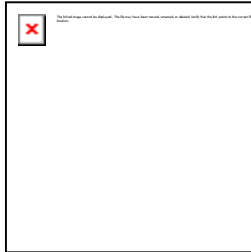


Review consultation draft



Statement of Policy

Approved under the Licensing Act 2003

November 2010

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Appendix A Other relevant Strategies and Policies

ALL applications will be considered on their merits, as well as against the relevant policy and statutory framework.

1.0 INTRODUCTION

Tonbridge and Malling Borough Council is the Licensing Authority under the Licensing Act 2003. The Licensing Authority is responsible for granting premises licences, club premises certificates, temporary events notices and personal licences within the Authority's area in respect of the sale and/or supply of alcohol, the provision of regulated entertainment and late night refreshment.

- 1.2 The 2003 Act requires the Licensing Authority to carry out its various licensing function to promote the following four licensing objectives:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 1.3 The 2003 Act further requires that the Council publish a 'Statement of Licensing Policy' that sets out the policies the Licensing Authority will generally apply to promote the licensing objectives when making decisions on applications made under the Act.
- 1.4 The aims of this Statement of licensing policy, in line with the four licensing objectives, are to:
- a. help build and maintain a safe and prosperous society that properly balances the rights of individuals and their communities;
 - b. apply proportionate enforcement to give business greater freedom and flexibility to meet their customers' expectations;
 - c. encourage more family friendly premises catering for all age groups;
 - d. develop a thriving cultural mix of live music, dancing and theatre;
 - e. protect local residents from anti social behaviour and disturbance
 - f. provide greater choice for tourists and visitors as to where and when they can spend their leisure time;
 - g. encourage an early evening and night time economy which is viable and sustainable;
 - h. reduce alcohol misuse and the consequential effects of that misuse;
 - i. regenerate areas and create employment opportunities that a thriving and safe night time economy can bring.
- 1.5 This 'Statement of Policy and Principles under the Licensing Act 2003' has been prepared in accordance with the provisions of the 2003 Act and having regard to the Guidance issued under Section 182 of the Act.

Where it is necessary to depart from the guidance - either in this policy or at any other time - The Licensing Authority will give clear and cogent reasons for

doing so. It has been drafted in partnership with the Kent & Medway Licensing Regulatory Steering Group. The Licensing Authority shall endeavour to work with other licensing authorities (particularly where licensing authorities' boundaries meet) to ensure that a consistent approach is taken in licensing matters whilst respecting the differing needs of individual communities.

- 1.6 When assessing applications, the Licensing Authority must be satisfied that the measures proposed in the applicant's operating schedule aim, as far as possible, to meet the licensing objectives.
- 1.7 However, it should be recognised that this policy covers a wide variety of premises and activities carried on within them including theatres, cinemas, restaurants, pubs, nightclubs, private members' clubs, village halls and community centres, as well as off-licences, fast food outlets, late night cafes etc. For this reason, this policy cannot detail all the factors that influence the achievement of the licensing objectives nor can this policy detail all the control measures that may be appropriate in any given circumstances.
- 1.8 The Section 182 Guidance advises that the holder of a premises licence, club premises certificate or temporary events notice work in partnership with the Licensing Authority to actively promote the licensing objectives. In respect of each of the four licensing objectives therefore, applicants will need to satisfy the Licensing Authority that suitable and sufficient measures, as detailed in their operating schedule, will be implemented and maintained, relevant to the individual style and characteristics of their premises and events. Reference will need to be made as to whether additional measures will be taken on a permanent basis or specific occasion such as when a special event or promotion is planned, which is intended to, or likely to attract, larger audiences. Applicants should be aware that, whilst the operating schedule does not form an integral part of any premises licence or club premises certificate, the Licensing Authority are required to impose such conditions on the licence or certificate as are reasonably consistent with the operating schedule. These conditions will form part of the premises licence or club premises certificate.
- 1.9 When considering applications, the Licensing Authority will have regard to this Policy, the Licensing Act 2003, particularly the Licensing Objectives and Guidance issued under Section 182 of the Act, and any supporting regulations that may from time to time be made. It will also seek proper integration with local crime prevention, planning, transport, employment and cultural strategies. To this end, the Licensing Committee may provide reports to the planning committee on the situation regarding licensed premises in the area and arrangements may be made for the Licensing Committee to receive reports on the needs of the local tourist economy and the cultural strategy for the area to ensure that these are reflected in their considerations. Care will be taken to ensure that only necessary, proportionate and reasonable licensing conditions are imposed.

