

**First review consultation draft
Adopted: 20 August 2007**

Tonbridge and Malling Borough Council

Licensing Act 2003

Statement of Licensing Policy

Note on revisions:

The statement of licensing policy was first adopted by Tonbridge and Malling Borough Council on 14 December 2004.

The statement of licensing policy was revised on 27 September 2005.

Following a review, this version was adopted on [11 December 2007].

Tonbridge and Malling Borough Council

Licensing Act 2003: Statement of licensing policy

1.0 Introduction

- 1.1 This the Tonbridge and Malling Borough Council's first review of its statement of licensing policy, which was first adopted on 14 December 2004.. Under section 5 of the Licensing Act 2003 ("the Act"), the Council is required to publish a statement of licensing policy every three years.. This statement was produced during the first review of the policy in 2007.. The licensing authority will review, update or modify it as necessary.

2.0 The licensing objectives

- 2.1 The Act requires the licensing authority to carry out its functions under the Act so as to promote the four licensing objectives.. These are:
- § the prevention of crime and disorder;
 - § public safety;
 - § the prevention of public nuisance
 - § the protection of children from harm.

Each of the licensing objectives is considered to be of equal importance for the purposes of this policy.

3.0 Policy objectives

- 3.1 The aims of the policy are to pursue the four licensing objectives by:
- § helping to build and maintain a prosperous society that properly balances the rights of individuals with the needs of business;
 - § integrating the policy aims and objectives with other initiatives, policies and strategies including culture, planning, transport, employment and crime and disorder reduction;
 - § working to:
 - protect the well-being of local residents;
 - encourage young people to enjoy and take part in cultural activities;
 - maintain a safe and family-friendly environment in the licensing authority's administrative area
 - reduce crime and disorder;
 - encourage tourism;
 - encourage an early evening and night-time economy which is viable and sustainable;
 - reduce alcohol misuse;
 - encourage employment;
 - encourage the self-sufficiency of local communities;
 - reduce the burden of unnecessary regulation on business.
- 3.2 The policy will seek to reflect local requirements and recognise the need to encourage and promote live music, dancing, theatre and other forms of entertainment for the cultural benefit of the Borough in general.. Through consultation, the licensing authority will monitor the impact of licensing on the provision of regulated entertainment and particularly on live music and dancing.

4. Licensing Act 2003 Guidance

- 4.1 The Secretary of State for Culture, Media and Sport has published guidance on the operation of the Act.. The Act does not compel the licensing authority to follow the guidance explicitly.. The licensing authority may, and will, depart from the guidance and this policy if it needs to do so to promote the licensing objectives.. It will always give clear reasons for any such departure.

5. Equality, diversity and race relations

- 5.1 In carrying out its licensing functions, including writing this policy, the licensing authority has regard to the Human Rights Act 1998, the requirement to promote racial equality under the Race Relations Act 1976 [as amended by the Race Relations (Amendment) Act 2000] and to section 17 of the Crime and Disorder Act 1998 and, so far as may be possible, the local crime prevention strategies formulated by the Crime and Disorder Reduction Partnership.

6.0 Relationship to the planning process

- 6.1 The use of any licensed premises or places may be subject to planning controls.. There are several key differences between licensing and planning control, although the regimes overlap.. Licensing is concerned with detailed issues concerning the operation and management of the premises that are not addressed by the planning process, which relates to the use of premises, and their location.
- 6.2 The licensing authority expects that any planning issues will generally be resolved before the licensing application is made.. It will be for the applicant to demonstrate why a licence should be granted before the relevant planning permission is obtained.

7.0 Development of this policy

- 7.1 The licensing authority has developed this policy review in consultation with the Kent Licensing Forum and the Kent Licensing Regulatory Steering Group.. Members of those groups include representatives of the Kent Police, the Kent and Medway Fire and Rescue Authority and Crime and Disorder Reduction Partnerships.
- 7.2 In addition, the council has consulted the licensing authority, members of the licensing trade and their representatives, businesses in the Borough, voluntary groups and its residents.
- 7.3 The licensing authority gave proper consideration to the views of all those who responded to the consultation.

8.0 On-going consultation

- 8.1 The licensing authority will seek the integration of this policy with local crime prevention, planning, transport, employment, tourism and cultural strategies.
- 8.2 The licensing authority will continue to work with the Kent Police, the Kent and Medway Fire and Rescue Authority, current licence holders and bodies representing them, bodies representing businesses and residents in the Borough and other local authorities in Kent to ensure that the licensing objectives are addressed as consistently as possible throughout the county.. It will also strive to meet the needs of communities in its area in promoting the four licensing objectives.

