



CHELTENHAM
BOROUGH COUNCIL

Licensing Act 2003
Licensing policy statement

DRAFT

Pre consultation draft

(August 2004)

Preamble

The Licensing Act 2003 introduces major changes to the law relating to alcohol sales, public entertainment and late night refreshment. A new unified system of regulation through local unitary and district councils is expected to be fully operational by January 2005. An estimated 200,000 premises in England and Wales will be affected. There will be two new types of licence: *the premises licence and the personal licence (club premises certificates for qualifying clubs)*. As a result Cheltenham Borough Council, instead of the magistrates' court, will assume responsibility for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities' : public entertainment; theatre; cinema; or, late night refreshment. Fixed opening hours will be abolished and other freedoms and flexibilities will be balanced by accountabilities, new offences and strong enforcement powers. The new system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The council must promote these objectives in carrying out its new functions.

The Act requires the licensing authorities to publish and keep under review a statement of their licensing policy. Partnership working is at the heart of the new system and statutory bodies, licensee and resident representatives are key stakeholders who must be consulted before the policy is adopted. Cheltenham Borough Council welcomes these new powers and will work to integrate its new responsibilities with existing policies and strategies including those relating to community safety; the night time economy; transport; culture and development.

This document is the first draft of Cheltenham Borough Council's licensing policy.

This is your opportunity to comment on the draft licensing policy to ensure that it reflects the local balance between the commercial interests of the licensed trades and the communities they serve and impact upon. Comments are invited and they should be returned to George Rowlinson by 8 November 2004 before the Council formally adopts the policy on 6 December 2004.

Comments are invited on this draft policy by 8 November 2004 and should be sent to:

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**Further copies may be obtained from the council's offices or from its website
www.cheltenham.gov.uk**

Schedule of policies

When submitting comments on the draft statement, please quote the policy reference

A: Introduction

- A1 **Each objective is of equal importance** and the council has developed policies relating to each objective. **(Paragraph 1.2)**
- A2 The council welcomes the licensing reform measures that the Act introduces and in carrying out its new duties and responsibilities, will seek to progress the Night Time Economy Strategy's vision of **'a safe and attractive town centre with a diverse night time economy, accessible to all while protecting the quality of life for residents'**. **(Paragraph 1.3)**

B: General principles

- B1 The council will give proper weight to the views of those it has consulted. The policy will take effect on 7 February 2005 and will remain in force for a period of not more than three years. A review and further consultation will be carried out in 2007-08. **(Paragraph 2.1)**
- B2 Nothing in this policy will prevent any person from exercising their rights under the Act as an applicant or objector. The council's aim is to uphold the licensing objectives whilst facilitating well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents. **(Paragraph 2.3)**
- B3 The council will consistently strive to work in partnership with licensees, authorised persons, the police, other responsible authorities and interested parties in promoting the licensing objectives. **(Paragraph 2.3)**
- B4 The council will only apply terms and conditions to licences which promote one or more of the licensing objectives and are relevant to the individual circumstances of the application. Conditions may be drawn from those set out in Appendix C and / or tailored to particular circumstances and they will be focused on matters within the control of the individual licensees and others granted relevant permissions. **(Paragraph 2.4)**
- B5 The council will always seek to ensure that conditions are necessary, proportionate and reasonable and will avoid the use of any conditions which duplicate other legal requirements that apply to an employer or operator of premises. **(Paragraph 2.4)**
- B6 The council expects that any conditions that are necessary will, in the first instance, be identifiable from prospective licensees or certificate holders' risk assessments. Applicants will have to translate their assessments into measures which promote one or more of the licensing objectives and record them in their operating schedule. **(Paragraph 2.5)**

