



Licensing Act 2003

Draft Statement of Licensing Policy.

Consultation Period: ???

2020



Walsall Council

Version: 1.1

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Version	Effective Date	Reason	Summary
1.1	01/01/2021	5 Year Review	Update Policy to include changes to legislation, changes to Cumulative Impact Policy following CIA

IMPORTANT NOTE

Where this policy refers to information, legislation, policy or guidance produced by other governing bodies or regulatory agencies, please note that the requirement detailed within this this policy will be subject to any amendments thereof.

Walsall Metropolitan Borough Council

Draft Statement of Licensing Policy

1 Introduction

- 1.1 Section 5 of the Licensing Act 2003 requires each Licensing Authority to publish a Statement of its Licensing Policy at least every five years. During the five-year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met.
- 1.2 This document is Walsall Council's (Walsall MBC) Statement of Licensing Policy, which will come into force on once members have approved the consulted version. The policy will be updated and modified as and when the Council considers appropriate.
- 1.3 Walsall MBC is located in the West Midlands; an area comprising seven Metropolitan Councils in total. The Walsall Council covers 40.2 square miles of which 24.83 square miles are predominantly urban development. With an estimated population of 293,378 (2018) it is the fourth largest area in the County, in terms of population.
- 1.4 The towns of Willenhall and Darlaston, to the west of the M6, contrast with the eastern parts of the borough, which are more residential and, in parts, agricultural in character. Traditional and growth industries are spread throughout the borough. Walsall benefits from its position at the cross-roads of the motorway network and communications have been improved further by the M6 Toll Road.
- 1.5 Birmingham airport and the Genting Arena Complex are within easy reach and frequent trains to Birmingham provide links to the national network. Regeneration projects focussing on Walsall town centre, local centres, the wider borough, and key transport corridors continue to transform the borough's new economic well-being.
- 1.6 Through its statement of licensing policy, the Licensing Authority strives to sustain core values of Honesty and Integrity, Fairness and Equality, Value for Money, Innovation and Collaboration and Listening and Responding.

2 Licensing Act 2003

- 2.1 This Licensing Statement of Policy is intended to meet Walsall Councils obligations under Section 5 of the Licensing Act 2003 (“the Act”).
- 2.2 The Licensing Authority (“the Authority”) will carry out the licensing functions of Walsall MBC with a view to promoting the four licensing objectives contained in the Act. These are –
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 2.3 Each objective is treated as having equal importance.

3 Scope of the Policy

- 3.1 Section 5 of the Act requires a Licensing Authority to prepare and publish a statement of its licensing policy at least every five years.
- 3.2 The revised statement of licensing policy will take effect from the following consultation and approval by members.
- 3.3 The policy will be reviewed at appropriate intervals and Walsall Council will make such revisions to the policy as it considers appropriate. Where revisions to the policy are made they will be in accordance with statutory requirements and, following any amendment, a statement of such revisions, or a revised licensing policy statement will be published.
- 3.4 The main purpose of this policy is to provide clarity to applicants, interested parties, and Responsible Authorities, in relation to how Walsall Council will determine applications for the supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment. It will also provide a basis for all licensing decisions taken by Walsall Council and will inform Councillors of the parameters within which licensing decisions should be made.
- 3.5 In carrying out its functions, the Authority will not only have regard to this policy but also any guidance issued from time to time by the Home Office under Section 182 of the Act (referred to as ‘the guidance’,)
- 3.6 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation

concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.

- 3.7 However, licence holders are expected to take all reasonable steps to prevent the occurrence of crime and disorder and public nuisance in the immediate vicinity of their premises.
- 3.8 Licensing will be one of the key contributory factors in the overall management of the evening and night time economy, particularly in relation to town centres and other 'high risk' areas, working in partnership with the police and other responsible authorities.
- 3.9 In relation to the prevention of crime and disorder, Walsall Council recognises its duty under Section 17 of the Crime and Disorder Act 1998. It will continue to work in partnership with the police, responsible authorities defined in the Act, local businesses, local people and other interested parties, in the promotion of all the licensing objectives.

Licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act; and conditions attached to various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations, i.e. the premises and its vicinity.

- 3.10 In conducting the review of its policy statement, Walsall Council will consult in accordance with the statutory provisions of the Act and will also seek to integrate these requirements with local policies for crime prevention, community safety, planning, transport, tourism and child protection procedures.
- 3.11 This policy acknowledges the importance of the role of partnership working, with the police, local businesses, performers and local people, in how the Council fulfils its licensing responsibilities.
- 3.12 In regulating licensable activities, the aim of the Walsall Council licensing process is to promote well-managed premises, where licence holders are aware of, and sensitive to, the impact of their premises on local residents. Walsall Council wishes to encourage licensees to provide a wide range of entertainment activities during their opening hours, promoting the provision of live music, dance, theatre etc., for wider cultural benefit. These activities are considered to be key factors in maintaining a thriving and sustainable community. A fair balance will be struck between promoting the provision of entertainment and addressing concerns relevant to the licensing objectives. Walsall Council is conscious that licensing policy may inadvertently deter live music by imposing indirect costs of a disproportionate nature, for example a blanket policy that any pub providing live music entertainment must have door supervisors.

3.13 Walsall Council has a duty to protect the amenity of the borough, which is a mixed commercial and residential area. The Authority wishes to promote safer and stronger communities, ensuring all persons are as safe and secure as possible. Where an application is likely to increase the concentration of entertainment uses and/or lengthen hours of operation in a way that would materially impact on the local area, these factors will be taken into account.

3.14 This policy statement sets out the general approach the council will take when fulfilling its responsibility in determining applications made under the Licensing Act 2003. It will observe the right of any individual to apply for a variety of permissions and to have each application considered on its own merits. It will transparently protect the right, where provided in the Act, of any 'other person' to make representations in support or in opposition to an application, or to seek a review of licence where provision has been made for them to do so.

3.15 The policy relates to all 'licensable activities' as defined by the Act, namely:-

- the retail sale of alcohol.
- the supply of alcohol to club members.
- the provision of 'regulated entertainment' – to the public, to club members or with a view to profit including the following:
 - the performance of a play.
 - the exhibition of a film.
 - any indoor sporting event.
 - the provision of boxing or wrestling entertainment.
 - a performance of live music.
 - any playing of recorded music.
 - a performance of dance.
 - entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance.
- the supply of hot food and/or hot drink from any premises between 11pm and 5am.

3.16 Each application for the grant, variation or review of a licence will be considered and determined on its individual merits. When making a decision, Walsall Council will operate in accordance with this licensing policy and the statutory guidance; however, if the Authority considers it appropriate to depart from either of those, full reasons will be provided as to why the departure was necessary, appropriate and justified.

3.17 In addition, the Act also regulates:

- The licensing of individuals for the sale or supply of alcohol ('Personal Licences');
- The authorisation of certain licensable activities on a temporary basis ('Temporary Event Notices').

4 Duplication

4.1 Walsall Council recognises that the licensing process should not duplicate powers, provisions, or restrictions enshrined in other primary legislation. Therefore, in so far as possible, it will avoid duplication of this kind. Legislation that may be relevant is set out below:

- The Gambling Act 2005
- The Environmental Protection Act 1990
- The Noise Act 1996
- Anti-Social Behaviour, Crime & Policing Act 2014
- The Regulatory Reform (Fire Safety) Order 2005
- Health and Safety (First-Aid) Regulations 1981
- The Equality Act 2010

Walsall Council is committed to avoiding attaching conditions that duplicate other regulatory regimes as far as possible as set out in Chapter 10 of the s182 Guidance in force when this statement was made.