- 1.10 The Policy does not undermine the rights of any person to apply under the 2003 Act for a variety of permissions and have the application considered on its individual merits. Such considerations will be in the context of the relevant policy and statutory framework.

The Policy does not override the right of any 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 2003 Act.

In formulating this policy the Council has had regard to the provisions of the Human Rights Act 1998. This Act incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right.

In the exercise of its licensing functions under the Licensing Act 2003, the Council will act in accordance with the duties imposed by the relevant race equality legislation the Disability Discrimination Act 1995 and Section 17, Crime and Disorder Act 1998.

- 1.11 Applicants and those making representations in respect of applications to the Licensing Authority have a right of appeal to the Magistrates' Court against the decisions of the Licensing Authority.
- 1.12 The Licensing Authority recognises that the object of licensing is to maintain appropriate control of licensed premises, qualifying clubs, temporary events and the people who manage them or hold personal licences within the terms of the 2003 Act.

Longer licensing hours with regard to the sale of alcohol are an important strategy to ensure that the concentration of customers leaving premises simultaneously is avoided.

Where any party makes relevant representations, the Licensing Authority will seek to make objective judgements as to whether conditions may need to be attached to a licence, certificate to secure promotion of the licensing objectives. 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 and will cover issues that are reasonably within the control of individual licensees.

- 1.13 When considering any conditions, the Licensing Authority acknowledges that the licensing function is not the only mechanism for the general control of the anti-social behaviour of individuals once they are outside the vicinity of licensed premises and beyond the direct control of the licensee of any premises concerned. Therefore, other mechanisms may be utilised, where appropriate, to tackle unruly or unlawful behaviour of patrons when beyond the control of premises. These include:

- Partnership working with the Kent Police (and other agencies as appropriate) to promote enforcement of the law, including the issuing of fixed penalty notices
- Powers to designate parts of the area 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.

As part of its overall policy the Licensing Authority expects every holder of a premises licence, club premises certificate or Temporary Event Notice to be responsible for minimising the impact of their activities and anti-social behaviour by their patrons within the vicinity of their premises. The holders of authorities under the Licensing Act 2003 should be aware that they might be responsible for the actions of their patrons if such actions occur on the premises, directly outside the premises or sufficiently close to their premises to provide a direct causal link.

A key aim of the licensing policy is to assist licence holders to maintain a safe and family friendly environment in this Local Authority Area. It may be that conditions that would be relevant in the town and city centres may not be appropriate in rural areas. However each application will be considered on its individual merits.

Further, when the Licensing Authority is considering any application, it must avoid duplication with other regulatory regimes, (e.g. health and safety at work, environmental protection, disability discrimination, the Regulatory Reform (Fire Safety) Order 2006, so far as possible.

The licensing regime is not intended to be used to achieve outcomes that have been or could be achieved by other legislation. In particular, its licensing functions will be discharged separately from its functions as the Local Planning Authority. The Licensing Authority anticipates compliance with other statutory regimes in particular those relating to public safety.

Licences and planning permission

- 1.14 The use of any licensed premises or places may be subject to planning controls. There are several key differences between licensing and planning control.

Licensing is concerned with the fitness of the operator and detailed issues concerning the operation and management of the premises that are not addressed by the planning process that relates to the use of the premises. Applicants will be requested to check specifically with the Planning Department for confirmation of the action that they should take in respect of planning matters.

It is anticipated, in general, that the grant or variation of planning permission would be resolved before a licence application is made. Provisional statements may be treated differently.

- 1.15 With the exception of the approval and review of its Licensing Policy, decisions on licensing matters will be taken in accordance with a published and approved scheme of delegation aimed at underlining the principles of timely, efficient and effective decision-making.

Advice and Guidance

- 1.16 The Licensing Authority recognises the valuable cultural, social and business importance that premises and events requiring a licence under the Licensing Act provide and welcomes the diversity of activities that are provided by licence holders. For this reason, pre-application discussions will be encouraged to assist applicants to develop their operating schedule to the standards the Licensing Authority will normally expect. The Licensing Authority, Kent Police and/or Kent Fire and Rescue Service will offer as much advice and guidance to applicants, as resources permit.
- 1.17 The Licensing Authority will also seek to liaise with applicants and/or mediate between applicants and others who may make representations, to achieve a satisfactory outcome for all involved wherever possible and where resources permit. Where an applicant considers that representations may be likely or probable, it is recommended that the applicant discuss the proposal with the Licensing Authority and those from whom they think representations are likely prior to submitting their application. Once an application has been lodged, there are statutory timescales imposed upon the application and determination process, which restrict the opportunity for such discussions, liaison and mediation.