- B7 The council, as the licensing authority, will not impose any conditions unless, following the receipt of relevant representations, it has used its discretion at a hearing and been satisfied of the validity of those concerns. **(Paragraph 2.5)**
- B8 The council encourages prospective applicants to seek to minimise disputes and the need for hearings by consulting with all responsible authorities when operating schedules are being prepared. **(Paragraph 2.5)**
- B9 Cheltenham Borough Council fully understands that licensing law is not a mechanism for the general control of antisocial behaviour by individuals once they are beyond the direct control of the individual, club or business holding the licence, certificate or permission concerned. Licensed premises, especially those offering late night entertainment, alcohol and refreshment, can be a source of crime and disorder, public safety and nuisance concerns. The council will expect operating schedules to satisfactorily address these issues from the design of the premises through to the way that they are operated on a day to day basis. The council understands and expects that the primary responsibility for controlling activities on and in the immediate vicinity of their premises will rest with all holders of a licence, certificate or permission. **(Paragraph 2.6)**
- B10 Cheltenham Borough Council will consider every application on its individual merits with regard to this policy statement and to the Licensing Committee's Probity Guide. The council will seek to balance the needs of the wider community, local community and commercial premises and activities, against those who may be concerned about adverse impacts from licensed premises. The views of vocal individuals or groups will not of necessity prevail over the general interests of the community. In every case, the council will focus on disproportionate or unreasonable impacts of the licensable activities on people living, working and sleeping in the vicinity. **(Paragraph 2.7)**
- B11 The council will support diversity of premises as it believes that a mix of different types of licensed premises (particularly where there is already a high concentration of them) offers a number of benefits. **(Paragraph 2.8)**
- B12 The council will adapt its existing consultative mechanisms to ensure that regular dialogue takes place with representatives of licensed premises, personal licensees, businesses and residents to discuss and keep matters relating to licensing under review. **(Paragraph 2.9)**
- B13 The council will work in partnership with the other local authorities in Gloucestershire to ensure a consistent approach is taken to licensing matters whilst respecting the needs of individual communities. **(Paragraph 2.10)**
- B14 In any case where the council believes that a departure from this policy or relevant guidance is necessary it will give clear and sound reasons for doing so. **(Paragraph 2.11)**

C: Integrating strategies

- C1 Cheltenham Borough Council will continue the development of its work on the night time economy as a key linking mechanism to ensure that its licensing policies are properly integrated with other existing strategies and plans relating to crime reduction, planning, transport, economic development, tourism and culture. **(Paragraph 4.1)**

- C2 Cheltenham Borough Council has developed a Race Equality Scheme to accord with the Race Relations Act 1976, as amended. The council will use the experience gained in implementing the Licensing Act 2003 to inform its judgements on the ways that these duties and responsibilities may impact on the general duty to:
- eliminate unlawful discrimination
 - promote equality of opportunity
 - promote good relations between persons of different racial groups **(Paragraph 4.2)**
- C3 The council, in fulfilling its duties under the Act, will seek to reflect this desire for greater inclusion and balance in its evening and night time offering. **(Paragraph 4.3)**
- C4 The owners of public spaces within the borough, including the council itself, will be encouraged to apply for premises licences. This will enable performers and entertainers who wish to provide regulated entertainment to do so by obtaining the permission of the premises licence holder without needing to either obtain a licence or give a temporary event notice. **(Paragraph 4.4)**
- C5 In undertaking its role as a licensing authority, the council will monitor the impact of licensing on regulated entertainment, and particularly on live music, dancing and theatre. The council, as the licensing authority, will have regard to the cultural strategy's aim: *'to offer everyone in Cheltenham access to the best possible cultural and leisure opportunities, enhancing the town's reputation and environment, in pursuit of a better quality of life for all'*. **(Paragraph 4.5)**
- C6 To ensure that the Licensing Committee is able to properly reflect these issues in its deliberations, arrangements will be made for members to receive reports from time to time on: a) the night time economy strategy, b) the needs of the local tourism economy, c) cultural strategy developments and d) the local economic development and employment situation. **(Paragraph 4.6)**
- C7 The council recognises that there must be a clear separation of the planning and licensing regimes and that licensing applications should not be a re-run of the planning application, decision or appeal processes. The need for improved co-ordination of the planning and licensing regimes has been recognised in the Night Time Economy Strategy and the council will ensure that the Licensing Committee provides reports to the Planning Committee on licensed premises in the town and the impact of alcohol related crime and disorder. This will ensure that the Planning Committee has regard to such matters in taking its decisions. **(Paragraph 4.7)**
- C8 In general, the council will require applications for premises licences and club premises certificates to be supported by an appropriate grant of planning permission. The Licensing Committee may refuse an application following representations from the local planning authority that the activity to be authorised would amount to an unlawful land use. It will be for the applicant to demonstrate any special circumstances that may justify a departure from this policy. **(Paragraph 4.8)**