5 Partnership Working and Integrating Strategies

5.1 Walsall Council acknowledges the importance of integrating its policies with local crime prevention strategies, as well as public health, planning, transport, tourism, equality schemes and cultural strategies.

5.2 The Government recommends that licensing authorities should establish and set out joint enforcement protocols with the local police and the other authorities and describe them in their statement of policy. This will clarify the division of responsibilities for licence holders and applicants, and assists enforcement and other authorities to deploy resources more efficiently.

5.3 In particular, these protocols should also provide for the targeting of agreed problem and high-risk premises which require greater attention, while providing a lighter touch for low risk premises or those that are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment

house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. Principles of risk assessment and targeted inspection (in line with the Regulators' Code) should prevail and, for example, inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are used efficiently and for example, are more effectively concentrated on problem premises. Licensing authorities should also remind operators of licensed premises that it is incumbent on them to provide appropriate training for their staff to ensure the promotion the licensing objectives.

While many strategies may not appear directly related to the promotion of the licensing objectives, they may affect them and therefore such strategies are important for the Authority to consider

The Need for Licensed Premises

- 5.4 There can be confusion about the difference between the "need" for premises and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel and is a matter for the planning authority and for the market. This is not a matter for a licensing authority.

6 Licensing Process

- 6.1 Walsall Council's licensing responsibilities are executed by the Licensing and Safety Committee, supported by licensing sub-committees, and by one or more officers acting under delegated authority. Please see the delegations set out at Part 26.
- 6.2 Where applications are not contentious, the licensing functions will be largely administrative. In the interests of efficiency and effectiveness these will, for the most part be carried out by officers. As part of the application process, applicants are expected to address each of the licensing objectives in their operational schedules having regard to the type of premises, the licensable activities to be provided, the operational procedures, the nature of the location and the needs of the local community
- 6.3 If a lawful application for a premises licence or club premises certificate is received, and no relevant representations are submitted by responsible authorities or other persons, the Licensing Authority must grant the application, subject only to conditions that are consistent with the operating schedule and any relevant mandatory conditions.

- 6.4 When setting out the steps they propose to take to promote the licensing objectives, applicants are also encouraged to make themselves aware of, and be able to demonstrate that they understand the layout of the local area. This should include the physical environment and any relevant planning and transportation policies, tourism and cultural strategies or local crime prevention strategies, which may help to mitigate potential risks.
- 6.5 Any responsible authority, and/or any other person, may make representations to the Licensing Authority in relation to any application for the grant, variation, minor variation or review of premises licences and club premises certificates; the grant of a provisional statement. This right is not dependent upon their geographic proximity to the premises.
- 6.6 'Other person' is defined as any individual, body or business including a member of the relevant Licensing Authority.
- 6.7 Representations are not limited to objections, but may also be made in support of an application. However, a representation expressing support for an application will be subject to the same criteria under the Licensing Act.
- 6.8 Ordinarily, representations are invalid if they are made anonymously. However, if a person believes there are exceptional circumstances relating to the disclosure of their identity, they are advised to contact the Licensing Service for advice.
- 6.9 The Licensing and Safety Sub-Committee will determine any application for the grant of a new premises licence, where a relevant representation(s) objecting to the grant of the licence is received, and all applications for the review of a premises licence.
- 6.10 In accordance with the guidance, a representation is 'relevant' if it relates to the likely effect of the grant or variation of the licence on the promotion of at least one of the licensing objectives.
- 6.11 The outcome of any hearing before a Licensing and Safety Sub-Committee will be delivered to all parties verbally at the hearing and in writing as soon as practicable thereafter.
- 6.12 The Act requires the Authority to suspend a premises licence or club premises certificate if the annual fee remains unpaid by the due date (i.e. on or by, the anniversary of grant of the original licence). The Act provides a grace period of 21 days in cases where the non-payment is due to an administrative error or where there is a dispute over liability for the fee, after which the licence/certificate will be suspended.
- 6.13 The Authority is required to give a minimum 2 days' notice of the suspension of the licence/certificate, if payment is not made, however Walsall Council considers that 7 days' notice is more appropriate.

7 Review of Licences

7.1 Walsall Council may refuse to review licences if it considers

- a) that the representations are not relevant to any of the licensing objectives; or
- b) in the case of a representation made by any other person, that the representation is frivolous, vexatious or a repeat of a representation already made at the time of the licence application or previous application for review.

7.2 Anyone may appoint a representative to make representations on their behalf, including a ward councillor. However, 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 another person will disqualify him or herself from any involvement in the decision making process affecting the application in question.

7.3 As elected members, and regardless of whether they live or run a business in the vicinity of those premises, Councillors may also apply for the review or submit representations in their own right if they have concerns about any premises.

7.4 Where possible though, Walsall Council 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 authority, the licence holder, the relevant responsible authorities, or other persons, in respect of relevant representations.

7.5 Walsall Council will attempt to encourage a dialogue, and mediate between the relevant parties if necessary, to achieve a satisfactory solution without the need for a review of the premises licence.

7.6 In the first instance Walsall Council will decide whether any complaint or representation is relevant, vexatious, frivolous, or repetitious. This will be determined on the facts of each individual case and should be supported by evidence. This decision will be taken by officers under delegated powers.

7.7 Walsall Council will not allow more than one application for the review of any premises licence, originating from other persons, within a period of twelve months on similar grounds, save in exceptional and compelling circumstances or where it arises from a closure order.

7.8 Where Walsall Council conducts a review of a premises licence, the hearing will follow the process prescribed in the regulations. The 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 their licence, and any evidence supporting the allegations or representations, in order that they or their legal representatives have the opportunity of robustly answering allegations and defending their premises licence.

7.9 When determining a review application, the Act provides a wide range of powers when considering what action may be proportionate and necessary for the promotion of the licensing objectives.

7.10 In deciding which of these powers to invoke, wherever possible, Walsall Council will seek to establish the cause or causes of the problem, substantiated by the evidence before them. Remedial action may then be directed at identified causes.

The options available to the Sub-Committee include:

- Taking no action;
- Issuing an informal written warning to the licence holder and/or recommending an improvement within a specified period of time;
- Attaching conditions to the licence either temporarily, for a period of up to three months or permanently;
- The exclusion of a licensable activity from the scope of the licence, either temporarily, for a period of up to three months or permanently;
- The removal of the designated premises supervisor if applicable;
- The revocation of licence

7.11 Where representations are received and subsequently withdrawn, or agreement is reached prior to hearing (by all parties concerned), Walsall Council 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.

7.12 Walsall Council will give comprehensive written reasons for any decision taken.

7.13 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.

Summary (Expedited) Licence Reviews

- 7.14 The Summary Review procedure was effected by Section 53A-C of the Licensing Act 2003, inserted by section 21 of the Violent Crime Reduction Act 2006. This allows an expedient process for attaching interim conditions to a licence and a fast track licence review when the police consider that the premises concerned is associated with serious crime or serious disorder (or both).
- 7.15 The Licensing Sub Committee shall determine, by email, telephone (or in such other manner as may be deemed appropriate by the Regulatory Services Manager or by the Solicitor to the Council), whether it is necessary to take interim steps pending the determination of the premises licence the subject of an application and a certificate issued by a Senior Police Officer stating that in his/her opinion named premises are associated with serious crime or serious disorder (or both) (the requirements of the Local Government Act 1972 concerning the giving of notice of meetings will not apply).
- 7.16 Following a determination of interim steps, the licence will be subject to review, which will be heard in the usual manner.

