



COUNCIL

8TH NOVEMBER 2004

ITEM 7 - LICENSING ACT 2003 – CONSULTATION

Council papers were sent out Friday 29th October, 2004, which was the last day of the consultation period on the draft statement of licensing policy.

The responses to the draft policy have now been considered and the amendments set out in the attached document to the draft policy are proposed.

The proposed amendments should be read in conjunction with the report and draft policy included in the reports booklet for the meeting.

Amendments to draft statement of licensing policy, following comments received during consultation period 13th September 2004 – 29th October 2004.

| | | |
|--------------|---|--|
| Page 5 | | |
| Para 1.2 | Line 5: Conditions can <i>only</i> be attached Line 6: delete the word only | |
| Para 1.5 | Lines 1 and 2: change February to <i>7th January 2005.....7th January 2008</i> | |
| Page 6 | | |
| Para 1.6 | Final sentence: Thriving and sustainable community, <i>and strengthening the local economy, which are among</i> | |
| 1.7 | Insert after stronger communities, <i>and ensure all people are safe and secure</i> | |
| Page 8 | | |
| Para 3.1 (b) | Final sentence in final subheading: Delete from 'If however' to 'period only'. Also subheadings are wrong we go from (h) to (a) obviously should be (i) and (j) add new (k) <i>the licensing authority may also take into account the operating history of a premises.</i> | |
| 3.3 | New bullet point at bottom of page <i>The power under the Act to prosecute any personal licence holder or member of staff who sells alcohol to a person under 18 years of age.</i> | |
| Page 11 | | |
| 6.1 | First line: Change the word 'will' to – The licensing authority <i>may</i> . And insert after 'taken': <i>Where possible the Licensing Unit will attempt to resolve any minor omissions or defects in the application prior to returning them as invalid.</i> | |
| Page 12 | | |
| | After 7.1 add the following new para: 'Where the responsible authorities and interested parties do not raise any representations about the application made to the licensing authority, it is the duty of the authority to grant the licence or certificate subject only to conditions that are consistent with the operating schedule or club operating schedule and any mandatory conditions prescribed in the 2003 Act itself '.(Ch.7, Para 7.4) 'The licensing authority may not therefore impose any conditions unless its discretion has been engaged | |

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| | following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations'.(Ch.7,Para 7.5) | |
| Page 13 | | |
| 8.1 | And delegated powers <i>under</i> the council's constitution (delete the word 'of') | |
| 8.2 | Insert <i>authorised persons</i> after 'such as the police or fire authority,' | |
| 8.5 | Final sentence: <i>The decision will be taken under delegated powers</i> | |
| Page 15 | | |
| 9.3 | If the police raise an objection within <i>the appropriate statutory timescales</i> (delete '14 days of them receiving an application') Delete the word 'said' in last line. | |
| Page 16 | | |
| 10.3 | Delete second bullet point re. seating requirement | |
| 10.4 | Insert after 'their application'(three quarters of the way down), ' <i>for example this may include stating capacity numbers for a premises</i> '. Insert as start of next sentence <i>Where possible</i> Officers from the Licensing <i>Unit</i> instead of Authority. At end of paragraph insert. <i>The licensing unit will also produce guidance to assist applicants in completing their applications.</i> | |
| Page 18 | | |
| 10.10 | Amend 10.10 If deemed necessary <i>following a review or relevant representations</i> the licensing authority <i>may</i> | |
| Page 21 | | |
| 12.3 | Amend para 12.3 <i>The Applicant will still need to apply for a premises licence.</i> | |
| Page 22 | | |
| 15.2 | Delete 15.2 and replace with <i>Where an applicant identifies an issue with regards to public safety (including fire safety) which is not covered by existing legislation, the applicant should identify in their operating schedule the steps that will be taken to ensure public safety. Such steps will depend upon the individual style and characteristics of the premises and/or events. The Fire Service, Health and Safety and other enforcement agencies, may require further</i> | |

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| | <i>information following consideration of the application and operating schedule, for example, current electrical certificates, fire risk assessments and test certificates.</i> | |
| 15.3 | Delete entire para | |
| 15.4 | Delete entire para | |
| Page 23 | | |
| 16.1 | Delete Current 16.1 and insert <i>All applicants for Premises Licences and Club Premises Certificates are reminded that planning permission will normally be required for such uses. Planning consents may carry conditions with which they are expected to comply, or action may be taken under the relevant planning legislation. In general, planning consents 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 for example, may cover a number of activities that can have a wide range of different impacts in the locality. The precise nature of the impact of specified activities proposed by a prospective licence will also be considered when an application is made for a premises licence.</i> | |
| Page 25 | | |
| 18.6 | Amend Walsall Area Child protection Committee to <i>Walsall Social Services, Civic Centre, Darwall Street</i> | |
| Page 26 | | |
| 18.9 | Add at end of para. <i>The licensing authority supports the acceptance of all proof of age schemes which carry the PASS (Proof of Age Standards Scheme) hologram logo. Walsall Council's local scheme which is encouraged throughout the Borough is the VALIDATE scheme. Details of the scheme can be obtained from Walsall Council's Trading Standards Department.</i> | |
| Page 28 | | |
| 19.7 | Add at end of paragraph: <i>Environmental Health Officers also have the power to close licensed premises on which noise amounting to a public nuisance is created, for a period of up to 24 hours(sec 40 Anti-Social Behaviour Act 2003)</i> | |
| 19.11 | Last paragraph delete extra or <i>her husband</i> | |
| Page 34 | | |
| | From table of delegations delete Review of licensing statement of policy | |

| | | |
|---------------|---|--|
| Page 35 | | |
| 24.1 | Insert after 'transport', <i>trading standards</i> | |
| 25.2 | Insert at end of paragraph . <i>If Applicants apply to vary their current terms and conditions at the same time as they apply for conversion, this may necessitate a hearing if relevant representations are received in respect of the application</i> | |
| Page 37 | | |
| | Under the heading 'Authorised persons', add at end, <i>trading standards</i> | |
| Page 39 | | |
| | Under the heading 'Regulated entertainment', first bullet point should be <i>play</i> not film | |
| Page 40 | | |
| | Under the heading 'Temporary event notice' fourth bullet point Amend Licence to <i>licence</i> change five to 5 | |
| Page 41 | | |
| | Appendix 3, amend Walsall MBC postcode 1TP and email contact to Beryl Smith, Licensing Officer | |
| Pages 43 - 47 | Remove pages 43-47 when published as these relate to consultation | |



CABINET
20TH OCTOBER 2004

**AGENDA
ITEM:**

**LICENSING ACT 2003 – THE IMPLEMENTATION OF THE NEW
LEGISLATION**

Ward(s): All

Forward Plan: Yes

Portfolio: Councillor Z Ali,
Community Engagement and Organisational Development

Service Area: Democratic Services

Summary of Report:

Walsall Council needs to ensure that it is ready to start issuing licences, notices and certificates when the new Licensing legislation comes into effect on 7th February 2005.

The new legislation introduces a single premises licence, which can permit premises to be used to supply alcohol; provide regulated entertainment; and provide late night refreshment. It also allows for a new system of personal licences, which will enable holders to move freely between premises where a premises licence is in force. It transfers authority to issue licences for the sale/supply of alcohol from the Magistrates Court to the Council.

The Council is obliged under section 5 of the Licensing Act 2003 to prepare and publish a statement of licensing policy every three years. The Council will not be able to start carrying out its licensing functions, until the statement of policy has been approved by the Council. The draft statement of licensing policy is currently being widely circulated for consultation, including on the website. The closing date for consultation is 29th October 2004. The final policy must be published by 7th January 2005.

This report is to seek Cabinet's approval of the draft statement of licensing policy.

Background Papers:

1. Licensing Act 2003
2. Guidance issued under section 182 of the Licensing Act 2003
3. Draft Regulations

Recommendations:**That Council be recommended to:**

1. adopt the draft statement of licensing policy and that the Chief Executive or her nominee be authorised to make minor amendments to the policy as necessary between now and the 29th October, that being the end of the consultation period.
2. delegate to the Licensing and Safety Committee the exercise of powers contained in the Licensing Act 2003.

Signed:**Signed:****Executive Director: J Morris****Portfolio Holder: Councillor Z Ali****Date:****Date:****Resource and Legal Implications**

The Government has stated in the Guidance notes that the Secretary of State will establish fee levels to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy.

The fee level has not yet been set, although it is anticipated that the Government will be consulting on fee levels in the very near future.

There is concern, based on the estimated fee levels previously circulated, that the fees will not fully cover the costs of the licensing functions, and therefore some costs may need to be absorbed by the Council.

The Council's licensing policy is governed by the Licensing Act 2003, statutory guidance and secondary legislation that may be issued from time to time by the Secretary of State for the Department of Culture, Media and Sport.

Citizen Impact

The new legislation could potentially affect everyone in the borough, and therefore it has been very important to consult as widely as possible. The new system provides for flexible opening hours, with the potential for up to 24-hour opening, seven days a week, subject to the impact on local residents and businesses.

The Council seeks a balance between the benefits to the community of a licensed venue and the risk of disturbance to local residents.

The Council will work in partnership with the responsible authorities to ensure that we promote the licensing objectives and seek full integration with local policies for crime and prevention, community safety, Safer Walsall Partnership, planning, transport and tourism.

Environment Impact

None arising from this report.

Performance Management and Risk Management Issues

In order to cope with the increased number of applications which are anticipated, the Council has established a new Licensing Unit. The Licensing Officer is in post, and it is anticipated that the three other posts will be filled in the near future.

The Council is currently making arrangements to purchase new software to assist with the administration of the licensing functions.

The statement of licensing policy must be kept under review throughout each three year period it is in force, and the licensing authority may make revisions to the policy as it considers appropriate. Before determining its policy for any three year period, the licensing authority must consult the police, the fire authority, premises licence holders, personal licence holders, local businesses, local residents and any other bodies or persons deemed appropriate.

