons, for example the provision of a free phone taxi service or other arrangements with taxi companies, and whether information is provided to patrons about the most appropriate routes to the nearest transport facilities.
- Whether taxis and private hire vehicles serving the premises or traffic flow from the premises are likely to disturb local residents.
- Whether routes to and from the premises pass residential premises.
- Whether other appropriate measures to prevent nuisance have been taken, such as the use of CCTV or the employment of an adequate number of licensed door supervisors.
- The measures proposed to prevent the consumption or supply of illegal drugs, including any search and disposal procedures.
- The procedures in place for ensuring that no customer leaves with bottles or glasses
- If the applicant has previously held a licence within the area of the Council, the history of any enforcement action arising from those premises.
- Whether the premises would result in increased refuse storage or disposal problems, or additional litter in the vicinity of the premises.
- The steps the applicant has taken or proposes to take in order to ensure that standards of public decency are maintained in any entertainment provided at the premises.
- If appropriate, whether music is played at a lower level towards the end of the evening in a “wind down period”.
- The applicant’s proposals for the length of time between the last sales of alcohol, and the closing of the premises
- The steps the applicant has taken to prevent noise and other public nuisance from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking

The above list is not intended to be exhaustive, and the applicant should consider all aspects of the operation that may affect public nuisance.

**13.4 Since the introduction of the Health Act 2006 the requirement for patrons to go outside a premises to smoke has caused an increase in the number of noise and anti-social behaviour complaints received by this and other Councils. It is therefore expected by the Licensing Authority that the management of licensed premises will ensure that adequate provision is made to supervise those patrons**

who leave the premises for a short time to smoke, having regard to the health and safety of their staff. In certain cases some form of regular engagement between businesses and residents can lead to better understanding of the needs of each party and inspire a degree of trust.

13.5 The cumulative effects of litter around premises carrying on licensable activities can amount to public nuisance. The Licensing Authority requires that any premises that can cause litter, be it from a take away food establishment or cigarette debris left by its customers, must remove it at regular intervals. At the end of trading, management of the premises should arrange for a final check of the area immediately outside the premises, to ensure that no litter, spilled food or cigarette debris is left. In some cases it may be necessary to impose conditions on licences for take away premises which require litter bins to be provided or for litter dropped around of the premises to be collected and removed at regular intervals at the licence holder's expense including washing away to the gutter any spilled food.

#### **14.0 The prevention of crime and disorder**

14.1 The central concerns of licensing in relation to law and order are acts of violence and vandalism brought about by consumption of alcohol and the use of licensed premises as part of a distribution network for illegal drugs.

14.2 It is not the function of licensing to impose good practice in the adoption of wider crime reduction measures, such as those for securing premises outside of trading hours. It is also not a purpose of licensing to require that measures be put in place to enhance the opportunities for gathering evidence in relation to crime of a general nature. However, the Licensing Authority recognises that CCTV cameras at premises have an important role in preventing crime and disorder.

14.3 The Licensing Authority's starting point is to seek a reduction in crime and disorder throughout the area, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998. Licences may be granted if applicants can demonstrate that a positive reduction in crime and disorder will result, or that it will not increase, as a result of the application being granted.

14.4 Where there are relevant representations, the Licensing Authority will generally not grant a licence where it is likely that the premises will be used for unlawful purposes or where it is considered that the use of the premises is likely to cause an increase in crime and disorder in the area or the premises and this cannot be prevented by the imposition of conditions. When addressing crime and disorder, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent crime and disorder, taking account the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant's operating schedule, and may include:

- Use of CCTV inside and outside the premises. The Lancashire Constabulary has produced suggested minimum requirements for CCTV and these are available from the Lancashire Constabulary or from the Licensing Authority's administrative staff
- Use of metal detection or other search equipment or procedures
- Crime and disorder risk assessment in relation to the proposed activities

- Measures to prevent the use or supply of illegal drugs and procedures for searching customers
- Ensuring that all staff are appropriately trained
- Ensuring that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent crime and disorder
- Employment of sufficient security staff where appropriate, controlling admission, monitoring capacity within the premises as a whole and in separate rooms/levels and patrolling the interior and exterior of the premises (any such staff must be licensed by the Security Industry Authority). The Licensing Authority recognises that there is a greater need for security staff in some premises than in others. For example there will be a greater need for security staff in a town centre nightclub than in a village pub. It will be for the applicant to consider the appropriate number of doorstaff required for the particular premises.
- Ensuring that a register of doorstaff and their working times is maintained
- Participation in Pub Watch, Best Bar None or other relevant schemes and using radio links/pages as a means of connecting to other licensed premises.
- Use of plastic or polycarbonate glasses and bottles, where appropriate, or toughened glass. Applicants are advised that the Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries
- Wherever possible, agreed protocols with police and other organisations and a commitment to co-operate and provide such evidence as the Police require.
- Adopting the “Night Safe Initiative” and “Safer Clubbing Guide” as statements of best practice
- Following the trade codes of practice, for example BBPA and Portman Group, and not carrying out any irresponsible drinks promotions
- Providing a suitable environment for customers having regard to the activities going on in the premises, in particular appropriate levels of seating
- Ensuring that there are sufficient transport facilities available to ensure that customers can leave the premises safely and swiftly.
- Maintaining an incident log
- The steps the applicant has taken to prevent crime and disorder issues from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking, due to location, control within and management of such areas.