8 Responsible Authorities and Other Persons

- 8.1 Any responsible authority and/or other person(s) who live or are involved in a business and are likely to be affected by the premises, may make representations about an application, variation, minor variation or review of a premises licence or club premises certificate or grant of a provisional statement.
- 8.2 The main responsible authorities relevant to Walsall Council are set out below and a full list of all responsible authorities is published on the Council's website.
- 8.3 The Authority will determine when it is appropriate to act in its capacity as a responsible authority, in accordance with its duties under section 4 of the Act, namely with a view to promoting the licensing objectives and with regard to its licensing policy and the statutory guidance
- 8.4 The Authority will not normally make representations or request a review of a licence when it is more appropriate for other responsible authorities to intervene, or when the basis for intervention falls within their remit. Licensing Authorities are not normally expected to act as a responsible authority on behalf of other parties such as local residents, local councillors or community groups.

8.5 **West Midlands Police**

Applicants are advised to include in their operating schedules any steps being taken to:-

- prevent disorder on the premises;
- prevent drunkenness in premises selling alcohol;
- prevent under age sales of alcohol;
- ensure customers enter and leave in an orderly manner;
- exclude illegal drugs; and
- exclude offensive weapons.

8.6 The police may consider the past history of a premises or an individual and may account decisions of the Magistrates' Courts when considering applications. Prior to submitting a representations, they may suggest that conditions be voluntarily added to a licence. However, with consideration to the specific location and style of a particular venue and the activities carried on there, the police may require applicants, or existing licence holders, to formalise extra measures in their operating schedule, in cases where it may be appropriate and proportionate to do so to promote public safety or prevent crime and disorder.

8.7 Any incidents of crime or disorder, which occur at, or can be linked to, a particular premises may lead to an application for review of the licence. Equally, any incidents which give cause for concern that the premises are not being properly managed, failure to comply with the operating schedule or conditions of licence, or where there are repeated complaints from the public, may also lead to a licence or club premises certificate being reviewed.

8.6 The police are expected to be Walsall Council main source of advice on matters relating to the promotion of the crime and disorder licensing objective.

8.7 Any current arrangements for the exchange of information between the police and other enforcement agencies will continue.

West Midlands Fire and Rescue Authority

8.8 From the 1st October 2006, the Regulatory Reform (Fire Safety) Order 2005 ('The Fire Safety Order') replaced previous fire safety legislation.

8.9 As such, any fire certificate issued under the Fire Precautions Act 1971 will have ceased to have effect. The Authority notes that under Article 43 of the Fire Safety Order any conditions imposed by the Authority that relate to any requirements or prohibitions that are, or could be, imposed by the Order automatically cease to have effect, without the need to vary the

licence or certificate. This means that the Authority will not seek to impose fire safety conditions where the Order applies.

- 8.10 The Fire Safety Order covers 'general fire precautions' and other fire safety duties, which have the effect of protecting 'relevant persons' in case of fire in, and around, 'most premises'. The Fire Safety Order requires fire precautions to be in place 'where necessary' and to the extent that it is reasonable and practicable in the circumstances of the case.
- 8.11 Responsibility for complying with the Fire Safety Order rests with the 'responsible person', which may be the employer, or any other person or people who may have control of the premises. Each responsible person must carry out a fire risk assessment, which must focus on the safety in case of fire for all relevant persons. The fire risk assessment must identify risks that can be removed or reduced and establish the nature and extent of the general fire precautions that need to be taken including, where necessary, capacity limits.
- 8.12 The Local Fire and Rescue Authority will enforce the Fire Safety Order in most premises and have the power to inspect the premises to check the responsible person is complying with the responsibilities imposed upon them. They will look for evidence that the responsible person has carried out a suitable fire risk assessment and acted upon the significant findings of that assessment.
- 8.13 In accordance with the guidance, 'safe capacities' should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. If a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence.
- 8.14 However, if no safe capacity has been imposed through other legislation, the Fire Authority may consider it appropriate for a new capacity to be attached to the premises licence, which would apply at any material time when the licensable activities are taking place and could make representations to that effect.

Director of Public Health

- 8.15 Health Bodies have been responsible authorities under the Act since April 2012 and health functions are now exercised by local authorities via the Director of Public Health. Although 'health' is not currently a licensing objective under the Act, health bodies hold certain information which other responsible authorities do not, but which may assist the authority in carrying out its licensing functions, especially in relation to the public safety or crime and disorder objectives.
- 8.16 The Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers.

- 8.17 Where a responsible authority, or other person, presents evidence to Walsall Council that links a specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence will be considered and appropriate action will be taken to ensure this licensing objective is effectively enforced.
- 8.18 In relation to applications for the grant of a premises licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18 Walsall Council will consider what conditions may be appropriate to ensure that this objective is promoted effectively.
- 8.19 Evidence relating to alcohol-related emergency department attendance of under 18s, hospital admissions, and underage sales of alcohol, could potentially have implications for both the protection of children from harm and the crime and disorder objectives. Health bodies can provide important supporting data/evidence, to lead or support representations, in relation to this objective.
- 8.20 In relation to proxy purchases, data collected by health bodies could be used to inform other responsible authorities, including the police and licensing authorities, about a prevalence of proxy purchasing in a particular area. For example, the police could use this data to tackle instances of 'shoulder tapping' (where under 18s approach adults to buy alcohol on their behalf) to suggest or support measures which retailers could impose to protect themselves against selling alcohol to adults who may be buying on behalf of persons aged under 18.
- 8.21 Although less obvious, health bodies may also have a role to play in the prevention of public nuisance where its effect is prejudicial to health and where they hold relevant data.
- 8.22 There will need to be consideration as to how to collect anonymised information about incidents that relate to specific premises or premises in a particular area (for example, a cumulative impact area). The College of Emergency Medicine has issued guidelines for information sharing to reduce community violence which recommends that data about assault victims should be collected upon admission to emergency departments, including the date, time and specific location of the assault – i.e. the name of the pub, club or street where the incident occurred.
- 8.23 Sometimes, it may be possible to link ambulance callouts or attendances at emergency departments to irresponsible practices at specific premises, such as serving alcohol to people who are intoxicated or targeting promotions involving unlimited or unspecified quantities of alcohol at particular groups.

Trading Standards

- 8.24 The sale of age-restricted products, in this case alcohol, remains a priority for Trading Standards. The service recognises the priorities of Walsall Council and partners, such as Police, Licensing, Public Health and the Community Alcohol Partnership, and will assist them in achieving their aims and objectives.
- 8.25 Trading Standards will help ensure that;
1. owners of licensed premises, premises licence holders and designated premises supervisors are aware of their obligations in law and those associated with the licensing policy;
 2. non-compliant licensed premises are helped to achieve compliance; and
 3. there is restricted access to cheap alcohol by removing from sale counterfeit, illicit and non-duty paid alcohol.
- 8.26 In 2014, the 'Better Regulation Delivery Office' published their Code of Practice for the enforcement of legislation relating to age restricted products, including test purchasing. Whilst not legally binding the document is persuasive and places some new requirements on Trading Standards.
- 8.27 It sets out a way of working that is rooted in the statutory principles of good regulation: that regulation should be proportionate, consistent, accountable, transparent and targeted. It applies the requirements of the statutory Regulators' Compliance Code, which promotes 'a positive and proactive approach towards ensuring compliance by: helping and encouraging regulated entities to understand and meet regulatory requirements more easily; and, responding proportionately to regulatory breaches'.
- 8.28 Trading Standards will in appropriate circumstances provide advice to licensed premises regarding the steps to be taken in order to avoid selling alcohol to children.
- 8.29 Trading Standards will ensure that any conditions requested as part of a licence review are appropriate and necessary.
- 8.30 Trading Standards are aware that the sale of counterfeit and non-duty paid alcohol and tobacco products is having a serious impact on the local economy. Legitimate retailers are struggling to compete with the small minority of dishonest traders who operate within the shadow economy.
- 8.31 These dishonest traders are making large profits by selling cheap counterfeit products, or evading duty on genuine products and selling

these at the full retail price, or even discounted rates, to unsuspecting consumers.