Consultation

- 1.18 There are a number of groups who have a stake in the leisure industry, including businesses, customers, residents and regulators, all of whom have views and concerns that require consideration as part of the licensing function and promotion of the licensing objectives.
- 1.19 In developing this Policy Statement, the Council consulted widely. Along with the statutory consultees (the Chief Police Officer for the District and the Kent & Medway Fire and Rescue Authority) and the Crime and Disorder Reduction Partnership, the views of existing licence holders, businesses, voluntary groups and residents were also taken into account. Due consideration was given to the views of all those who responded to that consultation process.
- 1.20 **This Policy Statement takes effect on 7th January 2011 and will remain in force for a period of 3 years.** It will be subject to regular review by the Licensing Authority. This may lead to Interim Provisions within the three year period that would then be published in a revised policy statement. .

1.21 Amusement with prizes machines

The Gambling Act 2005 gives an automatic entitlement to two gaming machines for category C or D to the holders of premises that are licensed for the sale of alcohol for consumption on the premises at a bar. This automatic entitlement may be rescinded under certain circumstances. Notification must be given to the Licensing Authority together with the appropriate fee. This notification will fail when the premises licence is transferred to another person or ceases to have effect. Under these circumstances a new notification must be given to the Licensing Authority and a fee paid

Where the intention is to make more than 2 machines available for use application must be made to the licensing authority. The Licensing Authority may restrict the number of machines on a premises if it appears that the licensing objectives under the Licensing Act 2003 or Gambling Act 2005 are not being promoted. An application fee and annual fee will need to be paid however this permit may be transferred with the premises licence.

Members Clubs and Miners Welfare Institutes may apply for Club Gaming and Club Gaming Machine permits. Commercial clubs e.g. snooker clubs and night clubs cannot avail themselves of these permits.

1.22 Minor Variations

In order to assist the holders of premises licence and club premises certificates to make variations to licences and certificates new regulations have been brought into effect. The test as to whether such a minor variation is appropriate is "could this variation impact adversely upon the licensing objectives?" If in the view of the Licensing Authority this is the case a full variation would be required.

A minor variation may be appropriate in cases:

- *where there is a minor change to the structure or layout of a premises*
- *Small adjustments to licensing hours*
- *The removal of conditions that have become irrelevant or unenforceable*
- *The addition of certain licensable activities*

Minor variations are not permitted if the hours for the sale or supply of alcohol are increased or if the effect of the variation is to authorise the supply of alcohol at any time between the hours of 23:00 and 07:00 on any day (notwithstanding that there is no increase in hours). Certain other types of application are also excluded by the Licensing Act 2003 as falling within the 'minor variation' category.

The Licensing Authority may consult with such responsible authorities as it thinks appropriate and must consider any representation made by such authorities or by interested parties.

The Authority must make its determination within 15 days of receipt of the application. Should the Authority fail to determine the application within this time it is deemed to have been rejected. The decision as to whether to allow a minor variation rests with the Licensing Authority and may only be challenged by way of judicial review.

1.23 Adult Entertainment

Premises that wish to provide adult entertainment by way of lap dancing, pole dancing or other types of activities involving nudity (relevant entertainment) are required to be licensed under the Local Government (Miscellaneous Provisions) Act 1982 unless they provide such entertainment less than 11 times in any rolling year and there is at least one calendar month between performances. Where this exemption applies the holders of authorities under the Licensing Act 2003 (premises licences, club premises certificates or temporary events notices) will be expected to implement measures to actively promote the four licensing objectives. In particular the Licensing Authority encourages measures that will protect children from moral, physical or mental harm. Such measures may include the following however this list should not be seen as being exhaustive or exclusive:

- Measures to ensure that any adult entertainment cannot be viewed from the public highway or from any part of the premises not being used for adult entertainment. Such measures may include the screening of doors and windows or the screening of the stage area to reduce the field of vision in respect of the performance*
- A proof of age scheme where persons under the age of 18 years are required to provide photographic means of identification*
- The provision of door supervisors registered by the Security Industry Authority for the purposes of ensuring good behaviour during any performance and to ensure that age restrictions are complied with.*
- Measures to ensure that members of the audience are not permitted to be in physical contact with the performer. This may included a barrier or enforced sterile area immediately in front of the stage at a distance that will prevent contact.*

Where premises licences or club premises certificates have conditions attached in respect of regulated entertainment in the form of adult entertainment such conditions will remain in force unless the premises are licensed for relevant entertainment under the Local Government (Miscellaneous Provisions) Act 1982. This is because it is anticipated that the conditions in respect of premises with relevant entertainment are likely to be stricter than those with regulated entertainment.