It should be noted that this list is not intended to be exhaustive. It may be appropriate for the applicant to consider other steps. Equally, the Licensing Authority recognises that not all the items in the list will be applicable to all premises.

14.5 Following the receipt of relevant representations, the Licensing Authority will not normally allow a person to be specified as a designated premises supervisor where that is likely to undermine the prevention of crime and disorder by reason of that person’s known past conduct. A person is likely to be considered unsuitable if he has previous unspent convictions for a relevant offence, notwithstanding that he may have been granted a personal licence. However, each case would be considered on its own merits in the light of representations received.

## **15.0 The promotion of public safety**

15.1 The Act complements but does not seek to duplicate the statutory requirements of other legislation, which affect those who have responsibility for the conduct of licensed premises such as the Health and Safety at Work Etc. Act 1974.

- 15.2 One of the things which the licensing system can provide is agreement in advance on a standard layout for furniture, location of stage, placing of linked seats etc. so that licensees can be confident about their practical arrangements, provided that they stick to that way of doing things. With other legislative controls, there may be no official inspection of the arrangements made, unless there is an investigation when something has gone wrong.
- 15.3 As a consequence of the many common features of leisure businesses, such as the operation of door policies, competition for taxis and the interaction with people on the street late at night, individual premises necessarily function as part of a network of businesses, sharing information on crime and disorder issues which affect them all.
- 15.4 The Licensing Authority recognises that participation in forums such as Pub Watch and the proper use of network radios are key to the safe operation of the majority of leisure businesses. It may be appropriate for an operating schedule to include these practical matters.
- 15.5 Fire safety requirements are determined principally by specific fire safety legislation. The overall standard of fire safety is an important consideration in determining the suitability of premises for licensable activities.
- 15.6 The Licensing Authority will not use the licensing process to secure routine compliance with fire safety requirements, which arise from other legislation. Nevertheless in circumstances where fire safety inadequacies indicate that premises pose a risk to the health and safety to those who enter them and where specific fire safety enforcement does not provide a sufficient or sufficiently rapid remedy, the Licensing Authority will take appropriate steps to ensure that the risk is removed including, where necessary, and where a review of the licence is requested, revocation of the licence.
- 15.7 In addition the Licensing Authority will also consider and deal with the introduction of further hazards to public safety as part of an event and the exercise of controls over occupancy, so that premises can be cleared safely and efficiently, in the event of an emergency.
- 15.8 Where an applicant identifies an issue with regard to public safety (including fire safety) which is not covered by existing legislation, the applicant should indicate in the operating schedule the steps which will be taken to ensure public safety. Depending on the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided, the following issues may be of relevance:
- The maximum capacity of the premises, and the arrangements for ensuring that a capacity limit is not exceeded and for monitoring capacity. This applies to the premises as a whole and to different rooms or levels within the premises.
  - Steps taken to ensure that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to ensure the safety of the public
  - The design of the premises and in particular the capability of the structure to bear the likely loads to be imposed at maximum occupancy.
  - The structural condition of the premises and state of repair.
  - The condition of the electrical and gas services, and arrangements for temporary electrical installations.
  - The lighting, heating and ventilation systems.
  - The fire resisting and fire separation properties of the premises.



- The means of escape from the premises.
- The adequacy of the sanitary arrangements.
- The use of flame retardant materials on fixtures and fittings.
- The protection and safety of the audience, particularly at any indoor sporting event or boxing or wrestling entertainment.
- The availability of qualified first aiders when the premises are open.
- The protection and safety of performers of entertainment.

The Licensing Authority will expect the applicant to have carried out a risk assessment on these matters in producing the operating schedule. The above list is not intended to be exhaustive, and the Licensing Authority will expect the applicant to have considered all relevant aspects of the safety and suitability of the premises which are not dealt with under other legislation, and which are within the control of the applicant.

### **16.0 Live Music, Dancing and Theatre**

- 16.1 The Licensing Authority recognises that proper account should be taken of the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of communities generally. The potential for limited disturbance in neighbourhoods will be balanced with these wider benefits, particularly for children.
- 16.2 In determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives, the Licensing Authority will be mindful of the need to avoid measures which deter live music, dancing and theatre, by imposing indirect costs of a disproportionate nature.
- 16.3 The Licensing Authority will monitor the impact of any restrictions on regulated entertainment in the district, particularly on live music and dancing. If there is evidence that licensing requirements deter such activities, it will consider how to prevent this and, if necessary will review this policy, but will remain mindful of the licensing objectives.
- 16.4 The Licensing Authority recognises that performances of live music and dancing are central to the development of cultural diversity and vibrant communities where artistic freedom of expression is valued. Music and dancing also help to unite communities, and in ethnically diverse communities, new and emerging musical and dance forms can assist the development of a fully integrated society.
- 16.5 The Licensing Authority recognises that the absence of cultural provision in any area can itself lead to young people being diverted into anti-social activities that damage communities and the young people involved themselves.
- 16.6 The Licensing Authority is mindful that the Council itself, as landowner, may seek in its own name premises licences for appropriate public spaces within the district. This will make it easier for people to organise suitable cultural events on Council property.