8.3 The licensing authority has established a licensing forum to which all responsible authorities, licensees, trade members and members of trade associations will be invited on a regular basis.

9. Partnership working

9.1 As part of its overall policy, the licensing authority expects every holder of a licence, certificate or temporary event notice to be responsible for minimising the impact of their activities and anti-social behaviour by their patrons within the immediate vicinity of their premises.

9.2 Section 17 of the Crime and Disorder Act 1998 requires the council to work in partnership with the Kent Police and others to consider crime and disorder reduction in the exercise of all their functions.. The Act reinforces this duty.

9.3 The licensing function is not the primary mechanism for controlling the anti-social behaviour of patrons once they have left the vicinity of licensed premises and beyond the direct control of the licensee.. In these circumstances other mechanisms will be used, where appropriate, to tackle unruly or unlawful behaviour of patrons.. These may include:

- § partnership working with the Kent Police, British Transport Police and other agencies, as appropriate, to promote enforcement of the law concerning disorder and anti-social behaviour, including the issue of fixed penalty notices;
- § powers to designate parts of the Borough as places where alcohol may not be consumed publicly;
- § partnership working with businesses, transport operators and other parts of the council to create a safe and clean environment;
- § working in partnership with landowners, licensees and other interested parties to seek to maximise CCTV coverage and effective street lighting in urban areas, incorporating and late night transport drop off points and along transport routes;
- § development of strategic routes, including strategically positioned catering facilities and mobile sanitary accommodation where there are a number of premises grouped in an area and where the sum total of patrons generates a need;
- § partnership working with the police, landowners, premises owners, designated premises supervisors and others to ensure that patrons and the public in both urban and rural areas are safe when moving by foot to, from and about licensed premises;
- § consideration and discussion concerning the potential for additional police patrols and private security patrols funded by licensed venues;
- § working to designate pedestrian and public transport routes away from sensitive residential areas, called "safe routes".

10. Cumulative impact of a concentration of licensed premises

10.1 The Licensing Authority will not take 'need' into account when considering an application, as this is a matter for the market and for development control.. However, the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for the local authority to consider in its policy.. The cumulative impact of the number, type and density of premises in particular areas may lead to them becoming saturated with premises of a certain type, making them a focal point for large groups of people together leading to severe or chronic problems of public nuisance and anti social behaviour.

- 10.2 The licensing authority may consider the adoption of a special saturation policy of refusing new premises licences or club premises certificates within a defined area or areas if it is satisfied that it is appropriate and necessary to include an approach to cumulative impact in its licensing policy statement.. It will take the decision only after it is satisfied that there is evidence to support such a decision.
- 10.3 Although the licensing authority and the responsible authorities do not consider that there is currently sufficient evidence to justify the adoption of special saturation policies, they are collecting information and statistical data which may form the basis of a future amendment to this licensing policy statement.
- 10.4 The licensing authority will take the following steps in considering whether to adopt a special saturation policy within the licensing policy statement:
- § identify a concern about crime and disorder or public nuisance;
 - § consider whether crime and disorder and nuisance are arising from and are caused by the customers of licensed premises and if so, identifying the area from which problems are arising and the boundaries of that area;
 - § consult with those specified by section 5(3) of the Act;
 - § subject to that consultation, include a special saturation policy relating to the area defined in that policy about future premises licence or club premises certificate applications within the terms of this licensing policy statement;
 - § publish the special policy as part of the licensing policy statement as required by the Act.;
 - § review the need for the special saturation policy regularly,
- 10.5 The effect of adopting a special saturation policy of this kind is to create a rebuttable presumption if relevant representations to that effect are received, that applications for new premises licences or club premises certificates or material variations will normally be refused, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced.
- 10.6 Applicants would need to address the special saturation policy issues in their operating schedules in order to rebut such a presumption.. Any special saturation policy will stress that the presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation before the local authority may lawfully consider giving effect to its special saturation policy.
- 10.7 The licensing authority recognises that many different kinds and styles of premises sell alcohol, serve food and provide entertainment.. It recognises that some applications in special saturation areas will be unlikely to add significantly to the problems arising from saturation.. Where it can lawfully make decisions on applications in special saturation areas, it will have full regard to the impact different premises may have on the local community.
- 10.8 The licensing authority must grant any application in a special saturation policy area in accordance with the operating schedule submitted by the applicant if it receives no relevant representation.
- 10.9 The licensing authority will review special saturation policies regularly to assess whether they are needed any longer or need expanding.
- 10.10 The absence of a special saturation policy does not prevent any responsible authority or interested party making evidence-based relevant representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

11.0 Advice and Guidance

- 11.1 The licensing authority, the Environmental Health and Housing Services of the council, the Kent Police and the Kent & Medway Fire and Rescue Service will offer as much advice and guidance to applicants as resources permit.. Nevertheless applicants are advised to consult with them before submitting an application.. If the licensing authority receives a representation from a responsible authority which is not satisfied with the steps set out in an operating schedule then the licensing authority may impose extra conditions at any hearing held to determine the application.
- 11.2 Where permitted under the Act, the Licensing Authority will also seek to liaise with applicants or mediate between applicants and those who make representations, to achieve a satisfactory outcome for all involved wherever possible and where resources permit.