By consulting widely, we can amend or revise our policy as required, depending on feedback and input from our consultees.

Equality Implications

All licensing applications are considered in accordance with the interests of natural justice, fairness and Human Rights legislation.

Consultation

Adverts have been placed in several newspapers informing people where they can view or obtain copies of the draft statement of licensing policy, and attempting to raise awareness of the new legislation. The draft policy is available on Walsall's website, and posters have been sent out to libraries, leisure centres, community centres and youth centres. A leaflet containing a summary of the draft statement and a letter reminding licensees of the imminent new licensing system was sent to all current licence holders, including liquor licensees. In addition, there has been consultation with the responsible authorities, such as the police and fire authority, so that we can establish joint working protocols. There will also be presentations and discussion meetings with interested parties.

Vision 2008

The policy supports the priorities of Vision 2008, by making licensees responsible for preventing and cleaning up any litter caused by any licensable activities, thus leading to a clean and green borough. The policy also aims to make services more accessible to people by making it possible to communicate with the council on-line, and make applications including the payment of fees on-line. People will also be able to access the register of all applications and notices made to the Council, both via the internet and by visiting the Council office. By working with local crime prevention and enforcement authorities we will aim to make Walsall people safe and secure, and by working with cultural groups and groups promoting tourism and the night time economy, we aim to strengthen the local economy.

Contact Officer:

Rod Williams, Head of Democratic Services ext 2003
williamsrf@walsall.gov.uk

Introduction

Members may recall that in April 2000 the Government published a White Paper on reforming alcohol and entertainment licensing. In November 2002 a Bill to introduce reforms to alcohol and entertainment licensing was announced in the Queens Speech, and on 10th July 2003 the Licensing Bill received Royal Assent, and has become the Licensing Act 2003.

Background

On 12th January this year, a report from the Licensing and Safety Committee was considered by Council. The report recommended that Council delegate authority to the Licensing and Safety Committee under the Licensing Act 2003, to make determinations as permitted in accordance with the said Act.

Objectives

The objectives we aim to achieve through the implementation of the new legislation are:

- The prevention of public nuisance;
- The prevention of crime and disorder;
- Ensuring public safety; and
- Protection of children from harm

These objectives are set by the Government, and we must promote the objectives in carrying out the licensing function. The objectives are a recurring theme throughout our policy and each objective will be treated as having equal importance.

Scope of the Policy

The policy covers 'licensable activities' as specified in the Act:

- The sale or supply of alcohol;
- The provision of regulated entertainment; and
- The provision of late night refreshment

The key changes contained in the Act

The new legislation transfers the authority to issue licences to sell or supply alcohol from the Magistrates Court to Walsall Council, who will be known as the licensing authority.

Licences to sell or supply liquor will be known as 'personal licences' and they will be valid for 10 years, and renewable for further periods of 10 years.

Unless granted under 'grandfather rights' to those currently holding a justices licence, the applicant must be 18 years of age, hold a recognised licensing qualification, and not have any relevant convictions. The personal licence holder will be able to move from premises to premises without the need to 'transfer' his licence. It will be more like a driving licence, and offers much more flexibility for the licensing trade.

The Act replaces six former regimes for licensing public entertainment, cinemas, theatres etc and allows for a single 'premises licence', which can permit premises to be used to supply alcohol; provide regulated entertainment such as live and recorded music, dancing, theatre and films; and to provide late night refreshment, including takeaways. The premises licence will last for the duration of the business, unless it is surrendered or revoked.

There is also provision for 'temporary event notices' which will allow events to go ahead without any permission from the licensing authority, provided strict conditions are satisfied e.g. less than 96 hours duration, less than 500 people attending at any one time, and limits on the number of events at any one premises. There will also be limits to the number of events either personal licence holders (50) or premises users (5) can put on.

Regulated entertainment

This is defined in the Act as:

- Performance of a play
- Exhibition of a film
- An indoor sporting event
- A boxing or wrestling entertainment (indoor or outdoor)
- A performance of live music
- Any playing of recorded music
- A performance of dance
- Entertainment of a similar description

Applications for premises licences will contain an 'operating schedule' which will describe the nature of the business to be conducted, and the type of entertainment available. The schedule will also indicate what steps the applicant has taken to promote the licensing objectives. These steps will normally be translated into conditions to be attached to the licence or certificate. In deciding whether to impose conditions on a licence, the Council will consider any relevant representations (objections) it has received, and where possible the conditions will be tailored to the characteristics of the premises.

The intention is to regulate problem premises by conditions, but to allow a 'light touch' to well run premises.

National 'permitted hours' will be abolished, with the potential for up to 24 hours opening 7 days a week, subject to consideration of the impact on local residents and businesses. The operating hours will be included in the

operating schedule, and will have to be advertised on the premises, and in the local newspaper.

Consultation period

The consultation started on 13th September 2004 and will finish on 29th October 2004.

Due weight and consideration will be given to all comments received, and the policy may be amended accordingly.

Timescales and Next Steps

The draft policy, if approved by the Cabinet will be reported to the Council on 8th November 2004 (following the end of the consultation period). If approved by the Council, the final policy will be published by 07.01.05 in time for the first appointed day 07.02.05, when the new applications will start to come in to the Council.



Licensing Act 2003

Draft Statement of Licensing Policy for Consultation

Published September 2004

Walsall Council

Draft Statement of Licensing Policy for Consultation

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PLEASE REFRAIN FROM SMOKING
IN THIS AREA DURING FOOD
SERVICE TIMES

GOLDFINGER
250 WINE GLOSS

1

Introduction

Walsall Metropolitan Borough Council Draft Statement of Licensing Policy

1.1 This policy is produced in compliance with the Licensing Act 2003 (hereafter referred to as “the Act”), and subordinate legislation and guidance issued by the government. The aim of the policy is to ensure, fairness, clarity, and consistency, equality of treatment and proportionality in the approach to be adopted by Walsall Council in determining licensing applications, as the relevant licensing authority. The policy document should be read in conjunction with any guidance notes and application procedures produced from time to time by the council.

1.2 The Licensing Act 2003 gives the council responsibility to determine applications in relation to the sale of liquor, the provision of entertainment and the provision of late night refreshment. Conditions can be attached to licences if considered necessary only to ensure the promotion of the four licensing objectives, which are:

Prevention of crime and disorder

Public safety

The prevention of public nuisance

The protection of children from harm.

These objectives will be treated as having equal importance.

1.3 The council will only make decisions in relation to licensable activities, qualifying club activities, and temporary events. In determining applications the council will have to apply and have full regard to the Licensing Act 2003, Secondary legislation, and regulations issued from time to time by the Secretary of State for the Department of Culture, Media and Sport (hereafter DCMS), and this policy statement.

1.4 In producing this policy the council has consulted in accordance with the statutory provisions as required by the 2003 Act, and will seek to achieve full integration with local policies for crime prevention, community safety, Safer Walsall Partnership, planning, transport, and tourism. The policy will encourage partnership working with the police, local businesses, performers, local people, and those involved in child protection to work towards the promotion and common objectives described.

1.5 This policy will be in force from 7 February 2005 (commencement date) to the 7 February 2008. The policy will be kept under review and the licensing authority may make such revisions to the policy as it considers appropriate. Where revisions to the policy are made, they shall be done so in accordance with statutory requirements, and the licensing authority shall publish a statement of such revisions, or a revised licensing policy statement. The policy statement will remain in existence for a maximum of three years, and will then be subject to review and further consultation.

1.6 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. It is the licensing authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of premises on local residents. The licensing authority wishes to encourage licensees to provide a wide range of entertainment activities during their opening hours and to promote live music, dance, theatre etc, for wider cultural benefit. These activities are a factor in maintaining a thriving and sustainable community, which is one of the council's aims.

1.7 The council has a duty to protect the amenity of the borough which is a mixed commercial and residential area. One of the council's aims is to promote safer and stronger communities. These factors will be taken into account where applications will increase the concentration of entertainment uses, and or, lengthen hours of operation in a way that would materially impact on the local area.

1.8 The policy statement will set out the general approach the council will take as licensing authority when it determines applications for licences. It will not undermine the right of any individual to apply for a variety of permissions, and to have any such application considered on its merits. Nor will it override the right of any "interested party" to make representations on an application or seek a review of licence where provision has been made for them to do so under the act.

1.9 In producing this policy the council has had regard to the provisions of the Human Rights Act 1998 and the Crime and Disorder Act 1998.



2

Scope of the Policy

2.1 The policy covers the following licensable activities as specified in the act:

- a) the sale by retail of alcohol, ("on" and "off" licences)
- b) the supply of alcohol by or on behalf of a club to, or to the order of , a member of the club,
- c) the provision of regulated entertainment, and
- d) the provision of late night refreshment (supply of hot food from premises from 23.00 to 05.00 hours)

The licensable activities are also qualifying club activities, applicable to members of a club.

2.2 Regulated entertainment provided to the public, or club members with a view to profit will generally include:

A performance of a play

An exhibition of a film

Indoor sporting events

A boxing or wrestling event

Performance of live music

Any playing of recorded music

A Performance of dance

Provision of facilities for making music

Provision of dancing facilities.

In addition the act also covers:

The licensing of individuals for the retail sale of alcohol ("personal licences");

The licensing of premises for the retail sale of alcohol, the provision of regulated entertainment, of late night refreshment ("premises licences");

The supply of alcohol or the provision of regulated entertainment to certain clubs ("club premises certificates"); and

The permitting of certain licensable activities on a temporary basis ("temporary event notices").

2.3 The policy will cover new applications, renewal of applications where applicable, transfers and variations of licences and certificates, and temporary premises licences. It will also include the review of licences and certificates, such a review could lead to the revocation of a licence or certificate.