- C9 The council recognises the need to avoid as far as possible duplication with other regulatory regimes and will, as a matter of policy, seek to avoid it as far as possible. However, the council is also mindful that other legislation does not always cover circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises where a condition(s) may be necessary **(Paragraph 4.9)**

The policy objectives:

D: Crime and disorder

- D1 In addition to its duty to promote the licensing objectives, Cheltenham Borough Council also has a duty under Section 17 of the Crime and Disorder Act 1988 to do all it can to prevent crime and disorder. The council, in undertaking its duties and responsibilities as a licensing authority, will seek to ensure that it consistently reflects local crime prevention strategies and priorities. **(Paragraph 5.1)**
- D2 In this policy, the council will focus on nationally identified good practice to uphold and promote the licensing objectives, particularly in relation to crime and disorder that has been highlighted by the Government in its action plan for tackling alcohol related crime and disorder which aims:
- to reduce problems arising from underage drinking
 - to reduce public drunkenness
 - to prevent alcohol related violence.

In forming a view about the merits of individual applications, the council will apply quality standards of socially responsible good management.
(Paragraph 5.5)

- D3 The council believes that unless licensees, particularly those responsible for nightclubs and town centre pubs / bars, participate in Nightsafe and contribute to the effective operation of its exclusion policy, they should not be permitted to enjoy maximum use of the new freedoms and flexibilities offered by the Licensing Act 2003. **(Paragraph 5.5)**

E: Public safety

- E1 The Licensing Act 2003 covers a wide range of premises that require licensing including cinemas, nightclubs, public houses, village and community halls, schools, cafes, restaurants and fast food outlets / takeaways. Each of these types of premises present a mixture of risks, some of which may be common to most premises whilst others will be unique to specific operations. In all cases applicants' risk assessments will be used to determine what public safety measures are necessary, given the nature and style of the venue. **(Paragraph 6.1)**
- E2 Conditions will not be imposed which relate to cleanliness or hygiene and neither will smoking bans in premises be sought by condition. **(Paragraph 6.2)**

- E3 A condition may require certain safety check documentation to be held but this requirement will not be applied where such a requirement exists in other legislation. **(Paragraph 6.3)**
- E4 Safe occupancy capacities will only be imposed on relevant premises where applicants' risk assessments and / or advice from the fire and rescue service show them to be necessary in the interests of public safety. On occasion the council may, acting on police advice, may use such a condition where overcrowding has raised concerns about the risk of disorder. **(Paragraph 6.4)**
- E5 Where 'small premises' which hold no more than 200 people intend to make use of the exemption provisions in s177 of the Act, the council will in every such case, either require confirmation of the permitted capacity through the premise's fire certificate or, where this is not available, the fire and rescue service will be asked to make a recommendation on the capacity for inclusion in a condition to be imposed by the council. **(Paragraph 6.5)**
- E6 The council has adopted a pool of conditions relating to public safety including fire safety (Appendix C). Where justified, conditions will be imposed relating to: CCTV system(s), the use of door supervisors (with a requirement that for every 100 persons (or part thereof) present in licensed premises no less than one supervisor be provided), use of plastic / toughened bottles and glasses and the removal of opened drinks containers from licensed premises. **(Paragraph 6.6)**
- E7 Applicants are encouraged to seek advice from the council's environmental health officers and licensing officers and the fire safety section of Gloucestershire fire and rescue service. The council will determine on a case by case basis which application premises require an inspection and, in all cases, the council's licensing officers will seek to reduce inconvenience, confusion and inconsistency by co-ordinating inspections and visits with the fire authority, police, building control and environmental health officers, as appropriate. **(Paragraph 6.8)**