12.0 Licences

- 12.1 As licensing authority, the Council Licensing and Appeals Committee administers premises licences, personal licences, club premises certificates, temporary events notices relating to the sale of alcohol, regulated entertainment and late night refreshments.
- 12.2 Regulated entertainment includes the following activities which a licensee provides to entertain an audience, a section of the public, or exclusively for the members of a qualifying club or their guests. The entertainment will be provided for payment or with a view of making a profit.
- § a performance of a play;
 - § an exhibition of a film (including recordings of sports matches, computer game graphics);
 - § an indoor sporting event;
 - § boxing or wrestling;
 - § provision of facilities for making music or dancing;
 - § a performance of dance.;
 - § A performance of live music;
 - § playing of recorded music;
- 12.3 Late night refreshment means supplying hot food or drink to members of the public between 2300 hours and 0500 hours. The food may be eaten on or off the premises.. Mobile units also need licences.
- 12.4 The licensing authority accepts the rights of any person to apply for a variety of permissions under the Act and to have the application processed in accordance with the Act.
- 12.5 Where the licensing authority has the ability to do so under the Act, following the receipt of a relevant representation, each application will be considered on its individual merits as well as against the relevant policy and statutory framework. The Policy accepts the right of any interested person to make representations on any application or seek a review of a licence or certificate where they are permitted to do so under the Act.
- 12.6 The Policy concerns the regulation of licensable activities on licensed premises, including qualifying clubs, and at temporary events within the terms of the Act.

13.0 Temporary event notices

- 13.1 Certain temporary events involving less than 499 people are licensed by notifying the licensing authority and the police using the Temporary Event Notice procedure.. Only the police can object to a Temporary Event Notice on the grounds of crime and disorder.. However, depending on the nature and location of such events, these can have serious implications on the Licensing Objectives.. Organisers of these events are encouraged to submit their notification as early as reasonably practicable to enable the police and the licensing authority to work with them to identify and reduce any risk of crime and disorder.
- 13.2 The Act requires that a minimum of ten working days notice is given.. But, as guidance, the licensing authority considers and recommends that a reasonable period of notice for the service of a Temporary Event Notice is at least 28 days, but not more than three months, prior to an event taking place.. Some council Services have expertise in advising the organisers of temporary events in respect of health and safety issues such as crowd control.. Organisers may ask for this advice at the earliest possible opportunity by contacting the council's Environmental Health and Housing Services.
- 13.3 Temporary events will be closely monitored, particularly as there are some events covered by a Temporary Event Notice that are not covered by existing fire and safety legislation.. Neither the safety of volunteers assisting with the event nor the public attending may be protected under existing legislation.

Licensing applications and the application process

14.1 The application process

Every application received, whether for the issue of a personal or premises' licence, will be treated in accordance with this statement of licensing policy, the Act and the Secretary of State's Guidance.. If no relevant representations are received then the licence will be issued automatically with, in the case of a premises licence or club premises' certificate, such conditions attached as are mandatory under the Act or are consistent with the operating schedule accompanying the application.

An application or notification for licensing purposes will be accepted as being valid only where it contains **all** of the detail specified by the Act or regulations and is accompanied where appropriate by the correct fee.

14.2 Personal licences

All applicants for the grant of a personal licence will be required to undertake a criminal record check with either the Criminal Records Bureau or Disclosure Scotland.. Where a criminal record check discloses an unspent relevant conviction (as set out in schedule 4 to the Act) and the police object to the application on crime prevention grounds the Licensing and Appeals Committee will normally refuse such an application unless there are exceptional and compelling circumstances to justify the granting of a licence.

14.3 Premises Licences

All applications for new premises' licence or variations need to be supported by an operating schedule.. The application form sets out the information which must be given in each operating schedule:

- a) Full details of the licensable activities to be carried on at and the intended use of the premises;
- b) The times during which the licensable activities will take place;
- c) Any other times when the premises are to be open to the public;
- d) Where the licence is only required for a limited period, that period;
- e) Where the licensable activities include the supply of alcohol the name and address of the individual to be specified as a designated premises supervisor;
- f) Whether alcohol will be supplied for consumption on or off the premises or both;
- g) Steps which the applicant proposes to promote the licensing objectives. The steps, which each applicant should consider carefully in completing the schedule, are set out in the headings for each licensing objective below.