- 8.32 Consumption of illicitly produced alcohol could have additional negative health consequences due to a higher ethanol content and potential contamination with toxic substances, such as methanol.
- 8.33 Licence holders found to be selling illicit alcohol or tobacco will be liable to prosecution and, whether convicted or not, risk having their premises licence reviewed by the Licensing and Safety Committee or one of its sub committees.

Health and Safety

- 8.34 The main objective is to ensure the health, safety and welfare of employers, employees and members of the public working at, or attending licensed premises. Applicants applying for a premises licence or club premises certificate should therefore be able to demonstrate a safe environment.
- 8.35 Although existing health and safety legislation will primarily be used, it may be appropriate to apply for the review of a licence in the following circumstances:-
- serious or regular contraventions of health and safety legislation.
 - failure to comply with improvement or prohibition notices.
 - service of a prohibition notice where a significant risk to public safety exists.
 - prosecution for failure to comply with health and safety legislation.
- 8.36 The Council and the Health and Safety Executive are jointly responsible for enforcing health and safety. As a general rule, the Council is responsible for the majority of premises but the Health and Safety Executive are responsible in the case of Council-owned premises, manufacturers or transport depots.

Environmental Health

- 8.37 Operating schedules should contain sufficient information for officers to form a view as to whether noise from licensable activities is likely to cause a problem. Applicants should also provide details of any proposed noise control measures intended to be put in place, particularly for premises in largely residential areas where regulated entertainment is being applied for outside the hours of 8am to 11pm.
- 8.38 When preparing operating schedules applicants should note that stricter measures for controlling noise may be sought, either through operating schedules or by imposing conditions, in the case of premises situated in largely residential areas. This is especially relevant where there is a history of problems associated with a particular premises.

- 8.39 If licence conditions are to be imposed, they must be specific to the premises in question and must relate to the type of licensable activity proposed.

Planning

- 8.40 The Authority recognises that planning permission, building control approval and licensing regimes should be properly separated to avoid duplication and inefficiency.
- 8.41 Licensing applications may not be used to affect a re-run of the planning application process; the licensing committee will not be bound by decisions of the planning committee, and vice versa.
- 8.42 There are circumstances when, as a condition of planning permission; a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission are liable to prosecution under the planning legislative regime.
- 8.43 The Planning Authority may make representations in respect of an application (as a responsible authority under the Act) for a premises licence or club premises certificate as long as it relates to the licensing objectives. The granting of a licence, certificate or provisional statement will not override any requirement of the planning regime.

Children's Services

- 8.44 The Local Safeguarding Children's Board is the body recognised as being competent to advise on matters relating to the protection of children from harm, they are a responsible authority and are therefore, entitled to make representations.
- 8.45 In certain circumstances, where children will be present at a licensed premises, the Council expects responsible adults to be present to ensure their safety. Where relevant and appropriate, applicants must demonstrate how they will reasonably protect children from harm, not just by preventing underage sales but also how they will ensure that, whilst on the premises, children are not involved in crime and disorder, drugs or drug taking, entertainment of an adult nature or any other activity that may cause them harm.
- 8.46 The Council will expect cinemas to stipulate that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification. Similarly, theatre productions should be suitable for the audience present with consideration given in advance to the content and nature of the production.

8.47 In recent years, incidents of child sexual exploitation (CSE) and child criminal exploitation (CCE) taking place in or around licensed premises have been of particular concern across the country. Whilst there has been no specific intelligence suggesting incidents have taken place in Walsall, the Council will work via existing partnerships, including the licensed trade, to ensure that any concerns in relation to CSE and CCE can be tackled and addressed appropriately.

8.48 A resource that applicants should consider in the preparation of their applications, risk assessments and operating schedules are the materials produced by the Home Office on CSE and CCE, including its Child Exploitation Disruption Kit. Further advice and training materials for licence applicants can be accessed via Walsall Safeguarding Children Board's 'Virtual College' facility

Licensing Authority as a responsible authority

8.49 The Act enables the council to function as both a 'licensing authority' and to act as 'responsible authority' in its own right. These powers have been delegated to officers within the Council's licensing service. Officers may choose to intervene where they consider it appropriate for the promotion of the licensing objectives without having to wait for representations from other responsible authorities.

8.50 For example, where an application is in a cumulative impact area and officers have concerns about additional harm, they may make a representations to that effect. Also, where an application is received in respect of a premises which has a history of complaints which mean that additional activity may undermine the licensing objectives.

8.51 The Council's licensing service has taken steps to achieve a line of separation between those officers processing applications and those making representations. The officer presenting any application to a Licensing Sub-Committee will also be different from the officer acting as the responsible authority.

9 Licensing Hours

- 9.1 Walsall Council wishes to emphasise that consideration will always be given to the individual merits of any application. However, it is clear that in some circumstances adopting more flexible licensing hours, in relation to the sale of alcohol, may be an important factor in avoiding a concentration of customers leaving premises simultaneously and generally lead to a slower dispersal of people from licensed premises. This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport, which can be hot spots for disorder and disturbance.
- 9.2 Walsall Council recognises that providing consumers with greater choice and flexibility is an important consideration when it comes to developing thriving night-time local economies, which are equally important for local investment and employment. That said, economic considerations must always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents.
- 9.3 Each application will always be considered on its own individual merits, however, it should be recognised that restricting the hours of operation in some cases can play an important role in preventing public nuisance, especially in residential areas where there is a history of noise complaints relating to a particular premises from those living within the vicinity.
- 9.4 In accordance with 'the guidance', retail premises (e.g. shops, stores and supermarkets) will generally be permitted to sell alcohol for consumption off the premises during the normal hours they are open for shopping purposes.
- 9.5 However, in the case of individual premises known to be a focus of disorder and disturbance, then, subject to relevant representations, some limitation on licensing hours may be appropriate.

10 Temporary Event Notices (TEN)

- 10.1 There are two types of temporary event notice (TEN) which can be given to the Authority, standard and late.

Standard TEN

Anyone wishing to submit a standard TEN to the Licensing Authority must do so at least 10 clear working days prior to the event in question; not including the day the notice is submitted or the first day the event is due to take place.

Late TEN

If it is not possible to give 10 working days' notice, then a late TEN may be submitted providing there are at least 5 working days' notice given, again, not including the day of submission or the first day the event is due to take place.

- 10.2 The significant difference between a Standard and Late TEN is the loss of the notifier's right of appeal. If a relevant authority objects to a Standard TEN by way of submitting a counter notice, the applicant has a right of appeal. If the authority wishes to impose conditions on the notice and all parties agree, then a hearing is not necessary and the Authority will not normally hold a hearing.
- 10.3 Where all parties, including the applicant, fail to agree, the matter may be determined at a hearing of the Licensing and Safety Sub-Committee.
- 10.4 However, if a counter notice is submitted in relation to a late TEN, no right of appeal exists and the licensable activities may not go ahead.
- 10.5 Regulations control the number of TENs that may be held at any premises in a calendar year.