### **17.0 Transport**

- 17.1 Where any protocols agreed with the police identify a particular need to disperse people from town centres swiftly and safely to avoid concentrations which could lead to disorder and disturbance, the Licensing Authority will aim to inform those responsible for providing local transportation so that arrangements can be made to reduce the potential for problems to occur.

**18.0 Tourism and Employment**

- 18.1 The Licensing Authority will ensure that it receives, when appropriate, reports on the needs of the local tourist economy and the cultural strategy for the area to ensure that these are reflected in the considerations of its Committee and Sub-Committees.
- 18.2 The Licensing Act Committee will also ensure that it is kept informed of the employment situation in the area and the need for new investment and employment where appropriate.

**19.0 Link between Licensing and Planning and other Regulatory Regimes**

- 19.1 The Licensing Authority is mindful that the licensing and planning regimes should be kept separate to avoid duplication and inefficiency. A licensing application should not be a re-run of the planning application. Where considered necessary, the Licensing Act Committee will report to the Planning Committee on the situation regarding licensed premises within the area, including the general impact of alcohol-related crime and disorder. This will enable the Planning Committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap.
- 19.2 In general, planning permissions authorise a broad type of use of a premises, whereas licences are granted for a particular type of activity. A planning permission for an entertainment use may cover activities that can have a wide range of different impacts in the locality. The precise nature of the impacts of the specified activities proposed by a prospective licence holder need to be considered when an application is made for a premises licence or club premises certificate.
- 19.3 An application for a premises licence or club premises certificate will normally only be considered where the activity to be authorised by the licence is a lawful planning use of the premises, as evidenced by a valid planning consent, and the hours sought do not exceed those authorised by such planning consent. However, the Licensing Authority acknowledges that there may be circumstances where it is appropriate to deal with a licensing application before the planning process has been completed, and notes in particular the provisions in the Act in respect of provisional statements.
- 19.4 The Licensing Authority recognises that matters such as health and safety and fire safety are dealt with in other legislation, and will avoid duplication with other regulatory regimes so far as possible. Only conditions that are necessary for the promotion of the licensing objectives will be imposed, and only following the consideration of relevant representations.

**20.0 Promotion of Racial Equality**

- 20.1 The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, and to promote equality of opportunity and good relations between persons of different racial groups.
- 20.2 The Council is required under the 1976 Act, as amended, to produce a race equality scheme, assess and consult on the likely impact of proposed policies on race equality, monitor policies for any adverse impact on the promotion of race equality, and publish the results of such consultations, assessments and monitoring.

20.3 The Licensing Authority will monitor the impact of this policy on race equality, and feed the results of such monitoring into the race equality scheme.

**21.0 Administration, Exercise and Delegation of Functions**

21.1 The powers of the Licensing Authority under the Act may be carried out by the Licensing Committee, a Sub-Committee, or by an officer acting under delegated authority.

21.2 Many licensing decisions will be purely administrative in nature, and where there are no relevant representations, the Licensing Authority takes the view that a decision should be delegated to officers in the interests of speed, efficiency and cost-effectiveness.

21.3 Accordingly, where there are no representations for example for an application for the grant of a premises licence or club premises certificate, the matter will be dealt with by officers. Applications where there are relevant representations will be dealt with by Members, as will any application for a review of a licence.

21.4 The Licensing Authority does not intend that a Sub-Committee considering an application will include any Member who represents the Ward in which the premises which are the subject of the application are situated.

21.5 Applicants are encouraged to address the licensing objectives in their Operating Schedule having regard to the type of premises, the licensable activities to be provided, the operational procedures, the nature of the location and the needs of the local community.

21.6 Applicants are encouraged to make themselves aware of any relevant planning and transportation policies, tourism and cultural strategies, local crime prevention strategies including the Lancaster District Alcohol Harm Reduction Strategy 2007 – 2010, and any other documents setting out good practice in relation to some or all types of premises (for example, “Safer Clubbing”). Applicants will be expected to have taken these into account, where relevant and appropriate, and to demonstrate when formulating their Operating Schedule that such policies and documents have been considered.

21.7 Where the Act or Regulations thereunder require the submission of plans, the Licensing Authority will generally require these to be drawn to the scale of 1 centimetre representing 100 centimetres, although a different scale may be permitted by prior agreement for plans of open land.

21.7 When determining applications the Licensing Authority will have regard to any Guidance issued by the DCMS. In particular, account will be taken of the need to encourage and promote live music, dancing and theatre for the wider cultural benefit of the community as a whole. If representations are made concerning the potential for limited disturbance in a particular neighbourhood, the Licensing Authority’s consideration will be balanced against the wider benefits to the community.

21.8 When attaching conditions following the consideration of relevant representations, the Licensing Authority will also be aware of the need to avoid measures which might deter live music, dancing or theatre by imposing indirect costs of a substantial nature. However, this will be balanced with the need to promote the licensing objectives.