F: Prevention of nuisance

- F1 Cheltenham Borough Council wishes to do all in its power to protect the amenity of residents and businesses in the vicinity of licensed premises, and for these purposes 'vicinity' is taken to mean the immediate area around licensed premises. As the council is fully aware of the importance of the licensed trade in terms of the local economy and its culture and leisure aspiration, it will seek to work in partnership with all interested parties to ensure a mutual and productive co-existence. **(Paragraph 7.2)**
- F2 When considering licence applications, the council will take into account the location of the premises and the type and construction of the building as well as the adequacy of measures proposed to deal with the potential for nuisance and / or antisocial behaviour having regard to all the circumstances of the application. **(Paragraph 7.4)**
- F3 The council will consistently seek to ensure that its judgements about what constitutes public nuisance are balanced, as are decisions about any conditions that are considered necessary to prevent it. In particular the council will consider the appropriate action having regard to the following:

- prevention of noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- prevention of disturbance by customers arriving at or leaving the premises, particularly between 11pm and 7am
- prevention of queuing by pedestrians or vehicular traffic, or if some queuing is inevitable then ensuring the queues are diverted away from neighbouring premises or are otherwise managed to prevent disturbance or obstruction
- ensuring staff leave the premises quietly, arrangements for parking by patrons and staff, and the effect of the parking on local residents
- provision for public transport (including taxis and private hire vehicles) for patrons
- whether licensed taxis or private hire vehicles are likely to disturb local residents
- whether routes to and from the premises on foot, by car or other services pass residential premises
- the installation of any special measures where licensed premises are, or are proposed to be, located near sensitive premises such as nursing homes, hospitals, hospices or places of worship
- the use of gardens and other open-air areas
- the location of external lighting, including security lighting that is installed inappropriately
- other appropriate measures to prevent nuisance including action by registered door supervisors or the use of CCTV
- how the premises addresses refuse storage or disposal problems, or additional litter (including fly posters and illegal placards)
- any history of previous nuisance complaints proved against the premises, particularly where statutory action has been taken. **(Paragraph 7.5)**

F4 When considering the use of licence conditions to prevent unnecessary noise, disturbance and public nuisance to residents and businesses, the council may include restrictions on the times when music or other licensable activities may take place and may include technical restrictions on sound levels at the premises. **(Paragraph 7.6)**

G: Protection of children from harm

G1 The council recognises that locally, limitations may have to be considered where it is considered necessary for the prevention of physical, moral, or psychological harm. Concerns may be raised about particular premises where:

- current members of staff have convictions for serving alcohol to minors or the premises are associated with underage drinking
- there is a known association with drug taking or dealing
- there is a strong element of gambling on the premises
- entertainment or services of an adult or sexual nature are commonly provided

- the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- there is a presumption that children under 18 should not be allowed (eg to nightclubs, except when under 18 discos are being held).
(Paragraph 8.1)

G2 When deciding whether or not to limit the access of children to premises the council will judge each application on its own merits. To assist with this the council will consult with Gloucestershire Police and other agencies as appropriate, including the Area Child Protection Committee or Social Services Department. Where concerns have been identified in respect of individual premises and it is felt that access to the premises by children should be restricted, the options available would include:

- limitations on the hours when children may be present
- age limitations for persons under 18
- limitations on the exclusion of children under certain ages when specified activities are taking place
- full exclusion of person under 18 when certain licensable activities are taking place
- limitation of access to certain parts of the premises for person under 18
- a requirement for an accompanying adult to be present.
(Paragraph 8.2)

G3 The council will not impose any conditions that specifically require the access of children to the premises. **(Paragraph 8.3)**

G4 Where no conditions or restrictions are imposed, the issue of access for children remains a matter for the discretion of individual licensees or clubs or person who has given a temporary event notice. The Act does not impose any restrictions on individual applicants volunteering prohibitions or restrictions in their operating schedules because their own risk assessments have shown that the presence of children is undesirable or inappropriate. In the absence of any relevant representations, the volunteered prohibitions or restrictions would become conditions of the licence or certificate. **(Paragraph 8.4)**

G5 The Act details a number of offences that are designed to protect children in licensed premises and the council will work closely with the police and Trading Standards Services to ensure appropriate and effective enforcement, particularly in relation to the sale and supply of alcohol to children.
(Paragraph 8.5)

- G6 Films cover a vast range of subjects, some of which deal with adult themes and / or contain, for example, scenes of horror or violence that may be considered unsuitable for children with certain age ranges. In order to prevent children from seeing such films, the council will impose conditions requiring licensees to restrict children from viewing age restricted films classified by the British Board of Film Classification. **(Paragraph 8.6)**
- G7 In considering applications, the council will take into account any evidence that age restrictions for film exhibitions are not being properly observed. **(Paragraph 8.7)**
- G8 Where a regulated entertainment is specially presented for children, the council will require the following arrangements in order to control their access and egress and to assure their safety:
- an adult member of staff to be stationed in the vicinity of each of the exits from any level, subject to there being a minimum of one member of staff per 50 children of part thereof
 - no child, unless accompanied by an adult, to be permitted in the front row of any balcony
 - no standing to be permitted in any part of the auditorium during the performance. **(Paragraph 8.9)**
- G9 Where children are taking part in any regulated entertainment, the council will expect the arrangements that are set out in its guidance note 'Children in Performances' to be in place. **(Paragraph 8.10)**
- G10 The council will expect these matters to be satisfactorily addressed in applicants' operating schedules. **(Paragraph 8.11)**

H: Cumulative impact

- H1 Cheltenham Borough Council will not take 'need' into account when considering an application. **(Paragraph 9.1)**
- H2 Cheltenham Borough Council has established that it has a remarkably vigorous night time economy for the size of the town. It is apprehensive about current trends in crime and disorder when associated with an increase in people either passing through or congregating in streets during the night. The principal focus of concern is the town centre and whilst there is some evidence that this part of the borough is already suffering adverse effects from the concentration of late night premises, the council does not believe that they are currently so unusual or exceptional as to call for the immediate development of a special saturation policy. However, this is an area of particular concern and will, with stakeholders, be kept under close review along with the impacts of the Act and the council's 'quality standards' approach to upholding the licensing objectives. **(Paragraph 9.5)**
- H3 The council will take the following steps when considering whether to adopt a special saturation policy:
- identification of serious and chronic concern from a responsible authority or representatives of residents about nuisance and disorder
 - identification of the area from which problems are arising and the boundaries of that area, where it can be demonstrated that disorder and nuisance is arising as a result of customers from licensed premises
 - assessment of the causes

- adoption of a policy about future licence applications from that area. **(Paragraph 9.8)**

H4 The council will consider representations based on the impact on the promotion of the licensing objectives when determining the grant of any particular application before them. However, the onus would be on the objectors to provide evidence to support any assertion that the addition of the premises in question would produce the cumulative impact claimed, taking into account that the impact will be different for premises with different styles and characteristics. **(Paragraph 9.9)**

H5 The council recognises that the diversity of premises selling alcohol, serving food and providing entertainment covers a wide range of contrasting styles and characteristics and will have full regard to those differences and the differing impact these will have on the local community.