3

Consideration of the impact of licensed activities

3.1 When considering whether any licensed activity should be permitted, the licensing authority will assess the likelihood of it causing unacceptable adverse impact, both in terms of crime and disorder and public nuisance, particularly to local residents. The licensing authority will therefore consider the following factors, amongst other relevant matters:

- (a) the type of use, the number of customers likely to attend the premises and the type of customers at the time of the application;
- (b) the proposed hours of operation;
- (c) the level of public transport accessibility for customers either arriving or leaving the premises and the likely means of public or private transport that will be used by customers;
- (d) the means of access to the premises which should have customer entrances and exits on the principal pedestrian routes;
- (e) the level of likely car parking demand on principal roads and surrounding residential streets and its effect on residential parking and emergency access;
- (f) the need for the provision of portable toilet facilities outside of the premises;
- (g) the cumulative impact of licensed premises in an area and the scope for mitigating any impact; (see paragraph 5)
- (h) the frequency of the activity; and in considering any application which is already licensed, the licensing authority will take into account any evidence:
 - (a) of past demonstrable adverse impact from the activity especially on local residents; or
 - (b) that, if adverse impact has been caused, appropriate measures have been agreed and put into effect by the applicant to mitigate the adverse impact. If, however, such measures have not been put into effect or there has been insufficient time

to assess them a licence may be granted for a limited period only.

3.2 In assessing the impact of licensing activities the licensing authority accepts the difficulty licence holders have in preventing anti-social behaviour by individuals once they are beyond the direct control of the licence holder. However the licensing authority must balance this against the licensing objectives, which will not be achieved if patrons from licensed premises regularly engage in anti-social activities to the detriment of nearby residents or businesses.

3.3 It is also acknowledged that there are a number of other mechanisms for addressing anti-social behaviour and nuisance away from licensed premises, such as:

- Planning controls
- Measures adopted to create a safe and clean town centre environment in partnership with local businesses, transport operators, and other departments of the council
- Local authority powers to designate parts of the local authority area as places where alcohol may not be consumed in public
- Police enforcement of the criminal law concerning disorder and anti-social behaviour, including the issue of fixed penalty notices
- The power under the act to prosecute any personal licence holder or members of staff at such premises who are selling alcohol to people who are drunk
- The confiscation of alcohol from adults and children in designated areas
- Police powers to instantly close down any licensed premises for 24 hours or temporary events on the grounds of disorder, the likelihood of disorder, the likelihood of disorder or excessive noise emanating from the premises

4

Location of premises, licensing hours and the prevention of nuisance

4.1 At all times the licensing authority will try to strike a fair balance between the benefits to the community of a licensed venue and the risk of disturbance to local residents.

4.2 The licensing authority however recognises that longer licensing hours regarding the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which can lead to disorder and disturbance.

4.3 The licensing authority will deal with the issue of licensing hours on the merits of each application. In considering each application the licensing authority will consider whether or not the proposed licensing hours in the operation plan will have an adverse effect on the licensing objectives promoted by the authority.

4.4 Shops, stores, and supermarkets will be permitted to sell alcohol for consumption off the premises during the normal hours that they intend to open for shopping purposes. The licensing authority will not place a restriction or limitation on these opening hours unless there are good reasons for doing so. For example, a limitation may be deemed to be appropriate, following representations that a shop has become a known focus of disorder and disturbance.



5

Saturation and cumulative effect

5.1 It is recognised that when there are several licensed premises in the same area, this is likely to have a proportionally greater impact on the surrounding areas, often beyond the control of licence holders. Where the licensing authority considers areas are saturated with licensed premises, creating a significant cumulative effect, and that this is having an adverse impact upon the licensing objectives, the licensing authority will refuse to grant any further licences in that area except in exceptional circumstances. The applicant will be required to show that the grant of a further licence will not add to the existing problems, and detail what steps they have taken to ensure this in their operating plan.

5.2 In determining an application the licensing authority will have particular regard to its licensing objectives, and the cumulative effect and adverse impact that may arise from the saturation of premises in a particular area.

5.3 In determining whether or not to adopt a “saturation” policy for a particular area, the licensing authority may among other things:-

- Gather evidence or identification of serious and chronic concern from a responsible authority or local residents about nuisance and disorder
- Identify the area from which problems are arising and the boundaries of that area
- Make an assessment of the causes
- Adopt a policy about future applications for premises within that area

5.4 If the licensing authority decides to adopt a saturation policy in respect of any designated area it will inform current licence holders, and any new applicants, who may be affected by the policy.

6

Determination of applications

6.1 The licensing authority will return, as invalid, all notices or applications that are not submitted in accordance with the requirements of the act or regulations made under it, providing reasons for the decision taken.

6.2 The licensing authority will determine licensing applications after a full consideration of all the facts and individual merits of the case, having full regard to the licensing policy, the licensing act and any governmental guidance. In making any determination in respect of any application under the Licensing Act 2003 the licensing authority will act in accordance with the Human Rights Act 1998, having particular regard to

- Article 6 - in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal
- Article 8 - everyone has the right to respect for their home and private life;
- Article 1 - every person is entitled to the peaceful enjoyment of their possessions, including for example the possession of a licence.

6.3 Where applicable the licensing authority will provide full reasons to the applicants, and other interested parties or responsible authorities for a decision taken in respect of the grant, renewal, revocation, variation, transfer, or review of a licence or certificate.

6.4 There is a statutory right of appeal to the magistrates in respect of decisions made by the licensing authority when it determines licensing applications. Appeals in respect of personal licences must be made to the magistrates court in the area where the licence was issued. Appeals in relation to all other licences must be made to the magistrates court where the premises or event is situated.

7 Conditions

7.1 Where applicable the licensing authority may decide to impose conditions that it considers necessary and proportionate on a licence for the promotion of the licensing objectives.

7.2 In deciding whether or not to impose conditions on a licence the licensing authority will consider any relevant representations that may have been made by parties. Any conditions attached to licences and certificates will, where possible, be tailored to the individual style and characteristics of the premises and events concerned, and will relate to matters within the control of the licensee, the premises themselves, and the vicinity surrounding the premises.

7.3 The licensing authority will not impose conditions where other regulatory regimes provide sufficient protection to the public. Eg: Health and Safety at Work, Fire Safety Regulations etc.

7.4 Where it is decided to impose conditions upon a licence the licensing authority may choose to use appropriate conditions from the DCMS pool of conditions.

7.5 The licensing authority will endeavour where possible to discuss with all relevant parties to a licensing application any conditions it is considering prior to imposition.

7.6 Where conditions are attached to premises licences or club premises certificates, they will, so far as is possible, reflect and complement local crime prevention strategies.

7.7 Failure to comply with licensing authority conditions may amount to a criminal offence, punishable on conviction by a fine of up to £20,000 or 6 months imprisonment.



8

Representations and review of licences

8.1 In order to protect the community, and limit problems of crime and disorder, public safety, public nuisance or the protection of children from harm associated with licensed premises, the licensing authority will establish a sub-committee, in accordance with the relevant legislation and delegated powers of the council's constitution, to make determinations in respect of reviews of licences.

8.2 A review of a licence will follow the receipt of relevant representations from a responsible authority such as the police or the fire authority, or an interested party such as a resident living in the vicinity. Interested parties may also include a body representing persons living in that vicinity eg: residents' associations; a person involved in a business in the vicinity of the premises in question or a trade association.

8.3 Any of these groups may appoint a representative to make representations on their behalf, including a ward councillor. It will be expected that any councillor who is also a member of the licensing committee and who is making such representations on behalf of an interested party will disqualify him or herself from any involvement in the decision making process affecting the application in question.

8.4 Where possible the licensing authority will attempt to give licence holders early warning of any problems or concerns raised about the operation of licensed premises, and the need for improvement. It may be possible for an agreement to be reached between the licensing authority, the applicant and the relevant interested parties, or responsible authorities, in respect of relevant representations. The licensing authority will attempt to encourage a dialogue, and mediate between the relevant parties to achieve this, which may prevent the necessity for a hearing taking place.

8.5 In the first instance the licensing authority will decide whether or not any complaint or representation made by an interested party is irrelevant, vexatious, frivolous, or repetitious. This will be determined on the facts of each individual case, and should be supported by proper evidence. This decision will be taken by officers under the powers delegated to them.

8.6 The licensing authority will not permit more than one review originating from interested parties within a period of twelve months on similar grounds save in exceptional and compelling circumstances or where it arises from a closure order.

8.7 Where the licensing authority decides to hold a review of a licence, the hearing will follow regulations prescribed by the Secretary of State, or determined by the licensing committee. The licensing authority will ensure that all the parties to a review will receive a fair hearing. In particular the licence holder will be made fully aware of the allegations made in respect of his licence, and any evidence supporting the said allegations or representations in order that he or his legal representatives have the opportunity of rebutting such allegations.

8.8 Where a hearing is necessary it will be held within a reasonable period of time from when the representations were made, or in accordance with timescales laid down by statute, or regulations as prescribed by the Secretary of State.

8.9 On determining a review the licensing authority may choose to exercise a range of powers as permitted by the act as it considers proportionate and necessary for the promotion of the licensing objectives. In deciding which of these powers to invoke the licensing authority will so far as is possible seek to establish the cause or causes of the problem which has been substantiated on the evidence before them. The remedial action taken will be directed at those causes.

These powers include:

- i) Taking no action;
- ii) Issuing an informal written warning to the licence holder and/or recommending an improvement within a specified period of time;
- iii) Attaching conditions to the licence either temporarily for a period of up to three months or permanently;
- iv) Exclusion of a licensable activity from the scope of the licence, either temporarily for a period of up to three months or permanently;
- v) Removal of the designated premises supervisor;
- vi) Revocation of licence

8.10 Where no representations are received at a hearing, or are withdrawn, or agreement is reached prior to hearing, the licensing authority may determine the application, and only impose such conditions that will promote the licensing objectives, are consistent with the operating schedule, and/or are required by statute.