21.9 The Licensing Authority acknowledges the advice received from DCMS that the views of vocal minorities should not be allowed to predominate over the general interests of the community.

21.10 The following table sets out the delegation arrangements established under Section 10 of the Licensing Act 2003:

<b>Matter to be dealt with</b>	<b>Sub Committee</b>	<b>Officers</b>
Application for Personal Licence with relevant Unspent Convictions	If a Police representation made	If no Police representation made
Application for premises Licence/club premises Certificate	If a representation made	If no representation made
Application for Provisional statement	If a representation made	If no representation made
Application to vary premises licence/club premises certificate	If a representation made	If no representation made
Application to vary Designated premises Supervisor	If a police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a police objection	All other cases
Applications for interim authorities	If a police objection	All other cases
Application to review Premises Licence/club premises Certificate	All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc.		All cases
Decision to object when Local Authority is a Consultee and not the relevant authority Considering the Application.	All cases	

Determination of a Police objection to a Temporary event notice.	All cases	
Determination of film classification		Head of Legal & Human Resources in consultation with the Chairman.
<b>Determination of Minor Variations</b>		<b>All cases</b>
<b>Dissapplication of the S19 requirement to have a designated premise supervisor in Community Premise</b>		<b>All cases</b>

## 22.0 Enforcement Policy

22.1 The Licensing Authority has established protocols with amongst others, the Lancashire Constabulary and Lancashire Fire and Rescue Service and the Council's Environmental Health service on enforcement issues to ensure efficiency in the deployment of local authority staff and the other regulatory services who may be engaged in enforcing licensing law and the inspection of licensed premises. For this purpose, a M.A.L.T (Multi-Agency Licensing Team) has been set up by the relevant enforcement agencies to ensure effective and focussed enforcement. Inspections will take place if and when they are judged necessary, and this should ensure that resources are more effectively concentrated on problem premises. On occasions, multi-agency enforcement inspections will be carried out in conjunction with Home Office approved enforcement campaigns. The protocols will provide for the targeting of agreed problem and high-risk premises, but with a lighter touch being applied to those premises which are shown to be well managed and maintained. The Authority recognises the Hampton principles of inspection and enforcement, which include:

- No inspection should take place without a reason , and
- Regulators should recognise that a key element of their activity will be to allow or even encourage, economic progress and only to intervene when there is a clear case for protection

22.2 In any enforcement action taken by the Licensing Authority, the key principles of consistency, transparency and proportionality will be maintained.

22.3 The name of a Designated Premises Supervisor will be displayed on the summary of the licence, which must be prominently displayed at the premises. For enforcement purposes, if the Designated Premises Supervisor is not present at the premises, the Licensing Authority considers that it is good practice for name of the personal licence holder or another person authorised for the sale of alcohol to be displayed in a prominent position on the premises to provide a point of contact for the enforcement agencies.

### **23.0 Personal Licences**

- 23.1 Much of the foregoing policy inevitably relates to premises licences and club premises certificates. However, the Licensing Authority will also be responsible for issuing personal licences authorising individuals to supply alcohol or to authorise the supply of alcohol, in accordance with a premises licence.
- 23.2 Provided that an applicant fulfils the requirements of Section 120 (2) (a), (b) and (c), of the Act, a licence will be granted unless the applicant has a relevant conviction or a foreign conviction as defined in the Licensing Act 2003. In the event of such a conviction, the application will be referred to the Police, and if the Police give an objection notice, a hearing will generally be held. Whilst each application and objection will be considered on its merits, the application will normally be rejected if the Licensing Authority considers this necessary for the crime prevention objective.

### **24.0 Permitted temporary activities**

- 24.1 Where a person wishes to use premises for one or more of the licensable activities for a period not exceeding 96 hours a premises licence is not required. The person can simply serve a temporary event notice on the Licensing Authority notifying them of the event. The notice must be served on the Licensing Authority and a copy served on the police no later than ten working days before the event is to begin (not including either the day the notice is received or the day of the event) However the Licensing Authority would encourage applicants to give as much notice as possible so that the notice can be given full consideration
- 24.2 The maximum number of persons allowed on the premises at the same time during the temporary event is 499.
- 24.3 If alcohol is to be supplied, all supplies must be carried out by or under the authority of the person who served the notice.
- 24.4 Only the police may object to the staging of a temporary event and they may do so only on the ground that allowing the premises to be used as proposed would undermine the crime prevention objective.
- 24.5 The Licensing Authority must consider an objection notice and any representations which the premises user may wish to make. This is likely to be by way of a hearing unless all parties agree that a hearing is unnecessary. The Licensing Authority will give notice of its decision and the reasons for the decision. If the Licensing Authority upholds the objection it may serve a counter notice and the temporary event will not be able to be staged.
- 24.6 There are statutory limitations on the number of temporary event notices which can be given by individuals and which can be given in relation to particular premises.
- 24.7 Whilst it is acknowledged by the Licensing Authority that no conditions can be imposed in relation to permitted temporary activities, it is hoped that the organisers of such activities will voluntarily comply with the requirements of this policy in staging their events. When considering an objection notice, the Licensing Authority will take account of the provisions of this document so far as they relate to the crime prevention objective.