11 Adult Entertainment

- 11.1 An applicant wishing to provide adult entertainment should specify in the operating schedule what sort of adult entertainment they intend to provide and how frequently it will be provided. If sexual entertainment is to be provided, for example lap dancing, striptease etc. then a separate sexual entertainment licence may also be required.

Sexual Entertainment Venues (S.E.V)

- 11.2 Walsall Council has adopted a formal policy in relation to these types of premises under the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009. Standard conditions are attached to such licences. Where there are similar conditions attached to the 2003 licence for the premises, the more onerous will apply.

11.3 Under the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009, premises that provide sexual entertainment on no more than 11 times per year and no more frequently than once per calendar month are exempt. For further information on SEVs please contact Walsall Council Licensing Unit.

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12 Cumulative Impact Policy

- 12.0 These have undoubtedly helped licensing authorities to limit the number or type of licence applications granted in areas where the number of licensed premises is causing problems. Such problems have typically included crime and disorder or public nuisance caused by large numbers of drinkers being concentrated in one area.
- 12.1 Under the Home Office Guidance, issued under section 182 of the Licensing Act 2003, the definition of Cumulative Impact is:
- “Cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area”
- 12.2 The cumulative impact policy was initially introduced on the 8 September 2008 and reaffirmed on the 7 January 2011.
- 12.3 As part of the 2020 review of the Statement of Licensing Policy Responsible authorities provided evidence that the WS1 post code area for Walsall were saturated with licensed premises (‘on/off licences’ and late night refreshment) and the level of saturation was having a significant cumulative effect, which undermined the licensing objectives.
- 12.4 The review showed the defined area where the cumulative impact was most demonstrable was under the WS1 post code including the town centre (Appendix 2).
- 12.5 Having regard to the statutory guidance issued under the Licensing Act 2003, the Council consulted on the issues, took into account the views of respondents, and considered all the evidence presented to it.
- 12.6 In light of the findings, the Authority, proposed a cumulative impact policy (amended in 2021) in respect of applications relating to the sale or supply of alcohol for consumption ‘on and off’ the premises’ and for the provisions of late night refreshment in a defined area of Walsall.
- 12.7 In this area applicants will be required to demonstrate how the granting of their licence will not have a cumulative impact on the licensing objectives. Where relevant representations are received to the application, the matter will be referred to the Licensing Sub-Committee to make a decision on the application.
- 12.8 Walsall Council recognises that any special policy regarding cumulative impact is not absolute and where licence applications will not add to cumulative impact and no relevant representations received, the licence/certificate will be granted as applied for.

- 12.9 The presumption contained in respect of this policy, does not relieve responsible authorities or other persons of the need to make relevant representations. If there are no relevant representations, Walsall Council must grant the application on the terms that are consistent with the application.
- 12.10 In determining an application, Walsall Council will have particular regard to the licensing objectives, the cumulative effect, and any adverse impact that may arise from the saturation of premises in the defined area.
- 12.11 The cumulative impact policy will not be used to revoke existing licences or certificates. However, such a policy may be a justification to refuse an application to vary a licence or certificate in circumstances where the variation is directly relevant to the policy and the refusal is strictly necessary for the promotion of the licensing objectives, each case must be treated on its own merits.
- 12.12 Walsall Council recognises the difference between cumulative impact and the commercial need for premises in an area. Need and market forces are not matters for the Authority to consider as part of its licensing function.
- 12.13 Walsall Council will not operate a quota of any description. Each application must always be considered on its merits.

13 Late Night Levy

- 13.1 Walsall Council has considered the parameters for the introduction of such a levy but has resolved that it not be implemented at this time. The Council reserves its right to introduce such a levy, but will only do so after ensuring it has gone through the statutory consultation process and a formal decision has been made in respect of all evidence and comments received.

14 Early Morning Restriction Orders (EMRO)

- 14.1 Walsall Council has considered the parameters of such orders, but has resolved that none be implemented at this time. The Council reserves its right to introduce such orders, but will only do so after ensuring it has gone through the statutory consultation process and a formal decision has been made in respect of all evidence and comments received.

15 Children

- 15.1 Walsall Council recognises the great variety of premises for which licences and certificates may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, food take-away premises, community halls, church halls and schools. However, in the case of premises used exclusively, or primarily, for the supply and consumption of alcohol on the premises, it is an offence to allow anyone under the age of 16, unaccompanied by an adult, to be present on such premises.
- 15.2 Where the consumption of alcohol takes place but is not the exclusive or primary activity at a particular venue, such as a hotel or cinema for example, it is an offence for, those under 16 to be unaccompanied between 12 midnight and 5am.
- 15.3 Other than these two restrictions there is no presumption in favour of giving access to children under 18 generally, or indeed, preventing their access. Each application and the circumstances prevailing at each individual premises must be considered on its own merits and admission will always be at the discretion of those managing the premises.
- 15.4 Walsall Council, in its own right, will not seek to limit the access of children to any premises unless it receives representations to that effect based on the prevention of physical, moral or psychological harm to children. Applicants seeking premises licences and club premises certificates should include in their operating schedule any prohibitions or restrictions of their own in circumstances where it is felt that the presence of children would be undesirable or inappropriate.
- 15.5 Examples of areas which may give rise to concern in respect of children include premises –
- where nudity or entertainment of an adult or sexual nature is provided
 - where there is a strong element of gambling taking place
 - with a known association with drug taking or dealing
 - where there have been convictions for serving alcohol to those under 18
 - with a reputation for underage drinking
 - where the premises have been linked to child sexual exploitation.
- 15.6 In the case of premises used for film exhibitions, applicants should include in their operating schedule any specific arrangements for restricting access to children to ensure they meet the required age limit in line with any certification granted by the British Board of Film Classification.
- 15.7 Where a large number of children are likely to be present on any licensed premises, for example at a children's show or pantomime, then applicants

may need to demonstrate that measures are in place to ensure an appropriate number of adults are present in order to satisfy the licensing objectives.

- 15.8 In cases where it is considered necessary, options available for limiting access by children could include –
- a limit on the hours when children may be present
 - a limitation or exclusion on the presence of children when certain activities are taking place
 - the requirement to be accompanied by an adult
 - access being limited to parts of the premises only
 - an age limitation (for under 18s)
- 15.9 For premises where the sale or supply of alcohol takes place as a licensable activity, the Authority recommends that applicants adopt The Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years of age or over. The premises should also comply with the Committee of Advertising Practice in relation to advertisements and promotions, particularly those provisions relating to the sale and promotion of alcohol.
- 15.10 The Authority also recognises the Guide to Responsible Alcohol Retailing jointly produced by The Association of Convenience Stores, The British Retail Consortium and The Wine and Spirits Trade Association, which covers key areas of under age sales, proof of age cards, staff training and alcohol promotions.