14.4 Hearings

Where relevant representations are made a hearing will be held before a panel of the council's Licensing and Appeals Committee.. The committee will determine the application having regard to this statement of licensing policy, the Licensing Act 2003 (in particular the licensing objectives), any Regulations made or having effect under the Act, and any guidance and supporting regulations issued by the Secretary of State from time to time under the Act, any relevant representations and the applicant's submissions. The decision will be given to the applicant at the end of the hearing.. The decision will be confirmed in writing as soon as reasonably practicable.

14.5 Conditions

The licensing authority will take care to ensure that only necessary, proportionate and reasonable licensing conditions are imposed on any licence or certificate.. Any such conditions will primarily focus on the direct impact of the activities taking place at licensed premises, on those attending the premises and members of the public living, working or otherwise engaged in normal activity in the vicinity.. Conditions that might be relevant in the town centres may not be appropriate in rural areas – but each application will be considered on its merits.. The conditions will cover only those matters that are reasonably within the control of individual licensees.

Most conditions will be drawn from the relevant Model Pools of Conditions set out in Appendices D to H of the Guidance issued by the Secretary of State under section 182 of the Act. It may be necessary to impose conditions not in the Model Pool when appropriate.

Where it can, the licensing authority will avoid duplication with other regulatory regimes and legislation in attaching conditions to premises licences and club registration certificates.. Where legislation does not cover the particular circumstances of regulated entertainment at specific premises, then specific conditions may be imposed to address the licensing objectives.

14.6 Provisional Statement

Someone with an interest in premises, which is or is about to be constructed for use for one or more licensable activities, or which is or is about to be extended or altered for that purpose, may apply for a provisional statement.. Applications for provisional statements will be considered, subject to the provisions of the Act.. The applicant for

a provisional statement should seek advice from its legal advisor.. Whilst the council's Licensing Manager will assist where possible, he cannot give applicants any legal advice.

14.7 Appeal

Applicants and those making representations in respect of applications and reviews to the licensing authority have a right of appeal to the Magistrates' Court against the licensing authority's decisions.

14.8 Further Information

If you need more details about the licensing process or making an application please contact the Licensing Manager, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ; e-mail licensing.services@tmbc.gov.uk or telephone 01732 876368.. The Licensing Authority's website is www.tmbc.gov.uk.

The Department for Culture Media and Sport has a website at www.culture.gov.uk..

15.0 Irrelevant frivolous vexatious and repetitious representations

The Licensing Authority will not consider representations which are irrelevant, made out of time or which are, in the council's opinion, repetitious, frivolous or vexatious.. Representations must be relevant before the licensing authority can consider them..

This means that they must be:

- § made by a responsible authority or an interested party;
- § have some evidential link to the premises in question;
- § address one or more of the licensing objectives.

The responsible authorities are Kent Police, the British Transport Police, Kent Fire and Rescue Authority, the relevant health and safety authority (the Health and Executive or the Director of Health and Housing of Tonbridge and Malling Borough Council), the Environmental Health Authority (the Director of Health and Housing of Tonbridge and Malling Borough Council), the Local Planning Authority (the Director of Planning and Transportation of Tonbridge and Malling Borough Council), the Weights and Measures Authority (Kent County Council Trading Standards) the Kent Child Protection Committee and the Tonbridge and Malling Crime and Disorder Reduction Partnership.

An interested party means a person living in the vicinity of the premises or a body representing people who live in that vicinity.. It also means a person involved in a business in the vicinity of the premises or a body representing people who are involved in such a business.

Officers will examine each representation on its merits to see whether it is relevant or whether any ordinary or reasonable person would consider it to be frivolous or vexatious.. Full reasons for the refusal to consider the representation will be given to any one whose representation is disallowed.

A representation is repetitious if made in the same 12 month period as an earlier one and is identical or substantially the same as,

- § a ground for review specified in an earlier application for review in respect of the same premises licence;

- § representations considered by the licensing authority when the license was granted;
- § representations which would have been made when the application for the premises license was first made, but which were excluded at that time because of the issue of a provisional statement.

Repetitious representations will not be considered save in exceptional and compelling circumstances or where a review occurs following a closure order.

16.0 Reviews

The council may review a licence on the application of any responsible authority or interested party who makes a relevant representation which relates to the licensing objectives..

The outcome of a review may be no action, warnings regarding future conduct, the modification, suspension or revocation of the licence, the exclusion of a licensable activity from the scope of the licence, the removal of the designated premises' supervisor.