8.11 The council will provide an interpreter service as required at any review hearing.

8.12 The council will provide facilities for people with disabilities as required to ensure that they can attend review hearings.

8.13 The licensing authority will give comprehensive written reasons for any decision taken. On making finding of facts and giving reasons, the licensing authority will ensure that it addresses the standard and burden of proof that it has adopted. The reasons will also address the extent to which the decision has been made in accordance with the licensing authority's statement of policy. The written reasons will be provided to all relevant parties attending a review hearing, in accordance with the timescales provided by statute or regulation, or within a reasonable time taking into account the parties right to lodge an appeal with the magistrates court under Schedule 5 of the 2003 Act.

9

Personal licences

9.1 The licensing authority will grant a licence to an applicant provided that the application complies with the relevant statutory criteria set out in the act, and supporting regulations as issued by the Secretary of State.

9.2 An applicant for a personal licence must give a copy of the application to the chief officer of police for the licensing area, within 48 hours of making the application. The police may raise an objection to the application if they are satisfied, having regard to the applicant's conviction for any relevant offence or foreign offence, that the circumstances of the case are such that to grant a licence would undermine the licensing objectives as promoted by the licensing authority.

9.3 If the police raise an objection within 14 days of them receiving an application, the licensing authority will arrange a hearing to determine the said application.

9.4 If the police do not object to the grant of the licence the licensing authority must grant a personal licence if it appears that the applicant is:

- (a) 18 or over;
- (b) he or she possesses a licensing qualification or is a person of prescribed description
- (c) no personal licence held by him or her has been forfeited in the period of five years ending with the day the application was made, and
- (d) he or she has not been convicted of any foreign offence or relevant offence.

9.5 The personal licence holder must inform the licensing authority immediately if they are convicted of any relevant offence as defined by the act.

9.6 Where a personal licence holder is convicted by a court for a relevant offence, the court will advise the licensing authority accordingly. On receipt of such notification the licensing authority will contact the holder and request his or her licence so that necessary action can be taken. The holder must produce the licence to the licensing authority within 14 days. If the licence is declared forfeit it will be retained by the licensing authority.



10

Premises licence

10.1 The licensing authority will require that all applications for premises licences be in the form prescribed by the 2003 Act and supporting regulations as issued by the Secretary of State. In addition the licensing authority will expect that applicants will have had regard to any statutory guidance issued by the Secretary of State before issuing their application for a premises licence.

10.2 The operating schedule for the licensed premises will form a key element of all applications. It should be in the form prescribed by the statutory regulations and ideally include a general description of the style and character of the business to be conducted on the premises. It should also indicate the type of entertainment available on the premises, whether licensable under the 2003 Act or not. This will enable responsible authorities and interested parties to form a proper view as to what measures may be necessary at such premises to ensure the promotion of the licensing objectives. If dancing is to take place on the premises the operating plan should disclose the type of dancing that is to take place, and disclose whether or not this involves strip-tease or lap-dancing.

10.3 The operating schedule must also set out the following details:

- the relevant licensable activities to be conducted on the premises;
- the extent to which seating is available to patrons on the premises;
- the times during which it is proposed that the relevant licensable activities are to take place;
- any other times when the premises are to be open to the public;
- where the licence is required only for a limited period, that period;

- where the licensable activities include the supply of alcohol, the name and address of the individual to be specified as the designated premises supervisor;
- where the licensable activities include the supply of alcohol, whether the alcohol will be supplied for consumption on or off the premises or both;
- the steps which the applicant proposes to take to promote the licensing objectives.
- It will be important where applicable that operating schedules should be precise and clear about the measures, that it is proposed to take to promote the protection of children from harm.

10.4 The licensing authority will expect the applicant to have a good idea about the expectations of the licensing authority and those of the responsible authorities, concerning the steps that are necessary for the promotion of the licensing objectives. As a result it is advised that applicants work in partnership where possible with the licensing authority and responsible authorities prior to submitting their applications. In particular applicants should complete their own risk assessments, and seek the views of the key responsible authorities in relation to their application, addressing any issues that may arise from this consultation in the body of their application. Officers from the licensing authority will be prepared to discuss the content of draft operational plans with the applicant and/or their advisors prior to their formal submission. This will help to ensure that the operational plans properly address issues that are likely to be of concern to the licensing authority.

10.5 In relation to noise, the operating plan should reflect any assessment to minimise noise disturbance, both inside and outside the premises as patrons are leaving, and to implement the measures identified as being required to prevent nuisance to patrons, local residents and local businesses.

Such practical measures may include:

- (a) carrying out acoustic tests to ascertain whether or not there is sound escape;
- (b) keeping doors and windows closed and providing alternative ventilation;
- (c) reducing sound levels and installing a sound limiting device to prevent sound exceeding the appropriate level;
- (d) installing sound proofing measures to contain sound and vibration;
- (e) providing quieter areas for patrons;
- (f) in the case of beer gardens or similar outdoor areas, ensuring that amplified music is not relayed to such areas and that if it is these areas are properly screened;
- (g) at large venues formulating systems to avoid disturbance, for example monitoring queues outside the venue, and ensuring patrons queue away from residential areas;
- (h) erecting prominent notices at the exits to premises requesting customers to leave quietly and not slam car doors;
- (i) at appropriate times making announcements to the same effect;
- (j) instructing door staff to ask customers to leave quietly;
- (k) reducing the volume of music towards the end of the evening, and where appropriate playing quieter more soothing music as the evening winds down;

- (l) ensuring the availability of licensed taxis, private hire vehicles or public transport to take patrons from the premises;
- (m) banning people from premises who act in a manner that is likely to cause public disturbance or nuisance;
- (n) increasing outside lighting levels;
- (o) installing CCTV systems, and liaising with the police concerning video destruction;
- (p) where there is a private forecourt or outside area restricting its use after a certain time;
- (q) considering imposing an admission charge for entry after a certain time, for example 10.30 pm to discourage the large scale movement of patrons between premises, thus reducing the likelihood of noise disturbance to nearby residents

10.6 This list is not exhaustive, and reasonable measures that are taken will depend on the type of licensed premises for which an application is made.

10.7 The operating plan should also indicate the steps the applicant proposes to take to prevent crime and disorder. When addressing this objective in the operating plan the applicant should consider amongst other things the following steps:

- (a) use of CCTV both within and outside the premises
- (b) metal detection and search facilities
- (c) use of shatter-resistant glasses
- (d) recording of all incidents of nuisance or public disorder related to the premises and liaising with the police;
- (e) procedures for assessing the risk associated with promotions and events such as “happy hours”, and plans for minimising such risks

- (f) measures to prevent the use or supply of illegal drugs
- (g) employment of licensed SIA door supervisors and other appropriately trained staff
- (h) installation of non-retrievable bottle bins at exits and ensuring that patrons do not leave with bottles or glasses
- (i) participation in public watch schemes

10.8 The licensing authority, where necessary, will also expect the operating plan to include a risk assessment into the use of door staff, in terms of the actual need for the service, and the ratio of personnel to patrons based on the capacity of the premises.

10.9 As above, this list is not exhaustive and reasonable measures that are taken will depend upon the type of licensed premises for which an application is made.

10.10 If deemed necessary, the licensing authority will require a personal licensed holder or designated supervisor to be on the premises at all times when alcohol is being sold. However where the personal licence holder has authorised other members of staff to sell alcohol on his or her behalf the personal licence holder will still be responsible if the authorised person does not comply with the relevant legislation or guidance, or fails to promote the licensing objectives. It is important that the responsible authorities have an accessible point of contact with whom they may discuss any issues or problems that may arise from licensable activities offered on the premises.

10.11 Applicants will also be expected to have had regard to local crime prevention strategies, planning and transportation policies, tourism and cultural strategies in producing their operational plans. In particular this will include where applicable measures to prevent and clear up litter that may result as a consequence of the licensable activity.

10.12 The licensing authority is concerned that there should be reasonable facilities and access for people with disabilities. This should therefore be addressed in the operating plan. The Disability Discrimination Act 1995 comes into full effect in October 2004 and introduces measures to tackle discrimination encountered by people with disabilities in the areas of employment and access to goods, facilities and services. Holders of premises licences and club premises certificates will have to make reasonable adjustments to their premises to overcome any physical barriers to access to disabled persons. Where the licensing authority imposes conditions it will ensure as far as possible that those conditions themselves do not restrict access to people with disabilities.



11

Club premises certificate

11.1 In order for qualifying clubs to supply alcohol and provide other licensable activities on club premises, a club premises certificate is required. There is no requirement to specify a designated premises supervisor.

11.2 Club premises certificates will be issued to qualifying clubs formerly registered members clubs. To be eligible for a club premises certificate the club/organisation members must have joined together for a particular social, sporting or political purpose and then have combined to purchase alcohol in bulk as members of the organisation for supply to members and their guests. Qualifying conditions are specified in section 61 of the 2003 Act and the licensing authority must be satisfied that these conditions have been met.

11.3 The licensing authority will grant a licence to an applicant provided that the application complies with the relevant statutory criteria set out in the act, and supporting regulations as issued by the secretary of state.

11.4 The licensing authority will require the applicant to produce an operating schedule which should include the following

- the qualifying club activities to which the application relates;
- the proposed hours of those activities and any other times during which it is proposed that the premises are to be open to members;
- where the relevant club activities include the supply of alcohol, whether the supplies are for consumption on and/or off the premises;
- information to allow the licensing authority or any interested party to assess the steps taken by the applicant to promote the licensing objectives (eg: arrangements for door security to promote the prevention of crime and disorder).

11.5 Where a club intended to admit the general public to a regulated entertainment event then a premises licence or temporary events notice would be required.

11.6 If the applicant wishes to vary a club premises certificate, the licensing authority will require the application to be processed in the same manner as would be done for a premises licence.