16 Live Music and Regulated Entertainment

- 16.1 Walsall Council is aware of the need to encourage and promote a broad range of entertainment, particularly live music and dancing as well as a range of traditional theatre performances for the wider cultural benefit of communities generally.
- 16.2 In determining what conditions maybe attached for the appropriate promotion of the licensing objectives, care will be taken to avoid measures which might deter live music dancing and theatre by imposing indirect costs of a disproportionate nature.
- 16.3 As a result of deregulatory changes that have subsequently amended the 2003 Act, there are a number of exemptions that now apply to the provision of all categories of regulated entertainment. Applicants/licence holders should ensure that they are fully aware of the current Section.182 guidance issued by the Home Office.
- 16.4 It is still possible however, for a premises licence or club premises certificate to be reviewed if appropriate grounds to do so exist. In determining a review application, the Authority is allowed, if it is considered appropriate, to lift the suspension of such restrictions or conditions that apply to such venues/times and give renewed effect to an existing condition.
- 16.5 Entertainment licensing requirements were further deregulated as a result of the Legislative Reform (Entertainment Licensing) Order 2014, which came into force on 6 April 2015.
- 16.6 The 2014 Order deregulated entertainment licensing in the following ways:
- The provision of regulated entertainment, by or on behalf of local authorities, health care providers, or schools on their own defined premises, between 08.00 - 23.00hrs on the same day, with no audience limit.
 - The audience limit for a performance of live amplified music in relevant alcohol licensed premises or in a workplace between 08.00 - 23.00hrs on the same day was raised from 200 to 500.
 - Local authorities, health care providers and schools are now exempt from entertainment licensing when making their own defined premises available to third parties for live and recorded music activities between 08.00 - 23.00hrs on the same day for audiences of up to 500.
 - Community premises, not licensed to supply alcohol, are now exempt from entertainment licensing requirements for live and recorded music between 08.00 - 23.00hrs on the same day for audiences of up to 500.
 - Travelling circuses are now exempt from entertainment licensing in respect of all descriptions of entertainment, except an exhibition of a

film or a boxing or wrestling entertainment, where the entertainment or sport takes place between 08.00 - 23.00hrs on the same day, with no audience limit.

- Greco-Roman and freestyle wrestling are now deregulated between 08.00 - 23.00hrs for audiences of up to 1000 people.
- An exhibition of film that is incidental to another activity (where that other activity is not itself a description of entertainment set out in paragraph 2 of Schedule 1 to the 2003 Act) is exempt now from licensing.
- The exhibition of films in community premises has also been deregulated under section 76 of the Deregulation Act 2015 and no licence is required for an exhibition of film on community premises between 08.00 - 23.00hrs on any day provided that:
 - the film entertainment is not provided with a view to profit;
 - the film entertainment is in the presence of an audience of no more than 500 people;
 - the admission of children is subject to such restrictions as are necessary to comply with the recommendation issued by the BBFC or relevant Licensing Authority regarding the admission of children; and
 - a person concerned in the organisation or management of the exhibition of the film has obtained the prior written consent of the management committee of the premises, or if there is no management committee, a person who has control of the premises in connection with the carrying on by that person of a trade, business or other undertaking, or failing that a person with a relevant property interest in the premises.

17 Late Night Refreshment

- 17.1 Local Powers to Deregulate 26.1 Section 71 of the Deregulation Act 2015 inserted paragraph 2A into Schedule 2 of the Licensing Act 2003 in relation to the provision of late night refreshment.
- 17.2 This amendment created a discretionary power to licensing authorities to exempt premises in certain circumstances, from the requirement to have a licence to provide late night refreshment.
- 17.3 The powers allow a relevant Licensing Authority to exempt the supply of late night refreshment if it takes place:
- on or from premises wholly situated in a designated area;
 - on or from premises which are of a designated description; or
 - during a designated period (beginning no earlier than 23.00hrs and ending no later than 05.00hrs).
- 17.4 Walsall Council does not currently consider it appropriate to exercise the discretionary powers within paragraph 2A of Schedule 2 to the Licensing Act 2003.
- 17.5 If the Authority reviews this decision and considers exercising the powers in the future, it will only do so having carefully considered the risks to the promotion of the licensing objectives and having carried out a comprehensive consultation exercise with relevant stakeholders.

18 Licence Conditions

- 18.1 The Authority may only impose conditions (other than mandatory conditions) on a premises licence or club premises certificate (and in certain circumstances Temporary Event Notices) where they form part of an applicant's operating schedule or following a decision of the licensing sub-committee at a formal hearing. However this may include the voluntary addition, by the applicant, of conditions following mediation in response to the submission of a relevant representation,
- 18.2 Any conditions attached to licences, certificates and other authorisations must be tailored to the individual style and characteristics of the premises and events concerned and will reflect, as far as possible, local crime prevention strategies.
- 18.3 The Authority will not attempt to impose any 'blanket' conditions which apply to all premises, but the applicant's operating schedule, which forms part of the application should include sufficient information to enable a responsible authority or other person to assess whether the steps being taken to promote the licensing objectives are satisfactory or not.

- 18.4 The Council, therefore, expects all licence holders to set out, in their operating schedule, the measures and management controls they will have in place to: prevent alcohol being sold or served to children (other than in the limited circumstances permitted under the Act), demonstrate all reasonable precautions, and due diligence intended to prevent sales to under age persons whilst trading.
- 18.5 The Council considers that when effectively applied, 'Challenge 25' policies, where the individual attempting to purchase alcohol must prove they are 18 or over if they look as if they could be under 25, are an effective measure in preventing the sale of alcohol to children.
- 18.6 The Council expects licensed premises to embrace the 'Challenge 25' initiative. Premises licensed for the sale or supply of alcohol, particularly off-sales, are expected to display clear and prominent signage informing customers that it is an offence to:
- a) sell, or allow the sale of, alcohol to children;
 - b) allow an adult to buy, or attempt to buy, alcohol on a child's behalf; and/or
 - c) for a child to buy, or attempt to buy, alcohol themselves.
- 18.7 Where the Council is required to review a licence due to the sale of alcohol to children, the presumption will be for the licensee to demonstrate what measures and controls they had in place to prevent the situation arising.
- 18.8 When submitting an operating schedule, applicants are required by the Act to outline the measures and controls they commit to complying with in place in order to meet the licensing objectives. These measures will likely form the basis of conditions attached to the premises licence or club premises certificate if/when it is granted. However, only conditions considered appropriate and necessary, for the promotion of the licensing objectives, will be imposed and any breaches of conditions will, in most cases, be dealt with primarily through the review process.
- 18.9 The responsible authorities identified in this statement may also propose conditions of their own by making representations in relation to an application for the grant or variation of a premises licence. However, these must not be over burdensome or disproportionate and will only be imposed by the Authority in cases where it is considered appropriate and necessary to meet the licensing objectives.
- 18.10 In such cases, any conditions proposed by a responsible authority, and subsequently agreed by an applicant, can be attached to the premises licence without the need for a formal hearing. This is achieved either by the applicant agreeing to amend their operating schedule to include any condition(s) agreed between the parties, or if all parties agree that a hearing is not necessary.

18.11 As far as possible, duplication with other statutory or regulatory regimes will be avoided. However, in circumstances where existing primary legislation already effectively promotes the licensing objectives it is likely that no additional conditions will be necessary. For this purpose each case will be assessed on its own individual merits.

19 Removal of the requirement for a DPS at Community Premises

- 19.1 Instead of being required to appoint an individual as a designated premises supervisor (DPS), by way of a mandatory condition, volunteer committees managing community premises are may decide to take joint responsibility for the sale of alcohol on or from a community premises.
- 19.2 Management Committees wishing to apply for the removal of the mandatory condition requiring a DPS at community premises will need to demonstrate clearly to the Authority how they operate and that there will be appropriate supervision of all alcohol sales at different types of events.
- 19.3 Community premises will include church halls, chapels, community and village halls and similar buildings. If there is any doubt as to whether a building constitutes a community premises, the Authority will deal with such matters on a case by case basis with the main consideration being the primary use of the premises, for example;
- a. is it genuinely made available for community benefit most of the time?
 - b. is it accessible by a broad range of persons and sectors of the local community?
 - c. is it being used for purposes which are beneficial to the community as a whole?
- 19.4 Applicants will be required to set out exactly how the premises is managed, its committee structure and how alcohol sales are to be properly supervised within the committee/management structure.