The licensing authority, Kent Police and the Kent and Medway Fire and Rescue Service will give early warning to licence holders of any concerns identified at premises and of the need for improvement where appropriate.

No more than one review will normally be permitted within any 12-month period on substantially similar grounds except in exceptional and compelling circumstances or where it arises following a closure order.

17.0 Enforcement

The council delivers a wide range of enforcement services aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can trade fairly.. The administration and enforcement of the licensing regime is one of these services.. The council has adopted the principles of the Government's Enforcement Concordat designed to ensure effective and efficient public protection services.. Specifically, the council is committed to accord with the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.

The Enforcement Concordat is based on the principles that businesses should:

- § receive clear explanations from an enforcement authority of the steps they need to take and the period for compliance;
- § have opportunities to resolve matters before enforcement action is taken – unless immediate action is needed;
- § receive an explanation of their rights of appeal.

The council will work closely with partners to assist licence holders to comply with the law and the four licensing objectives the licensing authority seeks to promote.. Proportionate but firm action will be taken against those who breach the conditions of their licence or persistently break the law.

The council has set clear standards of service and performance that the public and businesses can expect.. The Licensing Enforcement Policy explains how the licensing authority will undertake its enforcement role effectively and fairly.

The council's Licensing Enforcement Policy is set out in the Appendix to this statement of licensing policy.

The licensing authority has established protocols with Kent Police, Kent and Medway Fire and Rescue Authority and Kent County Council Trading Standards on enforcement issues.. These protocols provide for the targeting of resources for inspection and enforcement towards high risk premises and activities that require greater attention using a scoring scheme based on risk factors, whilst providing a lighter touch in respect of low risk premises.

18.0 Licensing objectives

The following sections set out the licensing authority's statement of licensing policy relating specifically to the four licensing objectives:

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

Each section lists the concerns that might influence the achievement of promoting that objective with possible steps that may be of assistance in meeting those concerns. The lists of concerns and steps are not exhaustive because of the wide variety of premises and activities to which this Policy applies. Applicants should have regard to each of the four licensing objectives when writing their operating schedules.

Applicants know their premises best and will be expected to address the concerns that relate to the individual style and characteristics of their premises and activities as set out in their operating schedule.

Where applicants decide to incorporate an additional step to address the licensing objectives within their operating schedule they need mention it only once.

The licensing authority expects the selection of additional steps set out above to be based upon the applicant's thorough risk assessment of the premises, events, activities and the types and numbers of customers expected to attend.

Whilst the licensing authority cannot require such risk assessments to be documented (other than where required by other legislation) it does consider such documentation to be good practice and a useful tool, for instance in the instruction and training of staff. A risk assessment can also be a sound basis for review by the licence holder, in the event of an application for variation or a response to changing circumstances/conditions at the premises. It may also be a factor in the licence holders favour following an application for review.

In order to minimise potential problems and misunderstandings which can lead to hearings, applicants are advised to consult with the licensing authority when preparing their operating schedules. Applicants should note that, the environmental protection team of the city council, the Kent Police, the Kent and Medway Fire and Rescue Authority and the Kent County Council (the responsible authorities) will examine all applications in order to assess whether they need to make representations on them.

18.1 Addressing all four objectives

1. Applicants may consider taking additional steps when they plan a special event or promotion which is likely to attract larger audiences than usual.
2. The licensing authority considers the effective and responsible management of the premises, the instruction, training and supervision of staff and the adoption of best practice important for the achievement of all the Licensing Objectives. For this reason, the licensing authority will expect these elements to be considered by an applicant when completing an Operating Schedule.
3. The licensing authority will normally expect the premises licence holder to give the Designated Premises Supervisor (DPS) named in the operating schedule the day-to-day responsibility for running the premises. In addition to the DPS holding a personal licence, the licensing authority will normally expect the DPS to have additional training and experience commensurate with the nature and style of the operation of the premises.
4. Applicants for new or variations to late night licences will need to consider the orderly safe and swift dispersal of customers and possible impact on crime and disorder issues. The licensing authority will seek to encourage the controlled dispersal of customers, plans for which the licensing authority will expect to be considered in the Operating Schedules for licences.
5. Licensees are key partners in working towards the promotion of the Licensing objectives. In completing their Operating Schedules applicants will be expected to consider whether to put suitable and sufficient measures in place to promote those objectives. Those measures would be relevant to the individual style and characteristics of their premises, activities and events. It is only when well founded relevant representations are received, that the licensing authority may consider an application for a Premises licence. It will pay particular attention at any hearing whether to impose extra conditions in addition to any which may already be included in the operating schedule, with a view to promoting the objectives.