12

Provisional statement

12.1 Applicants will need to apply for a provisional statement where premises are being constructed, extended, or substantially changed structurally.

12.2 The licensing authority will accept applications for provisional statements provided that:

- Copies of approved planning consents and copies of building regulation applications are provided
- Clear plans of the proposals exist including provision for disabled people
- An operating schedule is capable of being completed
- Measures have been taken to promote the licensing objectives
- The proposed hours of opening have been decided
- Views have been sought from the police

12.3 The licence will not become effective until the licensing authority stipulates the effective start date.

12.4 Applications for a provisional statement shall be dealt with in the same way as an application for a premises licence.

12.5 The applicant will be required to state the days and hours during which they wish to be authorised to carry on licensable activities. The licence will be determined on such terms unless, following the making of relevant representations, the licensing authority considers it necessary to reject the application or vary those terms for the purpose of the licensing objectives.

13

Racial equality

13.1 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 for the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial backgrounds.

13.2 When exercising its duties under the licensing act the licensing authority shall ensure that it acts in accordance with those duties referred to in the preceding paragraph, and will monitor the impact and effect of the policy on the promotion of race equality.

14

Drugs policies

14.1 In certain circumstances dependant upon information contained in the operating plan, and obtained from risk assessments conducted in respect of licensed premises, the licensing authority will expect that licensees of certain venues which offer alcohol and entertainment to provide and implement a written drugs policy. This should be included as part of the operational plan. The council will offer assistance to licensees in relation to this. The policy should comply with the Home Office Safer Clubbing Guidelines. The applicant should also seek views from the police and other relevant agencies, for example the drug action team prior to implementing the drugs policy.

15

Public safety

15.1 The licensing authority will expect the premises to be constructed and maintained to the highest possible standards of safety. It will expect the applicant to have addressed the requirements of health and safety at work legislation and fire safety legislation and where appropriate in accordance with advice offered by the technical standards published by the District Surveyors Association. In particular the licensing authority will require the applicant to comply with fire safety regulations in respect of upholstery, curtains, and other hanging materials.

15.2 The licensing authority will expect the operating plan to detail how the premises will be managed and maintained to ensure public safety at all times. The operating plan should also reflect the maximum capacity as determined by the Fire Authority. The applicant will also be expected to provide up to date electrical safety certificates.

15.3 The licensing authority will require a full risk assessment where the applicant proposes to use technical effects such as pyrotechnics, smoke machines, lasers or strobe lighting. Including proposals for advertising their use in advance. The use of such special effects will be subject to notification to the Fire Authority and subject to compliance with all guidance issued by the Fire Authority.

15.4 The licensing authority will not normally approve “foam parties” or the use of any similar substance given the dual risks of them restricting clear vision in relation to tripping hazards and also the danger of skin irritation to patrons and staff.

16 Planning

16.1 The licensing authority will not consider an application for a licence unless the applicant can demonstrate that the premises have either an appropriate (in terms of the activity and hours sought) planning consent, or an appropriate certificate of lawful use or development.

Exceptions may be made where the applicant can demonstrate compelling reasons why the application should be considered although the planning status has not been finalised.

16.2 The licensing committee and planning committee will keep each other advised of their actions to ensure that a licensing application will not be a re-run of the planning application, and will not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee.

16.3 Planning permission is usually required for the establishment of new premises and the change of use of premises. Planning permissions that are relevant to licensed premises include:

- a retail shop, licensed for the sale of liquor for example (A1);
- food and drink sold and consumed on the premises or where hot food is sold for consumption off the premises, including restaurants and bars (A3); and
- assembly and leisure uses, including cinemas, concerts and indoor/outdoor sports and recreation (D2)
- a hotel that has a restaurant or bar included in its authorised use (C1)

16.4 In general, all premises that apply for a licence must also have authorised planning permission and comply with all conditions of that planning permission, or be deemed permitted development pursuant to the General Permitted Development Order (1995). The council may not grant a new licence application, or variation of conditions, if the activity to be

authorised by the licence would constitute unlawful planning use, or if the hours of operation sought exceed those authorised by the planning permission.

16.5 Under the current use classes order, planning permission is generally required if the use of an existing premises changes use class. For example planning permission would be required for a change from a shop (A1) to a restaurant or bar (A3). When applying for planning permission, the council, as local planning authority, will consider the potential impact from the proposed use within the context of the local development plan and relevant government guidance. Planning permission is not required if the use of existing premises changes to a use within the same class. For example planning permission would not normally be required for a change from a restaurant (A3) to a bar (A3).

16.6 In circumstances where any restriction has been placed on the use of premises (through the imposition of planning conditions) prior to an application being made for a licence, certificate or provisional statement, consideration will be given to the extent to which the application meets the overall licensing objectives and the policies contained within this statement. Where necessary, conditions will be attached to a certificate, licence or provisional statement, in order to achieve the objectives of the policy. The granting of a licence, certificate or provisional statement will not override any requirement of the planning system. The licensing system will provide detailed control of operational matters, which are unlikely to be addressed through planning processes, however, there will be overlapping issues of interest such as disturbance, which will remain material considerations for planning purposes.



17

Tables and chairs outside premises

17.1 The placing of tables and chairs on the highway requires a pavement café licence to be issued by the licensing authority. In the case of tables and chairs on private land the licensing authority will expect the applicant to advise on arrangements as part of the operating plan, although no specific licence is required for this.

18

Protection of children

18.1 The licensing authority will act at all times in a manner to protect children from harm. This will include the protection of children from moral, psychological and physical harm, and will include the protection of children from early exposure to strong language and sexual expletives, for example in the context of film exhibitions or where adult entertainment is provided.

18.2 Although the licensing authority will not seek to limit the access of children to any premises as a matter of policy, it will review the issue of child protection in relation to every application it considers, and based on the individual merits of the application before it, may impose conditions to regulate the licensable activity to protect children.

18.3 Certain premises may be of particular concern to the licensing authority in relation to issues of child protection, for example where:

- entertainment or services of an adult sexual nature are commonly provided;
- where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;
- with a known association for drug dealing or misuse;
- where there is a strong element of gambling on the premises (but not for example, the simple presence of a small number of cash prize gaming machines);
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises;

18.4 Where such circumstances exist the licensing authority may impose a combination of the following conditions:

- limitations on the hours when children may be present;
- proof of age requirements for alcohol sales
- age limitations (below 18)
- limitations on the admission of children under certain ages depending upon the nature of certain activities;
- requirements for accompanying adults (including for example a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensing activities are taking place (eg: entertainment of a sexual nature).

18.5 Conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is necessary, this should remain a matter of discretion of the individual licensee, club, or person who has been given a temporary event notice

18.6 Applicants for licences must consider child protection issues in their application, and where relevant deal with these issues in their operating plans. They will be required to send details of their applications to Walsall area child protection committee who may make representations in respect of the application's impact upon the protection of children.

18.7 Where the exhibition of films is permitted the licensing authority will expect the age restrictions of the British Board of Film Classification (BBFC) in respect of films to be exhibited, to be complied with.



18.8 Where events draw large numbers of children who are unaccompanied by adults, the operating plan will need to specify the ratio of stewards to children. Where staff are responsible for supervising children it will be expected that those staff will have undergone the necessary checks through the Criminal Records Bureau. These checks should be entered into a register which should be kept on the premises at all times, and made available to the police or an authorised officer of the council on request.

18.9 Premises that sell alcohol should give due regard to the code of practice published by the Portman Group on the naming, packaging and promotion of alcoholic drinks, and the proof of age scheme. The code seeks to ensure that drinks are packaged and promoted in a socially responsible manner, and only to those who are 18 or older.

18.10 Where restrictions are imposed (whether by statute or the council) on the sale or supply of goods, or the provision of services, or the showing of films or other entertainment to children below a certain age, the applicant will be required to demonstrate that they have a system in place for verifying the age of children intended to be supplied with such goods services or entertainment. Training should be given to all persons who might be in a position to refuse such children.

18.11 In relation to specialist Film Festivals where it is desired to show films not classified by the BBFC the licensing authority will, provided adequate notice has been given, classify the films concerned. To achieve consistency and the protection of children the licensing authority will use the guidelines published by the BBFC.



19

Temporary event notices

19.1 No permission is required from the licensing authority in relation to temporary event notices. The licensing authority will promptly acknowledge receipt of a temporary event notice.

19.2 There are direct limitations on temporary event notices under the 2003 Act. These are:

The number of times a person (the “premises user”) may give a temporary event notice (50 times per year for a personal licence holder and 5 times per year for other people);

- The number of times a temporary event notice may be given in respect of any particular premises (12 times per calendar year);
- The length of time a temporary event notice may last for these purposes (96 hours);
- The maximum aggregate duration of the periods covered by temporary event notices at any individual premises (15 days); and
- The scale of the event in terms of the maximum number of people attending at any one time (less than 500)

19.3 In any other circumstances, a full premises licence or club premises certificate would be required for the period of the event involved.

19.4 A personal licence holder will be able to give a temporary event notice in relation to licensable activities, including the sale of alcohol at any premises up to 50 occasions in each year for up to four days on each occasion, subject to informing the licensing authority and the police for the area in which the event is to take place of relevant details which are:

- The licensable activities to take place at the event;
- The period during which it is proposed to use the premises for licensable activities;
- The times during the event period that the premises user proposes that the licensable activities shall take place;
- The maximum number of persons (being less than 500) which it is proposed should, during those times, be allowed on the premises at the same time;
- Where the licensable activities include the supply of alcohol, whether the supply is proposed to be for consumption on or off the premises, or both; and
- Any other matters prescribed by the secretary of state

19.5 On each occasion at least ten working days notice must be given. This is the minimum possible notice and the licensing authority would encourage notice givers to provide the earliest possible notice of events likely to take place.