I: Licensing hours

I1 The council will not impose arbitrary restrictions on trading hours that undermine the principle of flexibility. The movement of people through the town centre at night and incidents at gathering places are particular areas of concern and the council wishes to see reduced concentrations and a slower dispersal of people from licensed premises with benefits in terms of promotion of the licensing objectives. **(Paragraph 10.2)**

I2 The council will expect the operating schedules for late night venues to address these issues by making it attractive for customers to spend their whole evening, or the latter part of it, at a single venue.

Whether or not operating hours are extended as a result of the Act, the council seeks (through its 'quality standards' approach) for licensees to carefully manage the final 30-60 minutes of their trading period with appropriate measures to prevent customers leaving en masse and 'hyped up' as a result of loud music. **(Paragraph 10.3 & 4)**

I3 The council will not impose fixed trading hours within specified parts of the borough; neither will it seek to engineer staggered closing times by setting quotas for particular times. **(Paragraph 10.5)**

I4 In reaching a judgement on the individual merits of applications, the council will have regard to the implications for nuisance generation and the impacts on residents that are posed by operating hours and types of regulated entertainment. The council will take into account requests for terminal hours in the light of the:

- environmental quality
- residential amenity
- character or function of a particular area
- nature of the proposed activities to be provided at the premises.

Consideration may, however, be given to imposing stricter controls on noise and disturbance from particular licensed premises, such as those in mainly residential areas. **(Paragraph 10.6)**

- 15 Generally the council will consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes. **(Paragraph 10.7)**
- 16 The council wants all licensees and their customers to continue to enjoy the benefits of the pattern of extended hours for bank holidays and major horseracing events that has been established in Gloucestershire.
(Paragraph 10.8)

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1. Introduction

1.1 This policy applies to activities that the council is responsible for under the Licensing Act 2003 (the Act). Examples of licensable activities are:

- retail sale of alcohol (including via the internet or mail order)
- the wholesale of alcohol to members of the public
- supply of alcohol to club members
- the provision of 'regulated entertainment' to the public or club members or with a view to making a profit in the presence of an audience; including: the performance of a play; film exhibitions; indoor sporting events; boxing or wrestling events (indoors and outdoors); performing live music and playing recorded music (except incidental music); dance performances; and entertainment of similar descriptions
- the provision of facilities for making music
- the provision of facilities for dancing
- the supply of hot food or drink from the premises between 23.00 hours and 05.00 hours.

1.2 The Licensing Act 2003 imposes a duty on Cheltenham Borough Council to produce, develop and review a licensing policy that sets out the policies that the council will generally apply to promote the licensing objectives when making decisions under the Act. The statutory objectives that the council will actively seek to promote in carrying out its licensing functions are:

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

Each objective is of equal importance and the council has developed policies relating to each objective.

1.3 The council welcomes the licensing reform measures that the Act introduces and in carrying out its new duties and responsibilities will seek to progress the Night Time Economy Strategy's vision of **'a safe and attractive town centre with a diverse night time economy, accessible to all while protecting the quality of life for residents'**.

- 1.4 This policy has been prepared in accordance with the provisions of the Licensing Act 2003 and with regard to guidance issued by the Secretary of State under Section 182 of the Act. The council has also had regard to existing corporate policies and strategies as well as its existing duties and responsibilities under the following statutes and associated statutory provisions: the Crime and Disorder Act 1988, the Human Rights Act 1998, the Health and Safety at Work etc Act 1974, and the Environmental Protection Act 1990.

2. General principles

- 2.1 The council will give proper weight to the views of those it has consulted. The policy will take effect on 7 February 2005 and will remain in force for a period of not more than three years. A review and further consultation will be carried out in 2007/2008. If any amendments to the licensing policy are needed before the review period they will only be made following consultation with the parties that are referred to below.
- 2.2 The Act stipulates a number of stakeholders who have an interest in licensing and who must be consulted before this policy is adopted:
- the Chief Officer of police
 - the fire authority
 - persons / bodies representing local holders of premises / club / personal licences
 - persons / bodies representing businesses and residents.