20 Black Country Regulators Operating Framework

20.1 Walsall Council embraces the Department for Business Innovation and Skills 'Regulators Code', which came into force on the 6 April 2014. Its standards have been integrated into our regulatory culture and processes and the authority supports the principles of better regulation to promote efficient and effective approaches to regulatory inspection and enforcement that improve regulatory outcomes without imposing unnecessary burdens on business.

20.2 Bearing in mind the principle of transparency, Walsall Council joined together with its Black Country neighbours and produced the Black

Country Regulators Operating Framework. This framework is available upon request to: Licensing , Walsall Council, Civic Centre, Darwall Street, Walsall, WS1 1TP. E-mail Licensing@walsall.gov.uk, Website www.walsall.gov.uk

In general, action will be taken against 'problem' premises through the review process. In cases where more formal action, such as prosecution is considered to be appropriate, the key principles of consistency, transparency and proportionality will be maintained.

21 Equal Opportunities

21.1 The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relation, between persons with different protected characteristics, for example age, disability, race and religion.

21.2 The Council recognises the right to freedom of speech (Human Rights Article 10) and will not intervene in this matter, when discharging its licensing functions, unless to do so would be appropriate to promote one or all of the licensing objectives. Holders of premises, club or personal licences/certificates should be aware of the potential for some organisations to have an influence on or advocate illegal activity that would be in direct contradiction of the spirit of the licensing objectives.

21.3 The Council may, based on evidence and on receipt of written representations from responsible authorities or other persons, seek to prohibit certain types of meetings or gatherings at licensed premises or clubs by attaching conditions in order to promote the licensing objectives, in particular the prevention of crime and disorder and the promotion of public safety.

22 Delegations

- 22.1 The Act provides that the functions of the authority must be carried out by the Licensing and Safety Committee. The Licensing and Safety Committee delegates certain individual powers, where it is appropriate to do so, via the Council's scheme of delegation.
- 22.2 The Scheme of Delegation, below, sets out the types of decisions that have been delegated to officers and the circumstances within which they can be used:

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 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		All cases	

licence/club premises certificate			
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 an objection to a temporary event notice		All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition		If a police objection	All other cases
Decision whether to consult other responsible authorities on minor variation application			All cases
Determination of minor variation application			All cases

22.3 A licensing sub-committee of three councillors will sit to hear applications where relevant representations have been received from responsible authorities and/or other persons.

23 Public Register

- 23.1 The Licensing Authority will keep a register in the prescribed form containing:-
- a record of each premises licence, club premises certificate and personal licence issued by it,
 - a record of each temporary event notice received by it,
 - matters mentioned in Schedule 3 of the 2003 Licensing Act
 - such other information that may be prescribed.
- 23.2 The licensing register will be available for inspection during office hours by any person without payment.
- 23.3 If requested to do so the Authority will supply any person with a copy of information contained in any entry, for which a fee will be charged. This may assist people in making representations to the Licensing Authority.

24 Personal Licence – New Applications

- 24.1 A personal licence, issued under Section 117 of the Licensing Act 2003, authorises an individual to make, or authorise, the sale of alcohol in accordance with a premises licence.
- 24.2 Every premises licence that authorises the sale of alcohol must specify the named individual, appointed onto the licence, who acts as the designated premises supervisor (DPS). Only the holder of a Personal Licence can be appointed into the position of DPS.
- 24.3 Applications for personal licences must be made to the Licensing Authority of the area where the applicant is ordinarily resident at the time they make their application.
- 24.4 The applicant must:
- a. be aged 18 or over
 - b. be entitled to work in the United Kingdom
 - c. possess a licensing qualification or is a person of a prescribed description
 - d. have not forfeited a personal licence in the five year period prior to their application being made
 - e. must be free of any conviction for any relevant offence or any foreign offence or required to pay an immigration penalty
- 24.5 Walsall Council will reject an application if the applicant fails to meet one or more of the requirements set out in (a) to (d) above.

- 24.6 Where the applicant meets the requirements in (a) to (e) but does not meet the requirements of (e), Walsall Council will give the Chief Officer of Police for its area a notice to this effect. Having received such a notice, if the Chief Officer of Police is satisfied that the granting of the application would undermine the crime prevention objective, within 14 days he must within give Walsall Council a notice to that effect.
- 24.7 Where the applicant fails to meet the requirements of (e), as a result of a conviction for an immigration offence or because they have been required to pay an immigration penalty, Walsall Council will give a notice to the Secretary of State for the Home Department to that effect. The Home Office may object to an application on grounds that granting the personal licence would be prejudicial to the prevention of illegal working in licensed premises.
- 24.8 Where an objection to the grant of a personal licence is received from either the Chief Officer of Police or the Home Office, the applicant will be entitled to a hearing. If no objections are received, Walsall Council will grant the application.
- 24.9 At a hearing to determine a personal licence application, to which the Chief Officer of Police or Home Office have objected, Walsall Council will have regard to all of the circumstances including the following:
- The need to assess each case on its merits
 - The duty to promote the crime prevention objective
 - The objection notice given by the Police or Home Office
 - The guidance issued by the Secretary of State under section 182 of the Licensing Act 2003
 - The seriousness of the relevant offence
 - The sentence or penalty imposed on the applicant for the relevant offence
 - Any representations made by the applicant
 - Any other evidence as to the previous character of the applicant
- 24.10 If, having considered all of the circumstances, Walsall Council considers that it is appropriate for, either, the promotion of the crime prevention objective or for the prevention of illegal working in licensed premises to reject the application, it must do so. In all other cases the application must be granted.
- 24.11 If an application is refused, the applicant has a right of appeal against the decision. Similarly, if the application is granted, despite a police objection notice or an objection from the Home Office, the Chief Officer of Police or Home Office has a right of appeal against the Authority's determination. Walsall Council will therefore record in full the reasons for any decision.

25 Personal Licences – Suspensions and Revocations

- 25.1 Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003 and granted Licensing Authorities the power to suspend or revoke personal licences issued by it, with effect from 6 April 2017.
- 25.2 When Walsall Council becomes aware that a person, to whom it has granted a personal licence, has been convicted of a relevant offence, convicted of a foreign offence, or has been required to pay an immigration penalty, it will consider whether to revoke the licence or suspend the licence for a period of up to six months.
- 25.3 This applies to convictions and civil immigration penalties imposed upon the licence holder at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017; or if the requirement to pay the civil penalty arose after 6 April 2017. Only a Magistrates' Court has the power to order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017.
- 25.4 The prescribed process for the suspension or revocation of a personal licence by the Authority is set out at Section 132a of the Licensing Act. Only the Licensing and Safety Committee or Sub-Committee have the power to revoke or suspend a personal licence; however, a Licensing Officer may make the actions preceding a final decision.
- 25.5 Walsall Council will not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the offence, until the appeal is disposed of. Where no appeal is made, the Authority will not take action until the time limit for making an appeal has expired.
- 25.6 If Walsall Council is considering revoking or suspending a personal licence, it will give notice to the licence holder. This notice must inform the licence holder of their right to submit representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also decide to include any other information, for example, about their personal circumstances.
- 25.7 The licence holder must be given 28 days in which to make a representation, beginning on the day the notice was issued. The Authority does not need to hold a hearing to consider the representations. Before deciding whether to revoke or suspend the licence, the Authority will consider any representations made by the licence holder, any decisions made by the court or appellate court in respect of the personal licence of which Authority is aware, and any other information the Authority considers relevant.
- 25.8 Walsall Council may not be aware of whether the court previously considered the possible revocation or suspension of, and there is no obligation on it to find this out before making a decision.