### **25.0 Contact Details /Advice / Guidance**

Applicants can obtain further details about licensing or the application process from:

The Licensing Manager or any other officer in the Licensing Section.

**Telephone:** 01524 582317

**Fax:** 01524 582368

**e-mail:** [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk)

Licensing staff will be willing to give general advice to potential applicants.

For specific advice on any intended application, an applicant may wish to consult a solicitor who has specialist knowledge of the Act.

DRAFT

Contact: Wendy Peck  
Telephone: (01524) 582317  
Fax: (01524) 582368  
Minicom: (01524) 582175  
E-mail: [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk)  
Website: [www.lancaster.gov.uk](http://www.lancaster.gov.uk)  
Our Ref: WP

**Legal and Human Resources**

Palatine Hall  
Dalton Square  
LANCASTER  
LA1 1PW

August 2010

DX63531 Lancaster

Dear Sir or Madam

**LICENSING ACT 2003 - REVIEW OF STATEMENT OF LICENSING POLICY**

Under the terms of the Licensing Act 2003 the Council's Statement of Licensing Policy has to be reviewed every three years. The current Statement of Licensing Policy came into effect in January 2008 and must, therefore, now be reviewed and a revised statement published by January 2011.

A revised draft Statement of Licensing Policy has been drawn up. The document recognises that the licensed leisure and entertainment industry is important to the social and economic life of the area, and seeks to establish sensible controls and appropriate guidance to help prevent and deal with anti-social problems which can arise from licensed activities. It takes account of the guidance issued under Section 182 of the Licensing Act 2003, together with the experiences of the Council as a licensing authority over the last five years.

The Council is consulting on the review of its Statement of Licensing Policy, and invites your organisation to make comment on the contents of a revised draft policy which can be viewed on the Council website at [www.lancaster.gov.uk](http://www.lancaster.gov.uk). Copies are also available in the reception areas at Lancaster Town Hall and Palatine Hall in Dalton Square, Lancaster and also at Morecambe Town Hall, Marine Road, Morecambe. For ease of reference, a separate document is also available showing a summary of the proposed amendments to the existing policy, and these are reflected in the revised draft policy.

All representations will receive due consideration prior to the final draft being placed before the Full Council for adoption. If you wish to make any comments on any of the aspects of the revised draft policy it would be appreciated if you could please use a "Consultation Response Form" also available on our Website and in the reception areas at the Council's offices above. Responses to the consultation must be returned to this office either by post or by email to [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk) by not later than the 2<sup>nd</sup> November 2010 to enable statutory timescales to be adhered to.

Should you wish to discuss any aspect of this policy or require any further information please do not hesitate to contact this office.

Yours faithfully

**Wendy Peck, MlOl, CERT HELL  
LICENSING MANAGER**

Mrs. Sarah Taylor  
Head of Legal & Human Resources



Press Release

Lancaster City Council invites comments on the review of its  
Statement of Licensing Policy

ONE of Lancaster City Council's responsibilities under the Licensing Act 2003 is to implement a Statement of Licensing Policy and to carry out subsequent reviews of the policy every three years.

The legislation requires that before determining its policy, the council must consult with the police, fire authority, representatives of holders of premises licences, club premises certificates, persons authorised to sell alcohol and residents and businesses within the area of the council.

As the existing Statement of Licensing Policy was implemented in January 2008, the review process is now underway to ensure that the revised policy may be published and implemented by January 2011, in order to comply with the legislative timetable.

The council is therefore consulting on the review of its Statement of Licensing Policy and invites comments on the contents of a revised draft policy which can be viewed on the council website at [www.lancaster.gov.uk/licensing-review](http://www.lancaster.gov.uk/licensing-review). Copies are also available in the customer service centres at Lancaster Town Hall and Morecambe Town Hall.

For ease of reference a separate document is also available showing a summary of the proposed amendments to the existing policy, and these are reflected in the revised draft policy.

Any comments on the revised draft Statement of Licensing Policy should be submitted in writing to Mrs W Peck, Licensing Manager, Lancaster City Council, Palatine Hall, Dalton Square, Lancaster, or by emailing [licensing@lancaster.gov.uk](mailto:licensing@lancaster.gov.uk) by no later than the November 2 2010.