All these parties have views and concerns that require consideration as part of the licensing function. Cheltenham Borough Council will consult with Gloucestershire Police, Gloucestershire Fire and Rescue Service, Gloucestershire County Council's Education, Social Services and Trading Standards Departments, the Gloucestershire and Cheltenham Crime Reduction Partnerships, the ambulance and accident and emergency services, the five consultative area committees, all known tenants and residents groups, the Nightsafe Group, the Cheltenham Innkeepers Association, the Cheltenham Tourism Forum, the Cheltenham Business Partnership, the Cheltenham Local Strategic Partnership, and the Night Time Economy Community Strategic Liaison Group before adopting its licensing policy or any amendments to it. In addition, the council may also consult with other local bodies and agencies as appropriate. The Night Time Economy Community Strategic Liaison Group will be asked to consider all responses to this draft before further reports are prepared for the Social and Community Overview and Scrutiny Committee and the full Council, the latter, ultimately, will approve and adopt the policy statement.

- 2.3 The Act introduces a unified system of regulation for the sale and supply of alcohol, and the provision of regulated entertainment and late night refreshment. Nothing in this policy will prevent any person from exercising their rights under the Act as an applicant or objector. The council's aim is to uphold the licensing objectives whilst facilitating well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.

The council will consistently strive to work in partnership with licensees, authorised persons, the police, other responsible authorities and interested parties in promoting the licensing objectives.

- 2.4 The council will only apply terms and conditions to licences which promote one or more of the licensing objectives and are relevant to the individual circumstances of the application. Conditions may be drawn from those set out in the Secretary of State's guidance on the Act; D-H (also available from our website at www.cheltenham.gov.uk, under 'licensing policy statement' in the A-Z of our services). They may be tailored to particular circumstances and they will be focused on matters within the control of the individual licensees and others granted relevant permissions. The council will always seek to ensure that conditions are necessary, proportionate and reasonable and will avoid the use of any conditions which duplicate other legal requirements that apply to an employer or operator of premises.
- 2.5 The council expects that any conditions that are necessary will, in the first place, be identifiable from prospective licensees or certificate holders' risk assessments. Applicants will have to translate their assessments into measures which promote one or more of the licensing objectives and record them in their operating schedule. The council, as the licensing authority, will not impose any conditions unless, following the receipt of relevant representations, it has used its discretion at a hearing and been satisfied of the validity of those concerns. The council encourages prospective applicants to seek to minimise disputes and the need for hearings by consulting with all responsible authorities when operating schedules are being prepared.
- 2.6 Cheltenham Borough Council fully understands that licensing law is not a mechanism for the general control of antisocial behaviour by individuals once they are beyond the direct control of the individual, club or business holding the licence, certificate or permission concerned. Licensed premises, especially those offering late night entertainment, alcohol and refreshment, can be a source of crime and disorder, public safety and nuisance concerns. The council will expect operating schedules to satisfactorily address these issues from the design of the premises through to the way that they are operated on a day to day basis. The council understands and expects that the primary responsibility for controlling activities on and in the immediate vicinity of their premises shall rest with all holders of a licence, certificate or permission.
- 2.7 Cheltenham Borough Council will consider every application on its individual merits with regard to this policy statement and to the Licensing Committee's Probity Code (Appendix B – available at www.cheltenham.gov.uk under 'L' in the A-Z of services). **Note:** Council has approved the Code as a consultation draft and will consider any comments made during consultation on this policy. The council will seek to balance the needs of the wider community, local community and commercial premises and activities, against those who may be concerned about adverse impacts from licensed premises. The views of vocal individuals or groups will not necessarily prevail over the general interests of the community. In every case the council will focus on disproportionate or unreasonable impacts of the licensable activities on people living, working and sleeping in the vicinity.