1.24 Mandatory Conditions

Alcohol-related violent crime, nuisance and disorder remain a serious problem in many areas in England and Wales. Those who retail or supply alcohol also have a responsibility to protect their customers, members, the public and communities.

The Policing and Crime Act 2009 allowed the Government to impose mandatory conditions with regard to the responsible retailing of alcohol.

These conditions are intended to support and actively promote the licensing objectives. The aim of the mandatory conditions is to ensure that those businesses, both small and large, who are selling alcohol irresponsibly, act more responsibly to help tackle alcohol-related crime and disorder.

The mandatory licensing conditions apply to all alcohol retailers and hence they will apply to many small businesses. Many of the proposed conditions involve restrictions on irresponsible practices or promotions and hence will not have any impact on those businesses that do not currently operate these types of practices or promotions. However, it is likely that some small businesses are operating them and hence will be affected by these conditions. There are also some conditions which require premises to adhere to particular good practice and these will also have an impact on some small businesses. The supply of alcohol by members clubs and miners welfare institutes is also included in the conditions.

For the purposes of this policy a responsible person will be considered to be:

- *Premises licence holder*
- *Designated premises supervisor*
- *A person aged 18 or over who is authorised to allow the sale or supply of alcohol by an under 18*
- *A member or officer of a club present on the club premises who can oversee the supply of alcohol*

A responsible person should be able to prove that they have taken reasonable steps to be complaint with the mandatory conditions.

In particular the code requires that the responsible person shall :

- *make free tap water available to customers on request*
- *ensure that a proof of age policy is in place and operated in respect of persons who appear to be under the age of 18 years that includes a photograph, date of birth and holographic mark*
- *where alcoholic drinks are sold for consumption on the premises (other than those sold in sealed containers) make such alcohol available in the following measures:*

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

and is required to inform customers of the availability of such measures.

The definition as to what is an irresponsible drinks promotion is given within the mandatory conditions as:

Any activity carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children

Examples of this would be:

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—
(i) the outcome of a race, competition or other event or process, or
(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable

The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

Whilst any prosecution will be assessed on its individual merit and in light of the Statutory Code of Practice for Regulators breaches of the mandatory code will always be viewed as serious and likely to be subject to enforcement action.

1.25 Early Morning Alcohol Orders

The Crime and Security Act 2010 has amended the Licensing Act 2003 in that a licensing authority may make an order providing:

(a) premises licences and club premises certificates granted by the authority, and temporary event notices given to the authority, shall not have effect to the extent that they authorise the sale of alcohol between 3am and 6am, and

(b) club premises certificates granted by the authority shall not have effect to the extent that they authorise the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club between 3am and 6am.

It is immaterial for the purposes of an order under this section whether a premises licence or club premises certificate is granted, or a temporary event notice is given, before or after the order is made. The effects of this provision is that where such an order is made it becomes enforceable on all premises where a premises licence, club premises certificate or temporary events notice is in force notwithstanding that the permitted hours were granted prior to the order being made.

The Licensing Authority has considered that a primary objective of the Licensing Act 2003 is to allow for a phased closure of licensed premises at the end of an evening thus reducing the crime and disorder and nuisance associated with a number of premises closing at the same time. It is the intention of this licensing authority to make orders under this section only where it is shown to be necessary in order that the licensing objectives, and in particular those relating to crime and disorder and public nuisance, will be promoted.

Where it is intended to make such an order the Licensing Authority will advertise the intention in a local newspaper and, where relevant representations are made by:

- (i) an affected person,*
- (ii) an interested party, or*
- (iii) a responsible authority,*

Hold a hearing to consider any relevant representations that are made.

A relevant representation is a representation that:

(a) is about the likely effect of the making of the proposed order on the promotion of the licensing objectives,

(b) are made to the licensing authority by:

- (i) an affected person,*
- (ii) an interested party, or*
- (iii) a responsible authority,*

(c) are made in the prescribed form and manner and within the prescribed period,

(d) have not been withdrawn, and

(e) in the case of representations made by an affected person or an interested party (who is not also a responsible authority), that they are not, in the opinion of the licensing authority, frivolous or vexatious.

For the purposes of this policy an “affected person” means:

(a) the holder of a premises licence or club premises certificate in respect of affected premises,

(b) the premises user in relation to a temporary event notice in respect of affected premises,

(c) a person who has applied for a premises licence or club premises certificate in respect of affected premises (where the application has not been determined), and

(d) a person to whom a provisional statement has been issued in respect of affected premises

Interested party and responsible authority retain the meanings contained within the Licensing Act 2003.