18.2 Prevention of crime and disorder

Concerns

The applicant should consider factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of crime and disorder. These may include:

underage drinking

- § drunkenness on premises
- § public drunkenness
- § drugs
- § violent behaviour
- § anti-social behaviour

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in addressing the above concerns in the preparation of their operating schedule, having regard to their particular type of premises or activities:

- § Effective and responsible management of premises
- § Training and supervision of staff

- § Adoption of current best practice guidance (some examples are Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit, and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA)
- § Acceptance of accredited 'proof of age' pass cards for example "Connexions Card" promoted by Kent Trading Standards and Kent Police or 'new type' driving licences with photographs, passports or an official identity card issued by H M Forces.
- § Provision of effective CCTV in and around premises
- § Employment of Security Industry Authority licensed door staff. (If two or more are employed there must be at least one male and one female)
- § Provision of toughened or plastic glasses
- § Provision of secure deposit boxes for confiscated items ('sin bins')
- § Provision of litter bins, security measures, eg lighting outside premises
- § Membership of a Pub Watch scheme
- § Operation of a 'Chill Out Hour' whereby late night venues cease to sell alcohol yet continue to provide music and dancing for a further hour (at a reduced volume and with the heavy bass beat removed), which in some places has proved to be a success in reducing late night crime and disorder.

18.3 The promotion of public safety

The licensing authority wishes to ensure the safety of everyone on licensed premises.

Concerns

In accordance with the Secretary of State's guidance, premises where a fire safety certificate has been issued under the Fire Precautions Act 1971 (which imposes an occupancy limit) will not have an occupancy limit imposed under the premises license unless the Kent and Medway Fire and Rescue Authority makes a relevant representation to that effect which is accepted by the licensing authority in determining the application..

Where existing legislation does not provide adequately for the safety of the public, club members or guests, the occupancy capacity for premises and events (to include performers and staff) may still be an important factor in promoting public safety. Subject to the requirements of the following paragraph the licensing authority will expect the issue of occupancy capacity and adequate controls of the numbers of persons on premises or attending an event to be considered by an applicant when completing an operating schedule.

Where a relevant representation is received in respect of capacity the licensing authority will consider setting capacity limits in consultation with the Kent and Medway Fire and Rescue Authority for the following premises:

- § Nightclubs
- § Cinemas
- § Theatres
- § Other premises where regulated entertainment within the meaning of the Act is being provided.

The Applicant might also consider the following concerns when assessing the appropriate capacity for premises or events in the Canterbury area, an important centre for tourism, with a large resident multi cultural student population. These could include:

- § The design and layout of the premises

- § The nature of the premises or event
- § The nature of the licensable activities being provided
- § The provision or removal of temporary structures, such as a stage or furniture
- § The number of staff available to supervise customers both ordinarily and in the event of an emergency
- § The customer profile (eg age, disability)
- § The attendance by customers whose first language is not English
- § Availability of suitable and sufficient sanitary accommodation
- § The nature and provision of facilities for ventilation
- § The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

Where capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the applicant will be expected to consider the arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

Additional Steps

The following examples of additional steps are given for applicants to consider in the preparation of their Operating Schedule, having regard to their particular type of premises or activities:

- § Suitable and sufficient risk assessments
- § Effective and responsible management of premises □ Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons
- § Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
- § Adoption of best practice guidance
- § Provision of effective CCTV in and around premises
- § Provision of toughened or plastic non disposable glasses/bottles
- § Implementation of crowd management measures
- § Regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety

18.4 Prevention of public nuisance

Licensed premises can cause adverse impacts on communities through public nuisance. The licensing authority wishes proactively to maintain and protect the amenity of residents and other businesses from the potential consequence of any nuisance caused by the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide. The licensing authority will interpret 'public nuisance' in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Concerns

When addressing the issue of prevention of public nuisance, the applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the likelihood of public nuisance. These may include:

- § The location of the premises and their proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship

- § The hours of operation, particularly if between 2300 hours and 0700 hours
- § The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
- § The design and layout of premises and in particular the presence of noise limiting features
- § The occupancy capacity of the premises
- § Last admission time
- § The steps the applicant has taken or proposes to take to ensure that staff leave the premises quietly
- § The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the premises
- § Whether routes to and from the premises, on foot or by car or service or delivery vehicles, pass residential premises within the vicinity of the Premises.
- § Whether other measures have been taken or are proposed such as the use of CCTV or the employment of registered door supervisors.
- § The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents.
- § The likelihood of any violence, disorder or policing problems arising if a licence were granted.
- § Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- § The siting of external lighting, including security lighting that is installed inappropriately.
- § Whether the operation of the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premises and any measures or proposed measures to deal with this.
- § The history of previous nuisance complaints proved against the premises, particularly where statutory notices have been served on the present licensees.