19.6 The licensing authority cannot seek to attach any terms, limitations or restrictions on the licensable activities at such events other than those set down in the 2003 Act and subordinate legislation made under it. However, the licensing authority will endeavour where possible to provide local advice about proper respect for the concerns of local residents; of other legislation requirements regarding health and safety, noise pollution or the building of temporary structures; of other necessary permissions, for example, with regard to road closures or the use of pyrotechnics in public places; with regard to local bye-laws; and the need to prevent anti-social behaviour by those attending.

19.7 Notice givers will also need to be aware of relevant offences under licensing law including the laws governing the sales of alcohol to minors or to any person who is drunk, and of police powers to close down events with no notice on grounds of disorder, the likelihood of disorder or because of public nuisance, including noise emanating from the premises.

19.8 Where a notice is served, the licensing authority will check that the relevant limitations as set down in the 2003 Act have been observed. If they have not, the licensing authority will issue a counter notice to the notice giver.

19.9 If the police issue an objection notice to a temporary event, then, unless that objection notice is withdrawn, the licensing authority will hold a hearing to consider the notice in relation to the prevention of crime.

19.10 A temporary event notice will be treated as void unless there is a minimum of 24 hours between events notified by a premises user in respect of the same premises.

19.11 A notice will be treated as being from the same premises user if it is given by an associate which is defined by the 2003 Act as being:

- The spouse of that person;
- A child, parent, grandchild, grandparent, brother or sister of that person or their spouse; or
- An agent or employee of that person or their spouse.

A person living with another person as his or her husband or her husband or wife is treated for these purposes as his or her spouse.

20

Register of licensing application

20.1 The licensing authority will keep a register in the prescribed form containing:-

- (a) a record of each premises licence, club premises certificate and personal licence issued by it,
- (b) a record of each temporary event notice received by it,
- (c) matters mentioned in Schedule 3 of the 2003 Licensing Act
- (d) such other information that may be prescribed.

20.2 The licensing register will be available for inspection during office hours by any person without payment.

20.3 If requested to do so the licensing authority will supply any person with a copy of information contained in any entry, for which a fee will be charged.

20.4 This will assist people in making representations to the licensing authority.





21

Large scale and outdoor events

21.1 The council, in consultation with its Safety Advisory Group (SAG), intends to establish a protocol for large scale and outdoor events, which organisers will be recommended to adopt. Notwithstanding this the council will encourage organisers of such events to approach council officers at the earliest opportunity to discuss the arrangements for the licensed activities involved. This may include the production of a substantial operating schedule. The council will offer advice and assistance to organisers about its preparation through the Safety Advisory Group.

21.2 In producing operating schedules for such events the organisers should have regard to the following documents:

- The Event Safety Guide - A Guide to Health, Safety and Welfare at Music and similar events (HSE 1999) (The Purple Book) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 07176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (HMSO, 1997) (The Green Guide) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival Procession and Large Scale Performances published by the Independent Street Arts Network, obtainable through www.streetartnetwork.org/pages/publications.

22

Enforcement

22.1 The licensing authority intends to establish protocols with the police, and other enforcement agencies. The protocols will provide for the targeting of agreed problems and high risk premises which require greater attention, while providing a lighter touch in respect of low risk or well run premises.

22.2 The council will seek to work actively with the police, fire and any other relevant authority to enforce licensing legislation. It expects the police to share information about licensees and licensed premises under the Crime and Disorder Act 1998 and its common law powers, and to consult closely with the council when any enforcement action may be required.

22.3 In general, action will only be taken in accordance with agreed enforcement principles and in line with the council's own enforcement policy, which strives for consistency, transparency and proportionality.



23

Administration, exercise and delegation of functions

23.1 The 2003 Act provides that decisions and functions may be taken and carried out by licensing committees, licensing sub-committees, or in appropriate cases by officers supporting the licensing authority, under a scheme of delegations. The licensing authority will follow the scheme of delegations outlined in paragraph 3.63 of the guidance issued under section 182 of the Licensing Act 2003. The purpose of the scheme of delegations is to assist with the speedy determination of applications, in a cost effective and efficient manner.

23.2 A licensing sub-committee of three councillors will sit to hear applications where representations have been received from interested parties, and/or responsible authorities.

Proposed delegation of powers:

| Matter to be dealt with | Full committee | Sub committee | Officers |
|---|----------------|-----------------------------------|------------------------------------|
| Review of licensing statement of policy | All cases | | |
| Application for personal licence | | If a police objection | If no police objection made |
| Application for personal licence with unspent convictions | | All Cases | |
| Application for premises licence/club premises certificate | | If a relevant representation made | If no relevant representation made |
| Application for provisional statement | | If a relevant representation made | If no relevant representation made |
| Application to vary premises licence/club premises certificate | | If a relevant representation made | If no relevant 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 |
| Application 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 | |

24

Integration strategies and the avoidance of duplication

24.1 The licensing authority will endeavour to secure proper integration with local crime prevention, planning, transport, tourism and cultural strategies by consulting widely on the policy prior to publication.

24.2 In reviewing the wider impact of licensing policy, the council's licensing and safety committee may from time to time receive reports on the:-

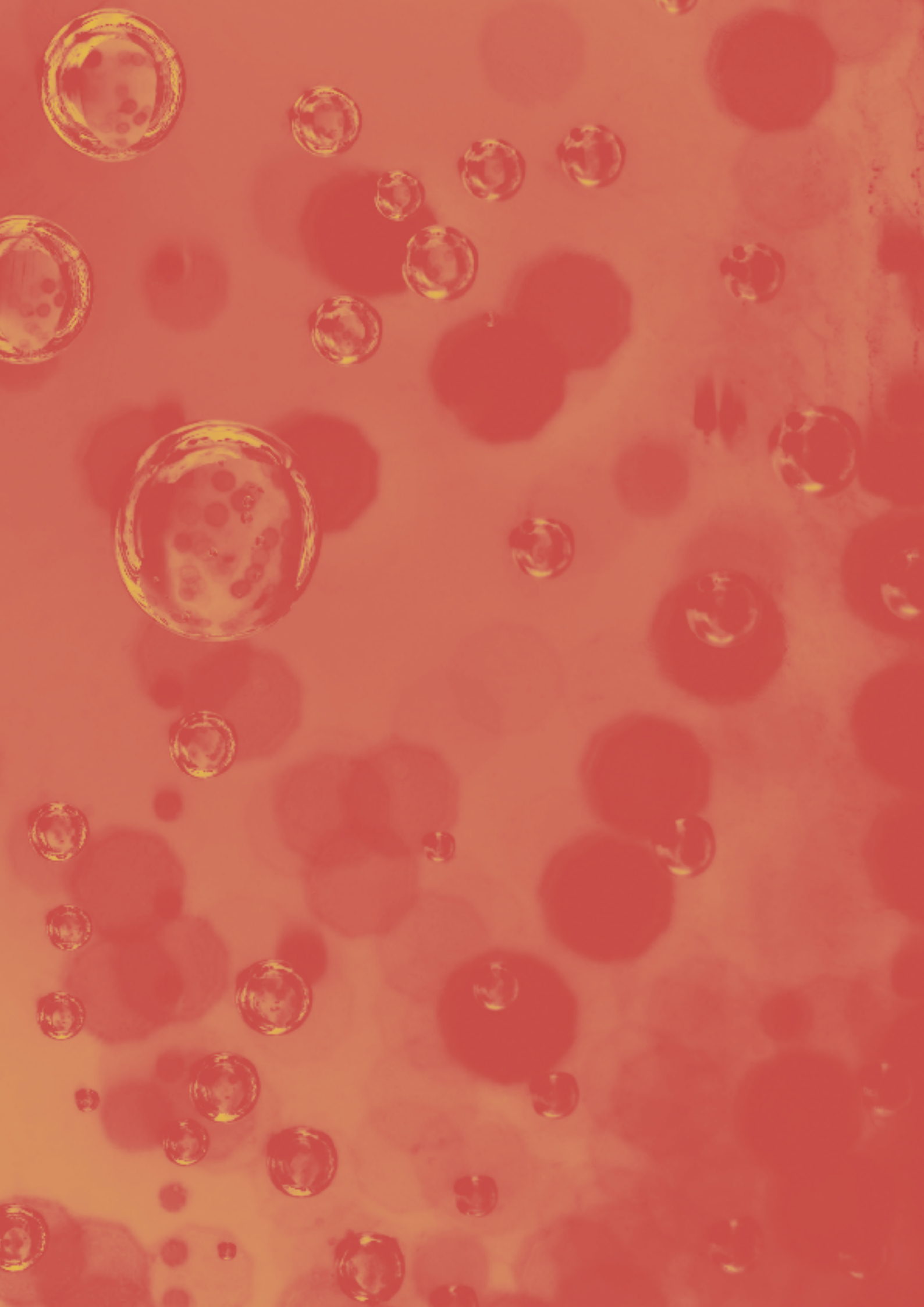
- (a) Needs of the local tourist economy
- (b) Cultural strategy for the area
- (c) Employment situation in the area and the need for new investment and employment where appropriate
- (d) Planning considerations which may affect licensed premises.
- (e) Transport

25

Transitional matters - applications

25.1 During the transition period, applications for grants of liquor licences, variations to existing justices licences or occasional licences that are to take effect before the end of the transition period, will continue to be made through the licensing justices. Likewise, applications for public entertainment, variations to public entertainment, cinemas, night café and theatre licences, will need to be made to Walsall Council as the licensing authority.

25.2 From 7 February 2005 (and before the second appointed day - probably 9 months later) applications can be made to the licensing authority for personal licences, premises licences and club premises certificates. On the second appointed day, all licences and certificates will be given full effect simultaneously as per the grandfather (see Definitions Appendix) provisions, unless there are police objections on the grounds of crime prevention. In which case, a hearing will be held by the local authority licensing committee, unless agreed unnecessary by the licence applicant and the police.