# LICENSING ACT 2003 – REVIEW OF STATEMENT OF LICENSING POLICY

## SUMMARY OF PROPOSED CHANGES TO EXISTING POLICY

AUGUST 2010



Paragraph number <sup>i</sup>	Title/description <sup>ii</sup>	Proposed amendment <sup>iii</sup>	Reason <sup>iv</sup>
1	Introduction	<p>1.3 inserted amended wording:-</p> <p>“This statement of licensing policy is a requirement of Section 5 of the Licensing Act 2003 (the Act) and has been prepared in accordance with the provisions of the Act and the Guidance issued by Secretary of State for Culture Media and Sport under Section 182 of the Act (currently dated 20<sup>th</sup> March 2010). The Licensing Authority is, therefore, bound by the Act, any regulations made under it and the Section 182 guidance”.</p>	Clarity
2	Scope of the Licensing Act	<p>2.1 Added:-</p> <p>“The policy covers new applications, transfers, variations of licences and certificates and provisional statements as well as renewals of personal licences. It also includes the review of licences and certificates”</p>	Additional information
4	Responsible Authorities and Interested Parties	<p>4.2 Amended details for Planning to:-</p> <p>“Regeneration and Policy”</p> <p>Inserted:-</p> <p>“Trading Standards, Metrology Section, 58-60 Gulldhall Street, Preston, PR1 3NU”</p> <p>4.2 Inserted:-</p> <p>“S33 of the Policing and crime Act 2009 has amended the definition of an interested party to include a member of the relevant Licensing Authority. As such, a Councillor of Lancaster City Council may now make representations as an interested party. This means that they could call for a review of a premise licence or continue to act in a</p>	<p>Restructure of service</p> <p>Omitted from previous statement</p> <p>Amendment to legislation</p>

		<p>representative capacity on behalf of ward residents for any new applications, or applications to vary.”</p>	
<p>5</p>	<p>Applications</p>	<p>Inserted:-  <b><u>“5.0 APPLICATIONS FOR A PREMISES LICENCES AND CLUB PREMISES CERTIFICATES</u></b></p> <p><b>5.1</b> The Licensing Authority requires that all applications for the grant, variation or transfer of any licence, permit or certificate detailed in the Act are made in accordance with the statutory requirements and any guidance issued from time to time by the Council. In particular, all such applications must be accompanied by the appropriate fee, where applicable, for them to be deemed to be properly made. Where such applications are statutorily required to be advertised, or notified to other specified persons, applicants are advised to confirm that such advertising or notification has been properly made. Applicants should be aware that failure to make an application in accordance with the statutory requirements will result in the application being returned and that the period for determination will not commence until a valid application has been submitted. Applications will not, however, be returned because of small administrative errors which can be easily corrected</p> <p><b>5.2</b> It is important to ensure that the application accurately reflects the intended operation of the premises. The application must be accompanied by a plan of the premises which shows certain information as required by the Licensing Act 2003 (Premises Licences and Club Premises Certificate) Regulations 2005. This includes marking the areas of the premises which are proposed to be used for each licensable activity. It is important to note</p>	<p>Additional information</p>

		<p>that, although consumption of alcohol is not itself a licensable activity, if the plan does not show outside areas (e.g. beer gardens or similar) then any premises licence which authorises the sale of alcohol 'for consumption ON the premises' only, as opposed to 'on and off the premises' would not authorise the use of such areas. In other words, the plan which is submitted as part of the application defines the 'premises' for the purpose of the licence.</p> <p>5.3 As indicated above, the Act requires licence applicants to publicise their applications. This is to enable interested parties and responsible authorities to make a representation if they wish. Our experience as a Licensing Authority is that statutory publicity may not always bring applications to the attention of all parties. Therefore, in addition to putting applications on our web site, we will notify all members of the Council of applications for premises licences, club premises certificates and variations received on a weekly basis.</p> <p>5.4 The Licensing Authority will offer guidance as appropriate to applicants on the completion of necessary documentation. It will issue and make readily available guidance notes on the procedures it requires for making applications for licences and will from time to time review such guidance."</p> <p>Moved paragraph 5 – Licensing Objectives to paragraph 10</p>	
6	Applications made by the Licensing Authority	<p>Inserted:-</p> <p><b><u>“6.0 APPLICATIONS MADE BY THE LOCAL AUTHORITY</u></b></p> <p>6.1 The Council has sought premises licences for public spaces in the community in its own name and will continue to do so. This could include, for example, open spaces, town centre squares, community halls and similar public spaces. With regard to those places, performers and entertainers will not need to obtain a licence or</p>	Clarification and transparency

<p>7</p>	<p>Variations</p>	<p>give a temporary event notice themselves in order to perform. Instead they would simply require permission from the Council as the premises licence holder.</p> <p>6.2 When one part of the Council seeks a premises licence from the Licensing Authority, the Licensing officers will consider the matter from an entirely neutral standpoint. If relevant representations are made, for example, by local residents or the police, they will be considered fairly. Those making representations genuinely aggrieved by a positive decision in favour of a local authority application by the Licensing Authority will generally be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision made."</p>	
	<p>Inserted:-  <u>"7.0 VARIATIONS</u></p> <p>7.1 Where a premises licence holder wishes to make changes to their licence or to their premises, the Act allows, in most cases, for an application to vary the licence to be made rather than requiring an application for a new premises licence. The Licensing Authority considers that, in general, any changes to the licence which may impact on one or more of the licensing objectives requires an application under section 34 of the Act.</p> <p>7.2 The Act does, however, allow for a simplified procedure for varying a licence where the changes do not have a detrimental effect on the licensing objectives. These are:</p> <ul style="list-style-type: none"> <li>• Changes to the name or address of anyone mentioned on the licence</li> <li>• Variations to specify a new individual as the designated premises supervisor</li> <li>• To disapply the mandatory condition requiring the sale of alcohol to be carried out under the authority of a personal licence holder and the need to have a designated premises supervisor</li> </ul>		<p>To explain the process of applying for a variation of a licence, and the process for applying for a minor variation following an amendment to the legislation</p>