Additional Steps

The following examples of additional steps are given as examples for applicants to consider in the preparation of their operating schedule, having regard to their particular type of premises or activities.

- § Effective and responsible management of premises
- § Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance
- § Control of operating hours for all or parts (eg garden areas) of premises, including such matters as deliveries
- § Adoption of best practice guidance (eg Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics)
- § Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- § Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
- § The incorporation of measures for ensuring the safe and swift dispersal of patrons away from premises and events without causing nuisance or public safety concerns to local residents.
- § Effective ventilation systems to prevent nuisance from odour

NB Where relevant representations are received which the licensing authority consider material particular consideration will be given to the impact on residential amenity of proposals for the provision of late night refreshment where these are either located in, or encourage people to move through, residential areas.

18.4 Protection of children from harm

The relaxation in the Licensing Act giving accompanied children greater access to licensed premises is seen as a positive step, which may bring about a social change in family friendly leisure but the risk of harm to children remains the paramount consideration. Clearly, this relaxation places additional responsibilities upon licence holders as well as upon parents and others accompanying children.

The protection of children from harm includes the protection of children from moral, psychological and physical harm and, in relation to the exhibition of films, the transmission of programmes by video or DVD. This includes the protection of children from exposure to strong language, sexual imagery and sexual expletives.

In certain circumstances children are more vulnerable and their needs will require special consideration. This vulnerability includes their susceptibility to suggestion, peer group influences, inappropriate example, the unpredictability of their age and the lack of understanding of danger.

Concerns

The applicant should consider those factors arising from the premises or the activities of their customers within the vicinity of the premises that may impact on the prevention of children from harm. These may include the potential for children to:

- § Purchase, acquire or consume alcohol
- § Be exposed to drugs, drug taking or drug dealing
- § Be exposed to gambling • Be exposed to activities of an adult or sexual nature
- § Be exposed to incidents of violence or disorder
- § Be exposed to environmental pollution such as noise or smoke
- § Be exposed to special hazards such as falls from a height

Additional Steps

The following examples of additional steps are given to assist applicants. The Licensing Authority considers them to be important matters that applicants should take account of in the preparation of their operating schedule, having regard to their particular type of premises and/or activities:

- § Effective and responsible management of premises.
- § Provision of a sufficient number of people employed or engaged to secure the protection of children from harm.
- § Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm.
- § Adoption of best practice guidance (Public Places Charter)
- § Limitations on the hours when children may be present, in all or parts of the premises.
- § Limitations or exclusions by age when certain activities are taking place
- § Imposition of requirements for children to be accompanied by an adult.
- § Acceptance of accredited 'proof of age' cards for example "Connexions Card" promoted by Kent Trading Standards and Kent Police, 'new type' driving licences with photographs, passport, an official identity card issued by HM Forces or by a EU country bearing the photograph and date of birth of bearer.
- § The placing of machines under the Gambling Act 2005 so that they can be properly supervised.

NB1 In exceptional circumstances, where necessary, and only where the licensing authority has received relevant representations, it may impose conditions restricting access or excluding children from premises or part of licensed premises

- a) At certain times of the day or
- b) When certain licensable activities are taking place or
- c) To which children aged under 16 years should have access only when supervised by an adult or
- d) To which unsupervised children under 16 will be permitted access

Examples of premises where these conditions may be considered include those where:

- 1) There have been convictions for serving alcohol to minors or where there is some evidence of under-age drinking
- 2) There is a known association with drug taking or dealing
- 3) There is a strong element of gambling on the premises
- 4) Entertainment of an adult or sexual nature is commonly provided
- 5) There is a presumption that children under 18 should not be allowed (eg to night clubs, except where under 18 discos are being held)
- 6) Licensable activities are taking place during times when children under 16 may be expected to be attending compulsory full-time education.

NB2 The licensing authority commends the Portman Group Code of Practice on the naming and packaging of alcoholic drinks. See www.portman-group.org.uk for further information.

**Tonbridge and Malling Borough Council
Statement of Licensing Enforcement Policy**

1. Aim

This Policy is intended to fairly and firmly enforce the law in a consistent and transparent way, and in accordance with the four licensing objectives: -

- § Prevention of crime and disorder
- § Public safety
- § Prevention of public nuisance
- § Protection of children from harm.

The Council will assist and advise wherever appropriate, but proportionate action will be taken against those who breach the provisions of the legislation.

The Council has adopted /or is in agreement with the provisions of the Government's Enforcement Concordat.