Appendix 1

Definitions

In this policy, the following definitions are included to provide an explanation of certain terms included in the act and therefore in the policy. In some cases they are an abbreviation of what is stated in the Licensing Act 2003 or an interpretation of those terms. For a full definition of the terms used, the reader must refer to the Licensing Act 2003.

‘Appointed days’

The dates when different provisions of the act come into force. On the first appointed day, applications can be made to local authorities for the new licences. On the second appointed day, the old law will cease to have effect. All the new licences will come into force and the responsibilities of the existing magistrates’ court licensing committees will end.

‘Appeals’

Appeals against decisions of the licensing authority are to the magistrates’ court for the area in which the premises are situated. The appeal must be lodged within 21 days of being notified of the council’s decision. On appeal a magistrates’ court may either; dismiss the appeal; substitute its own decision; remit the case to the licensing authority with directions; or, make an order for costs.

‘Authorised persons’

“Authorised persons” are specified people who have statutory duties in relation to the inspection of premises, e.g. licensing officers, police, fire, health and safety or, environmental health.

‘Interested parties’

“Interested Parties are persons living in the vicinity of the premises; a body representing such persons; a person involved in business in the vicinity; or a body representing businesses in the vicinity.

‘Responsible authorities’

“Responsible authorities” include the police, fire, enforcing authority for health and safety, planning authority, environmental health, bodies responsible for child protection and other specified authorities. Only these groups and interested parties can make representations about an application for a premises licence.

‘Closure order’

New powers for the police and courts to close premises. The 2003 Act significantly extends the existing powers of the police to see court orders in a geographical area that is experiencing or likely to experience disorder or to close down instantly individual licensed premises that are disorderly, likely to become disorderly or are causing noise nuisance.

‘Club premises certificate’

A certificate which licenses a qualifying club for the sale/supply of alcohol. It can be granted to members’ clubs which comply with specific conditions e.g. membership rules, run by club committees, profits go to members not an owner etc. Club premises certificates replace registration under the Licensing Act 1964. The law for members’ clubs has changed relatively little under the 2003 Act. There is no time limit on the duration of the certificate but it may be withdrawn, surrendered or suspended.

‘Conditions’

A premises licence may be granted subject to different conditions, and these may be in respect of different parts of the premises and different licensable activities. There is no power to impose conditions on a personal licence. The Secretary of State’s guidance provides “The only conditions which should be imposed on a premises licence or club premises certificate are those which are necessary for the promotion of the licensing objectives. Accordingly, if the existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary

to impose the same or similar duties on the premises licence holder". Conditions must be proportional and tailored to size, style, characteristics and activities taking place at the premises concerned.

'Designated premises supervisor'

The person in the case of premises selling alcohol, who will normally have been given the day to day responsibility for running the premises by the holder of the premises licence or will be the premises licence holder themselves (who must also be a personal licence holder).

'Grandfather rights'

The term used to describe the transitional provisions contained in the 2003 Act by which applicants for premises and personal licences who are already licensed are entitled to be granted new licences authorising the same activities and with the same restrictions and conditions as they have already.

'Interim authority notices'

Where a premises licence lapses due to the death, incapacity or insolvency of the holder, specified persons can within 7 days serve an interim authority notice on the licensing authority. This revives the licence, subject to police objection, for a period of up to 2 months so the premises can continue trading. This is the equivalent to "interim authorities" and "protection orders" under the Licensing Act 1964.

'International airports and international ports'

Premises licences can be issued to the above in areas where the non-travelling public have access. Areas the non-travelling public are not allowed known as airside or wharveside are not licensable under the 2003 Act.

'Late night refreshment'

The supply of hot food and/or drink to the public (whether for consumption on or off the premises) between the hours of 11.00 pm and 5.00 am.

'Licensable activities'

- The sale by retail of alcohol.
- The supply of alcohol by or on behalf of a club, or to the order of a member of the club.
- The provision of regulated entertainment.
- The provision of late night refreshment.

'Licensing authority'

Walsall Council

'Licensing objectives'

The objectives of licensing set out in the act:

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

The licensing authority must carry out its functions under the act with a view to promoting the licensing objectives.

'Licensed premises'

Includes club premises and events unless the context otherwise requires.

'Mandatory conditions'

Conditions that the act requires are imposed on a premises licence, club premises certificate or personal licence.

'Objection notice'

A procedure whereby the police can object to the grant of a personal licence on the grounds that, having regard to convictions of the applicant for relevant offences, the grant would undermine the crime prevention objective.

‘Operating schedule’

A document containing a statement of the following matters (and any others that may be prescribed):-

- Steps taken by the licence holder to promote the four licensing objectives.
- The licensable activities to be conducted on the premises.
- The times during which the licensable activities are to take place and any other times when premises are open to the public.
- Where the licence is required only for a limited period, that period.
- Where the licensable activities include the supply of alcohol, the name and address of the individual to be specified as the designated premises supervisor.

‘Personal licence’

A licence granted to an individual, and authorises that person to supply alcohol or authorise the supply of alcohol in accordance with a premises licence. The licence lasts for 10 years and can be renewed. It ceases to have effect when revoked, forfeited, surrendered or suspended. A personal licence is not required where the premises concerned do not supply alcohol as one of its licensable activities. A personal licence is also not required for the supply of alcohol in a club which holds a club premises certificate. Only the police can object to the grant of a personal licence (there is no equivalent to relevant representations as for premises licences).

‘Premises licence’

A licence granted in respect of any premises, which authorises the premises to be used for one or more licensable activities, has effect until revoked, surrendered or on the death, insolvency etc of the holder. Applications are dealt with by the local authority licensing committee in the area where the premises are situated.

‘Provisional statement’

A procedure by which the licensing authority can give a statement approving for licensing purposes proposals for a premises being built or in the course of being constructed. Equivalent to a “provisional grant” under the Licensing Act 1964. Where a provisional statement is made, subject to limited exceptions, the full licence must normally be granted once the premises are completed.

‘Qualifying club’

Club premises certificates will be issued to qualifying clubs formerly registered members clubs. To be eligible for a club premises certificate, the club/organisation members must have joined together for a particular social, sporting or political purpose and then have combined to purchase alcohol in bulk as members of the organisation for supply to members and their guests. Qualifying conditions are specified in Section 61 of the act and the council must be satisfied that these conditions have been met, including evidence to support that the club is non-profit making and that there is a minimum of 48 hours delay between application and acceptance of new members. The club must be established and conducted in ‘good faith’ (this involves consideration of details such as club finances).

‘Regulated entertainment’

- A performance of a film.
- An exhibition of a film.
- An indoor sporting event.
- A boxing or wrestling entertainment.
- A performance of live music.
- Any playing of recorded music.
- A performance of dance.
- Entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance.
- (or entertainment of a similar description falling within the last three of the categories listed above), where the entertainment takes place in the presence of and for the purposes of entertaining that audience or spectators.

‘Relevant offences’

The 2003 Act does not use the term “objections”. Instead authorised persons, interested parties and responsible authorities may be able to make relevant representations about an application for a licence.

Representations must relate to the licensing objectives and where made by an interested party must not be frivolous or vexatious. When considering an application from an interested party or responsible authority the local authority need only consider relevant representations. The making of relevant representations engages the licensing authorities discretion to take “steps” consistent with the licensing objectives when considering the application.

‘Review of licence’

Where a premises licence is in force an interested party or responsible authority may apply to the council for it to be reviewed. The council must hold a hearing to review the licence and as a result must take any necessary steps to promote the licensing objectives, such as modification of conditions; exclusion of licensable activities; removal of the premises supervisor; suspension of the licence for up to three months; or the revocation of the licence.

‘Responsible authority’

- The Chief Officer of Police in the area where the premises are situated.
- The Fire Authority in the area where the premises are situated.
- The enforcing authority for Health and Safety at Work.
- The local Planning Authority.
- The local authority responsible for minimising or preventing the risk of pollution of the environment or of harm to human health.
- The body representing matters relating to the protection of children from harm.
- In relation to a vessel, a navigation authority, the Environment Agency, or the British Waterways Board.

‘Statement of licensing policy’

Each licensing authority must every three years determine and publish a statement of licensing policy. There is a requirement to consult on the policy and keep it under review.

‘Supervisor’

Responsible for supervision of the premises e.g. the day-to-day manager. Any premises where alcohol is supplied as a licensable activity must have a designated premises supervisor.

‘Temporary event notice’

A permitted temporary activity involving one or more licensable activities subject to the following various conditions and limitations:-

- Duration - they are limited to events lasting for up to 96 hours.
- Scale - they cannot involve the presence of more than 499 people at any one time.
- Use of the same premises - the same premises cannot be used on more than 12 occasions in a calendar year, but are subject to the overall aggregate of 15 days irrespective of the number of occasions on which they have been used.
- The number of notices given by one individual within a given period of time - a personal licence holder is limited to 50 notices in one year, and any other person to five notices in a similar period.
- (If these conditions are not fulfilled, the temporary event would require a premises licence if it were currently unlicensed for the activity involved).

‘Transfer’

A procedure where an application can be made to transfer the premises licence into a new name e.g. if a premises licence holder sells his premises an application may be made to transfer the premises licence to the new owner.

Appendix 2

Policy consultation & review

This policy will come into effect on the first appointed day and will remain in force for not more than 3 years, during that time it will be subject to periodic review and further consultation.