1.26 Reviews

Where possible and appropriate the Licensing Authority, Kent Police and/or Kent Fire & Rescue Service will give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.

The Licensing Act 2003 allows the Licensing Authority to reject any application for a review that appears to be irrelevant, frivolous, vexatious or repetitive. With this in mind no more than one review will normally be permitted within any 12 month period where the application relies on substantially similar grounds other than in exceptional and compelling circumstances or where it arises following a closure order.

The Licensing Authority may review a licence on the application of any responsible authority or interested party who makes a relevant representation that relates to the licensing objectives. It views particularly seriously applications for the review of any premises licence where it involves the:

- (a) use of licensed premises for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crimes
- (b) use of licensed premises for the sale and distribution of illegal firearms
- (c) evasion of copyright in respect of pirated films and music
- (d) underage purchase and consumption of alcohol
- (e) use of licensed premises for prostitution or the sale of unlawful pornography
- (f) use of licensed premises for unlawful gaming
- (g) use of licensed premises as a base for organised criminal activity
- (h) use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks
- (i) use of licensed premises for the sale of smuggled tobacco or goods
- (j) the use of licensed premises for the sale of stolen goods
- (k) prolonged and/or repeated instances of public nuisance
- (l) where serious risks to public safety have been identified and the management is unable or unwilling to correct those risks
- (m) where serious risks of harm to children have been identified
- (n) permitting drunkenness and for encouraging binge drinking

Responsible authorities and/ interested parties can apply for a review of a premises licence however evidentiary basis would be required to be presented to the Licensing Authority. Interested parties are therefore advised to keep records of incidents in relation to licensed premises in order to support the application for review.

1.27 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 fairly trade. The administration and enforcement of the licensing regime is one of these services. The Council has adopted the principles of the Government's Statutory Code of Practice for Regulators 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.

1.28 The Statutory Code of Practice for Regulators is based on the principles that businesses should:

- receive clear explanations from enforcers of what they need to do and by when;

- have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
 - receive an explanation of their rights of appeal
- 1.29 The Council recognises the interests of both individual citizens and the requirements_of businesses and will work closely with partners to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit offences or break the law. The Council has set clear standards of service and performance that the public and businesses can expect. In particular, a licensing enforcement policy has been created that explains how the Council will undertake its role as Licensing Authority and how the principles of effective enforcement will be achieved. The policy is available from the Licensing Section
- 1.30 The Licensing Authority has established protocols with Kent Police, Kent & Medway Towns Fire and Rescue Authority and Kent County Council Trading Standards on enforcement issues. These protocols provide for the targeting of resources towards high-risk premises and activities that require greater attention, while providing a lighter touch in respect of low risk premises that are well operated.
- 1.31 The principle of using a scoring scheme based on risk factors will normally prevail and proactive inspections will usually be undertaken in accordance with a priority inspection scheme. This should ensure that resources are more effectively allocated to higher risk or 'problem premises'. Monitoring visits will also take place in and around premises.

2.0 LICENSING OBJECTIVES

- 2.1 The following sections set out the Licensing Authority's 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

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.

The Licensing Authority accepts the right of any interested person to make representation on any application or seek a review of a licence or certificate where they are permitted to so under the Act.. Where the Licensing Authority has the ability to do so, 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.

If no representations are received from responsible authorities or interested parties the licence will be granted as applied for, subject only to mandatory conditions and those conditions that are consistent with the operating schedule that is required to be submitted as part of the application.

The Licensing Authority will attach conditions to licences where considered necessary and proportionate for the promotion of the licensing objectives. They will be tailored to the individual style and characteristics of the particular premises and events concerned.

- 2.2 In each section relating to the objectives, the Licensing Authority has defined its intended outcome. Each section then lists the factors that may influence the achievement of that objective because of the wide variety of premises and activities to which this policy applies, the lists provided are not exhaustive or exclusive. Applicants know their premises and business best and should address all aspects relevant to the individual style and characteristics of their premises and events.
- 2.3 Further, in each section, a list of possible control measures is provided. This is to be of assistance to applicants, but again is not intended to be an exclusive or exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective. Applicants will not be required to mention a control measure more than once in their operating schedule.
- 2.4 The Licensing Authority will expect the selection of control measures, referred to in 2.3 above, to be based upon a risk assessment of the premises, events, activities and the customers expected to attend (e.g. their age, number, etc.). Whilst the Licensing Authority may not require such risk assessments to be documented, (other than where required by other legislation), it considers such documentation to be good practice and a useful tool in the instruction and training of staff. It is also 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 being required. The Licensing Authority also encourages the maintenance of training records to evidence the promotion of the licensing objectives.
- 2.5 Additional measures may be necessary on a specific basis such as when a special event (e.g. popular live band) or promotion (e.g. during major sporting occasions) is planned, and which is intended to, or likely to attract larger audiences and/or audiences of a different nature, and which can have a significant impact on the achievement of the licensing objectives.