2. Liaison with regulatory agencies

The Council will work actively with the Police and other bodies (Kent and Medway Fire and Rescue Service, HM Customs and Excise, Kent Trading Standards, Child Protection, Health and Safety Executive, Security Industry Authority, Crown Prosecution Service, etc), in enforcing the licensing legislation. This will necessitate the sharing of information in relation to those persons involved in licensing and relevant premises based on the requirements of the Licensing Act 2003, Criminal Justice and Police Act 2001, Anti-Social Behaviour Act 2003, Criminal Justice and Public Order Act 1994, Crime and Disorder Act 1998 and other relevant legislation.

There are various statutory provisions that enable the Council to exchange relevant information with other bodies. These provisions will be used as appropriate.

This enforcement policy in no way restricts other regulatory bodies from carrying out enforcement under their own regulatory powers.

3. Licensing Visits

Council Officers will make licensing visits to premises, and may on occasion be accompanied primarily by Police and or other regulatory agencies.

Both the Council and the other relevant agencies firmly believe that working with business is the primary method to achieve the licensing objectives, but will take appropriate enforcement action if necessary.

The visiting regime for premises is not decided solely on a risk assessment basis. The Council will, as part of its' proactive stance, make regular visits to and in the vicinity of licensed premises in order to assess the impact of their operation on residents and other businesses in the area.

There will be a presumption that visits will take place when various crime and disorder and other indicators show that there are potential problems developing in relation to specific premises or areas.

The Council will monitor patron movement to, from and between premises and the provision and accessibility of transport to assist dispersal of persons away from licensed premises.

The information gained from these monitoring exercises will inform the development of the Councils' Licensing policy statement.

4. Consistency

The Council and its officers will act in a fair and consistent manner. Council Officers whilst exercising their professional judgement in individual cases will do so within a framework based on consistency and fairness in action.

There will be specific circumstances when the Council will share an enforcement role with the Police or other agencies. When this occurs the same degree of consistency and fairness will be applied.

5. Proportionality

The Council, Police and other enforcement agencies will, as far as the law allows and where co-operation is given, work with business/licensees to enable them to meet their legal obligations without undue cost.

The Council will take into account the cost of compliance by ensuring that any enforcement or remedial action required is proportionate to the risks. However clear breaches of the legislation may attract prosecution and /or recommendation for review of the licence where it is deemed to be in the public interest.

6. Enforcement Action/Options

1. The initial contact between Council and Business/Licensees will normally be informal, with the provision of advice, guidance and support.
2. Enforcement action can include the following progressive approach to achieve compliance.
 - Verbal advice- *which may be documented*
 - Written advice
 - Verbal warning-*which will be documented*
 - Written warning
 - Statutory Notice
 - Formal Caution
 - Prosecution

The individual circumstances of the breach of the legislation will determine the level of enforcement.

In the case of a premises licence the Council or the Police may ask for a review. All actions will be considered in accordance with the requirements of the Human Rights Act 1998 and considered on its individual merits.

On conviction of a relevant offence, Magistrates may endorse, suspend or revoke a Personal Licence. Council Officers, Police or Crown Prosecutors may remind the Magistrates of their powers to endorse, suspend or revoke a Personal Licence

- 3 When prosecution is being considered, the relevant enforcement bodies will on a case-by-case basis decide which is the lead authority to prosecute the offence. Regard will be taken of the Code for Crown Prosecutors issued under Section 10 of the Prosecution of Offences Act 1985. Due consideration will also be given to any guidance and/or advice issued by Government, Local Authority Associations and other professional and technical bodies. Statements will be provided as regard to

evidence from one agency to another as necessary. Before deciding whether to prosecute the following factors will be considered: -

- § The seriousness of the alleged offence
- § The History of the business/person concerned
- § The willingness of the business/individual to prevent a reoccurrence of the problem and the level of co-operation with Council Officers, Police and/or other agencies
- § Whether it is in the public interest to prosecute
- § The realistic prospect of conviction
- § Whether any other action (including a formal caution) would be appropriate
- § The views of any complainant and other parties with an interest in a prosecution.

The Council takes a proactive stance towards the proper regulation of, and enforcement of the provisions of this legislation.

The Council will normally take the lead on issues including:

- § Noise
- § Production and display of relevant licences and documents
- § Unauthorised licensable activities in relation to the provision of regulated entertainment
- § Breaches of conditions of premises licences
- § Breaches of requirements under Temporary Events Notices
- § Exposing and keeping of alcohol on premises for unauthorised sale

Other breaches of the Act will be dealt with either directly or jointly as indicated above. The Council will give full co-operation to any other agency in carrying out their investigations.