	<p>in community premises.</p> <ul style="list-style-type: none"> <li>• Minor variations which do not impact on the licensing objectives</li> </ul> <p><b>7.3</b> Minor variations can include the following:</p> <ul style="list-style-type: none"> <li>• Minor changes to the structure or layout of a premises</li> <li>• Small adjustments to the licensing hours</li> <li>• The removal of out of date irrelevant or unenforceable conditions</li> <li>• Adding certain licensable activities including live music</li> </ul> <p><b>7.4</b> Changes to the structure of the premises will not fall within the definition of a minor variation if they have an adverse impact on the licensing objectives. For example:</p> <ul style="list-style-type: none"> <li>• If it increases the capacity for drinking on the premises;</li> <li>• Affects access between the public part of the premises and the rest of the premises or the street or public way e.g. block emergency exits or routes to emergency exits;</li> <li>• Impedes the effective operation of a noise reduction measure such as an acoustic lobby</li> </ul> <p><b>7.5</b> The following alterations to licensing hours are excluded from the minor variation procedures:</p> <ul style="list-style-type: none"> <li>• Extending licensing hours for the sale of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or</li> <li>• To increase the amount of time on any day during which alcohol may be sold or supplied for consumption off or on the premises.</li> </ul> <p><b>7.6</b> Application to alter the times of other licensable activities under the minor variation procedure will be considered on a case by case basis but the following will be some of the matters considered:</p> <ul style="list-style-type: none"> <li>• The nature of the licensable activity;</li> </ul>	
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	<ul style="list-style-type: none"> <li>• The extent of the additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;</li> <li>• Proximity of the premises to residential areas;</li> <li>• Any licence conditions in already place to mitigate the impact of the activity and any additional conditions volunteered by the applicant;</li> <li>• Arrangements for dispersal, i.e. when people leave the premises is there potential for noise and disturbance near the venue? Is the only means of dispersal a single route through residential areas?</li> <li>• Whether the proposed extension applies only at weekends;</li> <li>• Whether there will be any new admittances during the extended period;</li> <li>• The track record of the premises;</li> <li>• Whether the premises is already open during the extended period for other licensable activities;</li> <li>• Proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activities in large numbers. For example, people visiting a takeaway after leaving a public house</li> </ul>	
	<p>7.7 Applicants for minor variations may volunteer conditions to remove the risk of an adverse impact on the licensing objectives either as a result of their own risk assessments or after informal discussions with the responsible authorities. The Licensing Authority cannot, however, impose their own conditions during a minor variation procedure.</p>	
	<p>7.8 Where the Licensing Authority believes that a proposed minor variation will have an adverse effect on the licensing objectives the application will be refused. Any refusal of a minor variation application does not prevent an application for a full variation under section 34 of the Act being made.”</p>	

8	Adult Entertainment	<p>Inserted:-</p> <p><b><u>“8.0 ADULT ENTERTAINMENT</u></b></p> <p><b>8.1</b> Following the introduction of the Police and Crime Act 2009, schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 has been amended to incorporate Sexual Entertainment Venues and this council will be considering whether to adopt this legislation on the 15<sup>th</sup> September.</p> <p><b>8.2</b> Premises offering lap dancing or any live performance or display of nudity on more than 11 occasions within a 12 month period, in addition to any relevant entertainment, will be required to obtain a Sex Establishment Licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (if adopted) from the Authority authorising such activity. Applications for such premises will be considered on their individual merits.</p> <p><b>8.3</b> It is the view of the Licensing Authority that children should not be exposed to entertainments of a sexual nature or to strong language at a too early an age. Conditions may be imposed, if representations are received, aimed at preventing such exposure either intentionally or accidentally. In some premises entertainment of an adult nature may be occasional or restricted to certain times of the day. In these cases, any restrictive conditions to protect children will apply only at these times. When submitting an application, if no reference is made to the provision of adult entertainment or services within an operating schedule at “Box N”, then the Authority will interpret this to mean that such entertainment will not be provided and a condition to this effect will be applied to the licence.”</p>	<p>Amendment to legislation following the Council's resolution to adopt Schedule 3 to the Local Government (Miscellaneous Provisions ) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009</p>
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9	Operating Schedule	This paragraph has been moved from paragraph 11 – No changes	
10	Licensing Objectives	<p>This paragraph has been moved from paragraph 5.</p> <p>Inserted section in bold:-</p> <p>“10.5 The Licensing Authority recognises that it is ultimately for the Designated Premises Supervisor to decide how best to manage the premises. However, the Authority expects that the DPS or another personal licence holder should normally be on the premises when alcohol is supplied.<b>(except where in a case of a community premises the mandatory licence condition in S19 of the Act has been disapplied)</b> If they are absent from the premises, they will still be ultimately responsible for the actions of those they authorise to permit sales of alcohol. It is considered good practice that any such authorisations should be in writing. Where any person who does not hold a personal licence is authorised to sell alcohol, the DPS is encouraged to provide, or ensure that, the authorised person has received some training on the requirements of the Licensing Act, and any conditions attached to the licence for the premises concerned. It is recommended that a record of such training be maintained”.</p>	Amendment to legislation
12	Protection of Children from Harm	<p>This paragraph has been moved from paragraph 7.</p> <p>Inserted:-</p> <p>“12.12It is the view of the Licensing Authority that children should not be exposed to entertainments of a sexual nature or to strong language at a too early an age. Conditions may be imposed, if representations are received, aimed at preventing such exposure either intentionally or accidentally. In some premises entertainment of an adult nature may be occasional or restricted to certain times of the day. In these cases, any restrictive conditions to protect children will apply only at these times. When submitting an application, if no reference is</p>	