Reference should be made in an applicant's operating schedule, where applicable, to such occasions and the additional measures that are planned in order to achieve the licensing objectives.

- 2.6 The Licensing Authority considers the effective and responsible management of the premises, instruction, training and supervision of staff and the adoption of best practice to be the most essential of control measures for the

achievement of all the licensing objectives. Applicants are encouraged to consider and address such elements within an applicant's operating schedule.

2.7 *The imposition of occupancy capacities is encouraged for premises, (which includes performers_and staff) and events as appropriate. It is also considered to be an essential factor in the achievement of the four licensing objectives, (except in respect of premises licensed for the consumption of food and/or alcohol off the premises). The issue of occupancy capacity should be considered and addressed within an applicant's risk assessment under the Regulatory Reform (Fires Safety) Order 2006 however the Licensing Authority encourages premises to consider occupancy levels as part of the operating schedule*

2.8 The design and layout of premises are important in determining capacity, as is the availability and size of exits within recommended travel distances. Other factors should also be considered when assessing the appropriate capacity for premises or events. These might include:

- The nature of the premises or event
- The nature of the licensable activities being provided
- The provision or removal of such items as 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 (e.g. age, disability)
- The attendance by customers with disabilities and means of emergency exit for such customers.,
- The attendance by customers with whose first language is not English
- Availability of suitable and sufficient sanitary accommodation
- Nature and provision of facilities for ventilation

2.9 The agreement to a capacity for premises or events should not be interpreted as a requirement to also provide permanent monitoring arrangements such as door staff, attendance clickers or maintenance of attendance records. The Licensing Authority recognises that the person in charge at the premises can often readily assess the capacity of premises without resort to such measures. However, where the capacity is likely to be reached (such as on known busy evenings) and particularly where a special event or promotion is planned, the applicant has a responsibility in promoting the licensing objective of public safety and to be able to give details of the additional arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

3.0 PREVENTION OF CRIME AND DISORDER

3.1 Tonbridge and Malling Borough Council is committed to further improving the quality of life for the people of the area by continuing to reduce crime and the fear of crime.

Whilst the Community Safety Partnership is not a responsible authority under the Licensing Act 2003 the Licensing Authority will consult and involve the Community Safety Partnership in policy making in order to maximise the effectiveness of reducing crime, misuse of drugs and the fear of crime.

- 3.2 Section 17 of the Crime and Disorder Act 1998 introduced a wide range of measures for preventing crime and disorder and imposed a duty on Tonbridge and Malling Borough Council, Kent Police, Kent County Council and others to consider crime and disorder reduction in the exercise of all their duties. The Licensing Act 2003 reinforces this duty for local authorities.
- 3.3 The promotion of the licensing objective, “prevention of crime and disorder”, places a responsibility on licence holders to become key partners in achieving this objective. Applicants should demonstrate in their operating schedule that suitable and sufficient measures have been identified, and will be implemented and maintained, to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.
- 3.4 The applicant should consider factors arising from the premises or the activities of their customers within the vicinity of the premises, and are encouraged to demonstrate consideration of factors that may impact on the prevention of crime and disorder objective. These might include:
 - Underage drinking
 - Drunkenness on premises
 - Public drunkenness
 - Drugs
 - Violent behaviour
 - Anti-social behaviour
- 3.5 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule, having regard to their particular type of premises and/or activities:
 - Effective and responsible management of premises
 - Training and supervision of staff including the maintenance of training records
 - Adoption of best practice guidance (e.g. 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’ cards for example “Citizen Card” and/or ‘new type’ driving licences with photographs, passports, 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. Such door staff should be at a ratio set down by the Security Industry Authority (currently 1:100 patrons) The employment of female staff as part of such door supervision arrangements is encouraged
- Provision of toughened or polycarbonate glasses
- Provision of litterbins and other security measures, such as lighting, outside premises
- Membership of a Pub Watch,

3.6 Applicants should carefully consider the hours that they will wish to operate and when to close their premises for the entry of customers and to require them to leave. They should consider each licensable activity separately and carefully and reflect this in operating schedules. The Licensing Authority will similarly consider hours for licensable activities and closing times and appropriate conditions. The benefits of “cooling down” periods; after the last sales of alcoholic drinks; while food and non alcoholic drinks are still available; and when they volume and tempo of music is reduced, and the levels of lighting are increased, are very widely recognised as helping to reduce crime and disorder and public nuisance. Applicants should consider the benefits of stopping serving alcohol well before other licensable activities stop or more than half an hour before the premises close and customers must leave. They should consider stopping playing music or dancing before they stop serving alcohol and food to customers in very noise sensitive areas.