- 25.9 Where the court has considered the personal licence and decided not to take action, this does not prevent the Authority from deciding to take action. Licensing Authorities have different aims to courts and must fulfil their primary statutory duty, the promotion of the licensing objectives. Therefore, it is appropriate for Walsall Council to follow due process and reach its own independent decision in respect of the licence holder's suitability to hold a personal licence.
- 25.10 If Walsall Council has considered the possibility of suspension and/or revocation, together with all relevant information available at the time, and proposes not to revoke the licence it will give notice to the Chief Officer of Police, and invite the Chief Officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime.
- 25.11 The Chief Officer may make representations within the period of 14 days from the day they receive the notice from the Authority.
- 25.12 Any representations made by the Chief Officer of Police will be taken into account by the Authority in deciding whether to suspend or revoke the licence.
- 25.13 Convictions may come to light via police in another area, for example if the personal licence holder no longer lives in the area of the issuing authority, or if the offence took place in another police force area. In this instance it would be good practice for the police providing the information to notify the police force in the Licensing Authority area, because it is the local Chief Officer who must provide representations if the Licensing Authority proposes not to revoke the licence.
- 25.14 Where the licence holder is convicted of immigration offences, or has been required to pay a civil penalty for immigration matters, Walsall Council will notify the Home Office Immigration Enforcement service and allow representations to be made in the same way.
- 25.15 In deciding whether to suspend or revoke a personal licence, Walsall Council will have regard to all of the circumstances including the following:
- The need to assess each case on its merits
 - The duty to promote the licensing objectives
 - The guidance issued by the Secretary of State under section 182 of the Licensing Act 2003
 - The seriousness of the relevant offence
 - The sentence or penalty imposed on the licence holder for the relevant offence
 - Any representations made by the Police or Home Office Immigration Enforcement

- Any representations made by the licence holder
- Any evidence as to the previous character of the holder of the licence.

25.16 Walsall Council will notify the licence holder and the Chief Officer of Police of the decision made (even if the police did not make representations). The licence holder may appeal the Authority's decision to revoke or suspend their personal licence. A decision to revoke or suspend the licence does not take effect until the end of the period allowed for appealing the decision (21 days); or if the decision is appealed against, until the appeal is disposed of.

25.17 If the personal licence holder is a DPS, the will notify the premises licence holder once the decision is made to revoke or suspend the licence, if it becomes necessary to do so in order for the Authority to be able to carry out its functions.

25.18 The Licensing Authority may also notify any person who has declared an interest in the premises under section 178 of the 2003 Act, if it becomes necessary to do so in order for the Licensing Authority to be able to carry out its functions.

DRAFT

26 Immigration Act 2016 – Entitlement to Work

26.1 Section 36 of Schedule 4 of the Immigration Act 2016 amended the Licensing Act 2003, thereby introducing immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention of these changes is to prevent illegal working in premises licensed for the sale of alcohol or late night refreshment.

26.2 The licensing objective of 'prevention of crime and disorder' includes the prevention of immigration crime and the prevention of illegal working in licensed premises. The Council will work with the Home Office (Immigration Enforcement) and Police, in respect of these matters.

26.3 Section 36 of and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the 2003 Act to provide that in England and Wales:

- Premises licenced to sell alcohol or provide late night refreshment and personal licences cannot be issued to an individual who does not have permission to be in the UK, or is not entitled to undertake work relating to the carrying on of a licensable activity;
- Licences issued to those with limited permission to be in the UK automatically lapse upon the expiry of their right to remain or work in the UK.
- Immigration offences, including civil penalties, are 'relevant offences' as defined by the 2003 Act;
- The Home Secretary (in practice Home Office (Immigration Enforcement)) was appointed a responsible authorities under the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences), applications to transfer premises licences, and, in some limited circumstances, personal licence applications. As a responsible authority the Home Secretary (Home Office (Immigration Enforcement)) to make appropriate representations and objections to the grant of licences; and
- Immigration officers have a right of entry to premises they have reason to believe are being used to sell alcohol or provide late night refreshment, to investigate whether immigration offences are being committed in connection with the licensable activity.
- The Licensing Authority must have regard to any guidance issued by the Home Office in relation to the immigration related provisions now contained in the Licensing Act 2003.
- The Licensing Authority will also work in partnership with the Home Office (Immigration Enforcement) and West Midlands Police, with a view to preventing illegal working in premises licensed for the sale of alcohol or late night refreshment.

27 Appendix 1 - Definitions

28.1 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.

28.2 '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 licensing authorities' decision. On appeal a magistrates' court may, dismiss the appeal; substitute its own decision; remit the case to the Licensing Authority with directions; and make an order for costs.

28.3 '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 & safety, environmental health.

28.4 '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 can make representations about an application for a premises licence.

28.5 'Closure Order'

Powers for the police and courts to close premises. The 2003 Act significantly extends the existing powers of the police to serve 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.

28.6 '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.

28.7 **'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 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.

28.8 **'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. They must also be a personal licence holder.

28.9 **'Late Night Refreshment'**

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

28.10 **'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.

28.11 **'Licensing Authority or Authority'**

Walsall Metropolitan Borough Council

28.12 **'Licensing Objectives'**

The objectives, as set out in the Act, are:

- 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.

28.13 'Licensed Premises'

Includes club premises and events unless the context otherwise requires.

28.14 'Mandatory Conditions'

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

28.15 'Objection Notice'

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

28.16 'Operating Schedule'

A document (this is in effect the completed application form) containing a statement of the following matters (and any others that may be prescribed):-

- Steps taken by the licence holder to tackle 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.

28.17 Other Persons

Person(s) who live or are involved in a business and are likely to be affected by the premises.

28.18 '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 has no expiry. It ceases to have effect when revoked, forfeited, surrendered or suspended. A personal licence holder is not required where the premises concerned do not supply alcohol as one of its licensable activities. A personal licence holder 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.

28.19 '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.

28.20 '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. Where a provisional statement is made, subject to limited exceptions, the full licence must normally be granted once the premises are completed.

28.21 'Qualifying Club'

Club Premises Certificates will be issued to Qualifying 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).

28.22 'Regulated Entertainment'

- A performance of a film.
- An 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 to that falling within the performance of live music, the playing of recorded music and the performance of dance.

28.23 'Relevant Representations'

The 2003 Act does not use the term "objections". Instead 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.

28.24 **‘Review of Licence’**

Where a premises licence is in force any 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.

28.25 **‘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 Licensing 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.
- The enforcing authority for Health and Safety at Work.
- The local Planning Authority.
- Trading Standards, local weights and measures.
- Director of Public Health.
- In relation to a vessel, a navigation authority, the Environment Agency, or the British Waterways Board

28.26 **‘Statement of Licensing Policy’**

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

28.27 **‘Temporary Event Notice’**

A permitted temporary activity involving one or more licensable activities subject to various conditions and limitations.

28.28 '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 should be made to transfer the premises licence to the new owner (subject to any outstanding annual fee payments).

28 Comments

28.1 The Statement of Licensing Policy will be reviewed on a regular basis. Individuals and organisations that wish to comment on the policy are invited to send their comments in writing to:

Licensing Unit
Walsall M.B.C
Civic Centre
Darwall Street
Walsall
WS1 1TP

Telephone Number: 01922 653050
Fax Number: 01922 653070
e-mail: licensing@walsall.gov.uk
website : www.walsall.gov.uk

29 **Appendix 2 – Cumulative Impact Zone**