		<p>made to the provision of adult entertainment or services within an operating schedule at “Box N”, then the Authority will interpret this to mean that such entertainment will not be provided and a condition to this effect will be applied to the licence.”</p>	
<p>13</p>	<p>Prevention of Public Nuisance</p>	<p>This paragraph has been moved from paragraph 8</p> <p>Inserted:-</p> <p><b>“13.4 Since the introduction of the Health Act 2006 the requirement for patrons to go outside a premises to smoke has caused an increase in the number of noise and anti-social behaviour complaints received by this and other Councils. It is therefore expected by the Licensing Authority that the management of licensed premises will ensure that adequate provision is made to supervise those patrons who leave the premises for a short time to smoke, having regard to the health and safety of their staff. In certain cases some form of regular engagement between businesses and residents can lead to better understanding of the needs of each party and inspire a degree of trust.</b></p> <p><b>13.5 The cumulative effects of litter around premises carrying on licensable activities can amount to public nuisance. The Licensing Authority requires that any premises that can cause litter, be it from a take away food establishment or cigarette debris left by its customers, must remove it at regular intervals. At the end of trading, management of the premises should arrange for a final check of the area immediately outside the premises, to ensure that no litter, spilled food or cigarette debris is left. In some cases it may be necessary to impose conditions on licences for take away premises which require litter</b></p>	

		<p>bins to be provided or for litter dropped around of the premises to be collected and removed at regular intervals at the licence holder's expense including washing away to the gutter any spilled food.”</p>																									
21	Administration, Exercise and Delegation of Functions	<p>21.10 Amended table additions are in bold:-</p> <table border="1"> <thead> <tr> <th data-bbox="336 1153 539 1478"><b>Matter to be dealt with</b></th> <th data-bbox="336 909 539 1153"><b>Sub Committee</b></th> <th data-bbox="336 663 539 909"><b>Officers</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="539 1153 687 1478">Application for Personal Licence with relevant Unspent Convictions</td> <td data-bbox="539 909 687 1153">If a Police representation made</td> <td data-bbox="539 663 687 909">If no Police representation made</td> </tr> <tr> <td data-bbox="687 1153 874 1478">Application for premises Licence/club premises Certificate</td> <td data-bbox="687 909 874 1153">If a representation made</td> <td data-bbox="687 663 874 909">If no representation made</td> </tr> <tr> <td data-bbox="874 1153 986 1478">Application for Provisional statement</td> <td data-bbox="874 909 986 1153">If a representation made</td> <td data-bbox="874 663 986 909">If no representation made</td> </tr> <tr> <td data-bbox="986 1153 1134 1478">Application to vary premises licence/club premises certificate</td> <td data-bbox="986 909 1134 1153">If a representation made</td> <td data-bbox="986 663 1134 909">If no representation made</td> </tr> <tr> <td data-bbox="1134 1153 1283 1478">Application to vary Designated premises Supervisor</td> <td data-bbox="1134 909 1283 1153">If a police objection</td> <td data-bbox="1134 663 1283 909">All other cases</td> </tr> <tr> <td data-bbox="1283 1153 1431 1478">Request to be removed as designated premises supervisor</td> <td data-bbox="1283 909 1431 1153"></td> <td data-bbox="1283 663 1431 909">All cases</td> </tr> <tr> <td data-bbox="1431 1153 1560 1478">Application for transfer of premises licence</td> <td data-bbox="1431 909 1560 1153">If a police objection</td> <td data-bbox="1431 663 1560 909">All other cases</td> </tr> </tbody> </table>	<b>Matter to be dealt with</b>	<b>Sub Committee</b>	<b>Officers</b>	Application for Personal Licence with relevant Unspent Convictions	If a Police representation made	If no Police representation made	Application for premises Licence/club premises Certificate	If a representation made	If no representation made	Application for Provisional statement	If a representation made	If no representation made	Application to vary premises licence/club premises certificate	If a representation made	If no representation made	Application to vary Designated premises Supervisor	If a police objection	All other cases	Request to be removed as designated premises supervisor		All cases	Application for transfer of premises licence	If a police objection	All other cases	Amendments to the legislation.
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Application for premises Licence/club premises Certificate	If a representation made	If no representation made																									
Application for Provisional statement	If a representation made	If no representation made																									
Application to vary premises licence/club premises certificate	If a representation made	If no representation made																									
Application to vary Designated premises Supervisor	If a police objection	All other cases																									
Request to be removed as designated premises supervisor		All cases																									
Application for transfer of premises licence	If a police objection	All other cases																									