3.7 Within the operating schedule for premises from which alcohol will be sold, a Designated Premises Supervisor (DPS) must be identified. The DPS should have the day-to-day responsibility for running the premises by the premises licence holder. In addition to the DPS holding a personal licence, the Licensing Authority will expect, where serious crime or disorder has previously been experienced on those premises, the DPS to have additional training and/or experience commensurate with the nature and style of the operation of the premises.

In exceptional circumstances, the police may object to the designation of a new premises supervisor where they believe that such appointment would undermine the crime prevention objective.

3.8 Certain temporary events are not required to be licensed but must be notified to the Licensing Authority and Police using the Temporary Event Notice procedure. However, depending on the nature and location of such events, these can have serious crime and disorder implications. Organisers of these events must submit their notification at least 10 working days before the event to enable the police and the Licensing Authority to work with them to identify and reduce the risk of crime and disorder.

3.8 Where the Licensing Authority has given notice in writing to the holder of the premises licence prohibiting the exhibition of a film (including DVD or video) on the grounds that it contains matter which, if exhibited, would be likely to:

- Encourage or incite crime or lead to disorder, or

- Stir up hatred or incite violence towards any section of the public on grounds of colour, race or ethnic or racial origin, disability, religious beliefs, sexual orientation or gender

the Licensing Authority will expect that the film shall not be exhibited in the premises except with the consent in writing of the Licensing Authority and in accordance with any conditions attached to such consent.

The Licensing Authority will require all films to comply with British Board of Film Classification (BBFC) guidelines.

- 3.9 Applicants for late-night entertainment and premises licensed for the sale or supply of alcohol should show that they can comply with the Home Office guidance “Safer Clubbing” in relation to the control of illegal drugs on their premises. Applicants are advised to seek advice from the police on the handling and disposal of any controlled substances that are seized.
- 3.10 Whilst each application is considered on its merits, the provision of door supervisors in town centre pubs and clubs that wish to sell alcohol beyond 11.00pm is encouraged. The Security Industry Authority’s policy is that one door supervisor must be employed for every 100 people likely to be present on the premises. The Licensing Authority may liaise with the designated premises supervisor as to the days of the week when such staff need to be employed.

4.0 PUBLIC SAFETY

- 4.1 The Licensing Authority is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, applicants are encouraged to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events.
- 4.2 When addressing the issue of public safety, an applicant should demonstrate that those factors that impact on the standards of public safety have been considered. These may include:
- The occupancy capacity of the premises (notwithstanding the provisions of the Regulatory Reform (Fire Safety) Order 2006) in particular having regard to
 - means of escape in an emergency
 - The age, design and layout of the premises, including means of escape in the event of fire
 - The nature of the licensable activities to be provided, in particular the sale or supply of alcohol, and including whether those activities are of a temporary or permanent nature
 - The hours of operation, noting the difference between opening hours and the hours of licensable activities (wind down periods).
 - Customer profile (e.g. age, disability)

- The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

The Regulatory Reform (Fire Safety) Order 2006 places a responsibility on the licence holder to carry out a risk assessment and appoint a competent person. This risk assessment should include a maximum capacity limit taking into account the activities undertaken on those premises and any extenuating circumstances such as special effects, clientele, or restricted access

4.3 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule, having regard to their particular type of premises and/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 polycarbonate glasses
- Implementation of crowd management measures
- Regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety

5.0 PREVENTION OF PUBLIC NUISANCE

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

5.2 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.

5.3 In the case of shops, stores and supermarkets and garages selling alcohol, the Licensing Authority will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are valid reasons relating to any of the licensing objectives which justify restricting hours of opening.

5.4 Applicants should demonstrate in their operating schedule that suitable and sufficient measures to prevent public nuisance have been identified and will be implemented relevant to the individual style and characteristics of their premises and events.

5.5 When addressing the issue of prevention of public nuisance, the applicant should demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include:

- The location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
- The hours of operation, particularly if between 23.00 and 07.00
- 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
- The availability of public transport
- 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.
- 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 to be granted.
- Whether taxis and private hire vehicles serving the premises are likely to disturb local residents.
- The siting of external lighting, including security lighting
- Whether the premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the premise and any measures or proposed measures to deal with this.
- The history of previous nuisance complaints proven against the premises, particularly where statutory notices have been served on the present licensees.