In developing this policy the council will consult widely to ascertain an appropriate licensing framework for its area. The bodies consulted have included those specified in Section 3 of the government guidance:

- The police
- The fire authority
- Current licence holders
- Representatives of the local licensing trade
- Representatives of local businesses and residents

In addition to statutory consultees the council will consult:

- Licensing solicitors
- Walsall Primary Care Trust
- West Midlands Passenger Transport Executive
- Walsall area child protection committee
- Walsall social services
- Walsall crime reduction partnership
- Walsall magistrates court

Appendix 3

Further information

Further information about the Licensing Act 2003 and the council's licensing policy can be obtained from:

Mrs. B. Smith
Licensing unit, Walsall Council,
Civic Centre, Darwall Street, Walsall
West Midlands WS1 1JR

Telephone: 01922-653583
Fax: 01922-653235
Email: brookes@walsall.gov.uk

Information is also available from:

Department for Media, Culture and Sport
2-4 Cockspur Street, London SW1Y 5DH

Telephone: 020-7211-6200
Email: enquiries@culture.gov.uk
Website: www.culture.gov.uk

The local government licensing forum

Website: www.lglf.org

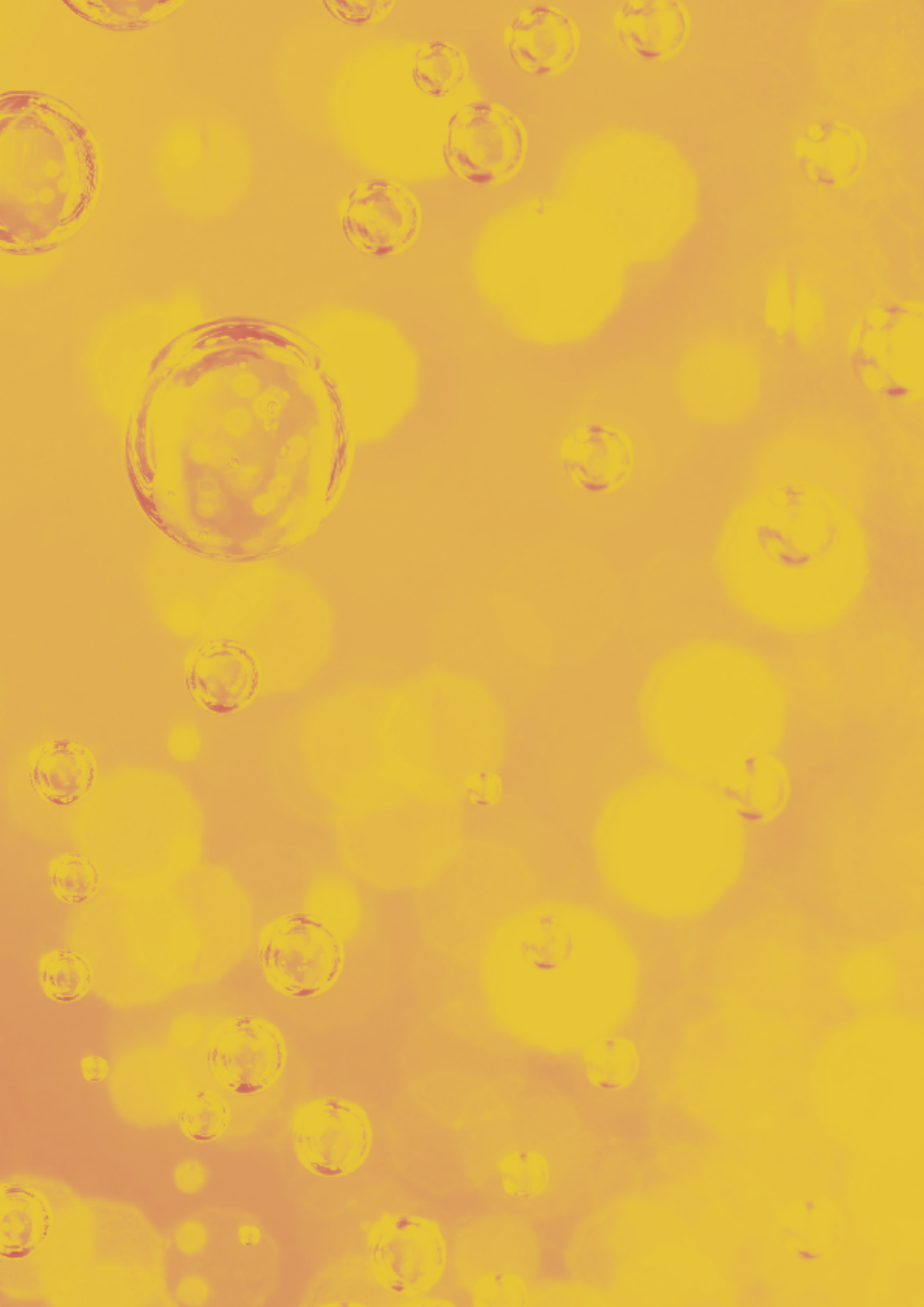
Security Industry Authority

Website: www.the-sia.org.uk

British Institute of Innkeeping

Website: www.bii.org

The draft statement of licensing policy is also available for inspection and comments on the council's website: www.walsall.gov.uk



Selling Alcohol? Providing Entertainment? Or Just Interested?

The New Licensing Policy - What You Need To Know!

Consultation On Draft Statement of Licensing Policy - Guidance Notes

The Licensing Bill obtained Royal Assent on the 10th July 2003, and is now the Licensing Act 2003. The Act transferred responsibility for licensing from Magistrates Courts to local authorities, as a result Walsall council will become the licensing authority for the borough. Transition to the new licensing arrangements will start on 7th February 2005, with the end of the transition period likely to be around November 2005. The Act aims to encourage a more continental style of drinking in which people drink in a more relaxed manner, and reduce crime and disorder, and nuisance.

Before carrying out any licensing functions under the Act, the council must determine and publish its licensing policy. Under the legislation the council must consult on the policy before it is published.

The council must consult with West Midlands Police; West Midlands Fire Service; persons/bodies who represent local holders of premises licences; representatives of local holders of club premises certificates; representatives of local holders of personal licences; and representatives of businesses and residents in the area.

As the significant changes to licensing may potentially affect everyone in the borough, the council will be looking to consult wider than the listed statutory consultees. The document will be of particular relevance to all current licence holders.

All views and comments received by the council will be considered carefully when the policy is finally determined.

The consultation period will start on the 13th September 2004 and conclude on the 29th October 2004.

The draft statement of licensing policy has been prepared in accordance with the formal guidance of the Secretary of State, and the statutory provisions under the Act. The draft policy sets out how the council expects applications to be made, and the principles by which it will consider representations on applications for licences and certificates, or, applications for review of existing authorisations from responsible authorities or interested parties.

The principle objectives under the Act in determining licensing applications are:

- The prevention of unreasonable public nuisance
- The prevention of crime and disorder
- Ensuring public safety
- Protection of children from harm.

The council will have to strike a balance between potentially conflicting interests and issues, in determining all applications.

Some of the key changes contained in the Act include:

- Flexible opening hours for premises, with the potential for up to 24 hour opening, seven days a week, subject to consideration of the impact on local residents, businesses and expert opinion of a range of authorities in relation to the licensing objectives.
- A single premises licence, which can permit premises to be used to supply alcohol; provide regulated entertainment; and to provide refreshment late at night. This will consolidate six existing licence regimes.
- A new system of personal licences which will enable holders to move freely between premises where a premises licence is in force.

People may for example have concerns about the potential impact that later opening hours will have on crime, nuisance and anti-social behaviour, or the concentration or increase of licensed premises in particular areas.

Walsall council think it is important to have your views, and would ask you to contact the council's licensing unit in writing before the 29th October 2004 in the following ways regarding the draft policy:

Post: Mrs. B. Smith, Licensing Unit, Civic Centre, Darwall Street, Walsall, West Midlands, WS1 1JR

Email: brookes@walsall.gov.uk

If you do not have a copy of the policy you can access and download a copy from www.walsall.gov.uk. In addition to this you can download a copy of the consultation response form and a copy of the monitoring form from the website, or you can complete and submit these forms online.

The council will consider all comments received and will aim to publish the final policy by January 2005.

Mr. R. Williams
Head of Corporate Services
Walsall Metropolitan Borough Council
Tel: 01922 652003

Licensing Consultation

Monitoring Form

Walsall Metropolitan Borough Council is committed to achieving equality of opportunity as an employer and as a service provider to people who live and work in the borough. By monitoring its services and activities the council can identify and address issues of inequality and discrimination in the provision of services and in employment. Any information contained on the monitoring form will be kept strictly confidential and retained in accordance with the Data Protection Act. Access to the information contained on the monitoring form will be restricted to those persons who require it for monitoring purposes.

Gender-

☐ Male

☐ Female

Ethnicity

Please state your ethnicity

Asian

☐ Bangladeshi

☐ Pakistani

☐ Indian

☐ Chinese

☐ Vietnamese

☐ Other Asian background

(Please specify)

Black

☐ Caribbean

African

☐ Somali

☐ Other African

☐ Other Black background

(Please specify)

White

☐ English

☐ Scottish

☐ Welsh

☐ Irish

☐ Other White background

(Please specify).....

Mixed /Dual Heritage

☐ White & Black Caribbean

☐ White & Asian

☐ White & Black African

☐ Other Mixed background

(Please specify).....

Other

Any other ethnic background

(Please specify).....

Disability

Do you consider yourself to be disabled?

☐ YES

☐ NO

Are You Responding As

☐ Local Resident

☐ Business

☐ Community Organisation

☐ Residents Organisation

☐ Representative Business Organisation

(Please specify).....

Walsall Metropolitan Borough Council
Consultation Response Document (Draft Statement of Licensing Policy)

Ref Number: for official use only

Name

Organisation (if applicable)

Address

.....

.....

Telephone e-mail

Paragraph No Please photocopy if more sheets are needed. Any supporting documents should be attached.

Q1. Was the document clear and understandable? Yes ☐ No ☐

If no please comment on areas for improvement

.....

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.....

Q2. Please comment below generally on the draft policy identifying any areas of concern you may have, or any improvements or addition you feel should be considered.

Comments

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Comments

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Comments

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Comments

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Comments

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Walsall Metropolitan Borough Council
Civic Centre,
Darwall Street,
Walsall WS1 1TP
Telephone: 01922 650000
Fax: 01922 616387