5.6 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule, having regard to their particular type of premises and/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 individual parts of the premises (e.g. garden areas), including such matters as deliveries, bottle clearing etc.
- Adoption of best practice guidance (e.g. 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
- Liaison with public transport providers
- Siting of external lighting, including security lighting
- Management arrangements for collection and disposal of litter
- Effective ventilation systems to prevent nuisance from odour

6.0 PROTECTION OF CHILDREN FROM HARM

- 6.1 Applicants should demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to protect children from harm, relevant to the individual style and characteristics of their premises and events. The Licensing Authority commends the Portman Group Code of Practice on the naming and packaging of alcoholic drinks.
- 6.2 The Licensing Authority considers that the appropriate body for advising on the protection of children from harm shall be the Kent County Council Safeguarding Children Board.
- 6.3 The protection of children from harm is an important issue. It is hoped that family friendly premises will thrive, but the risk of harm to children remains a paramount consideration when determining applications.
- 6.4 The relaxation of previous restrictions contained in the Licensing Act 1964 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. Clearly, this relaxation places additional responsibilities upon licence holders. However, it is recognised that parents and others accompanying children also have responsibilities.
- 6.5 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, or 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,

and the unpredictability of their age and the lack of understanding of danger.

6.6 Whilst children may be adequately protected from harm by the action taken to protect adults, they also need special consideration and no policy can anticipate every situation. When addressing the issue of protecting children from harm, the applicant should demonstrate that those factors that impact on harm to children have been considered. The potential for children to be exposed to the following should all be considered and addressed:

- 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

6.7 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in 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
- Limitations on the hours when children may be present, in all or individual 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 Citizens Card" and/or 'photocard 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 provided under the Gambling Act 2005 so that they can be properly supervised.

6.8 In the case of film exhibitions, the Licensing Authority will expect licensees to implement measures that restrict children from viewing age-restricted films classified according to the recommendations of the BBFC or the Licensing Authority. In the case of a film exhibition that has not been classified, the Licensing Authority will expect the licensee to certify to the Licensing Authority that an assessment of the suitability of the film for exhibition to children in accordance with the BBFC Guidelines has been carried out and that this has been confirmed by the Licensing Authority in writing prior to public viewing.

- 6.9 Where regulated entertainment is provided the Licensing Authority will require the presence of an adequate number of adult staff to control the access and egress of children and to protect them from harm whilst on the premises. Where children are present as performers, the Licensing Authority will normally require an adequate number of adult staff to be responsible for the child performers. The staff should be suitably screened to work with children.
- 6.10 In promoting this licensing objective the holders of any premises licence should ensure that a current risk assessment has been carried out and adequate numbers of attendants are on duty to ensure public safety.
- 6.11 The Licensing Authority will rarely impose complete bans on access to children. In exceptional circumstances, and only where the Licensing Authority has received relevant representations, conditions restricting access or excluding children completely may be considered necessary. Those conditions may restrict children from entering all or part of licensed premises:
- (1) at certain times of the day or
 - (2) when certain licensable activities are taking place or
 - (3) to which children aged under 16 years should have access only when supervised by an adult or
 - (4) to which unsupervised children under 16 will be permitted access
- 6.12 Examples of premises where these conditions may be considered include 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 (e.g. to nightclubs, 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.
 - (7) there is evidence or convictions for permitting drunkenness and/or binge drinking

Appendix A - Other Relevant Contacts, Strategies and Policies

Licensing Act 2003: Guidance issued under Section 182 and Guidance on the Operation of Closure Powers in Part 8
www.culture.gov.uk

Together Tackling Anti-Social Behaviour Actionline
www.together.gov.uk

PM's Strategy Unit's Interim Paper re alcohol related harm
<http://www.number10.gov.uk/output/Page4498.asp>

Home Office Alcohol and Crime Research Page
<http://www.homeoffice.gov.uk/rds/alcohol1.html>

Home Office Guidance for Local Agencies
<http://www.homeoffice.gov.uk/rds/dprpubs1.html>

British Institute of Innkeeping (BII)
info@bii.org

Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by Independent Street Arts Network
www.streetartsnetwork.org/pages/publications

Home Office Race Relations Guidance
www.raceimpact.homeoffice.gov.uk

Disability Rights Commission
www.dre-gb.org

Home Office's Updated Drug Strategy and "Safer Clubbing"
www.drugs.gov.uk

"Alcohol and Crime: Taking Stock" by Anne Deehan, Home Office Crime Reduction Research Series Paper 3
www.crimereduction.gov.uk/drugsalcohol8.htm