- 2.8 The council will support diversity of premises as it believes that a mix of different types of licensed premises, particularly where there is already a high concentration of them, offers a number of benefits. A good mix will provide resilience against changing tastes and fashions and attract a more diverse range of customers from across the age groups with different attitudes towards alcohol consumption. It offers potential benefits in terms of an area's ambiance and peoples' perceptions of it. This may lead to reductions in the fear of crime and a resultant increase in the numbers of people visiting the area. This would be particularly helpful in combating negative perceptions which exist about the relative safety of the town centre at night.
- 2.9 The council will adapt its existing consultation mechanisms to ensure that regular dialogue takes place with representatives of licensed premises, personal licensees, businesses and residents to discuss and keep matters relating to licensing under review.
- 2.10 The council will work in partnership with the other local authorities in Gloucestershire to ensure a consistent approach is taken to licensing matters whilst respecting the needs of individual communities. This policy statement is based on a common policy template that was developed by the Gloucestershire Chief Environmental Health Officer's Licensing Technical Sub Committee.
- 2.11 In any case where the council believes that a departure from this policy or relevant guidance is necessary it will give clear and sound reasons for doing so.

3. Cheltenham in focus

- 3.1 Until the late 18th century Cheltenham was a small market town which rose to prominence in the 19th century as a fashionable Regency resort. It was founded in this guise with an emphasis on culture, leisure and a high quality of life.
- 3.2 Over the years it has gained the reputation of being a festival town of international repute, hosting cricket, competitive arts, folk, jazz, literature and music and fringe festivals as well as the Gold Cup and steeplechase race meetings. So successful is Cheltenham, that one day in five is a festival day.
- 3.3 Cheltenham also enjoys a vibrant and diverse restaurant culture with over 100 establishments in the town offering a variety of eating experiences. It also has an enviable selection of theatres, music venues and cinema. The town has attracted major employers and together with its architectural heritage, educational facilities and quality environment it is an attractive place for people to live, work and play.
- 3.4 Cheltenham has a thriving local economy with a gross domestic product¹ (GDP) of 126% of the national average (based on 2000 figures from Gloucestershire Labour Market Information Unit).

¹ Gross Domestic Product - Measurement of the value of all goods and services produced by the economy within its boundaries and is the nation's broadest gauge of economic health.

Its key sectors are financial and business services, accounting for almost 28% of GDP and manufacturing accounting for 18% of GDP. The thriving bar and club scene prevalent in the town also contributes to the economy and means that full use is being made of Cheltenham's infrastructure for up to 18 hours a day.

- 3.5 Cheltenham's night time economy is not limited to clubs, pubs and bars. The 'Guide to Eating Out in Cheltenham' (published by Cheltenham Tourism) features over 100 restaurants, bistros, brasseries and cafes in the town. These provide a mix of fine dining, cafe society and international cuisine that has made Cheltenham a focal point for anyone in search of an eating experience. The restaurant scene covers every market segment from the sophisticated to the themed and caters for all age ranges.
- 3.6 The night time economy is set to expand still further with the redevelopment of the former Flowers Brewery site in the town centre. This is the location for a £40 million commercial leisure development which will provide approximately 20,700m² of leisure, retail, office and residential space. It will comprise an 11 screen cinema, a health and fitness club, a bowling alley and, subject to de-regulation, a casino. There are plans for approximately 7,000m² of retail space, plus bars and restaurants: pre-lets already include two new restaurants. This development will add a further dimension to the night time economy; it will attract more residents and visitors to the town centre; increase the diversity of existing and potential user groups; affect existing traffic and pedestrian flows and increase competition for customers amongst businesses.
- 3.7 Since 1990 Cheltenham has witnessed sustained growth in its number of bars and clubs. As a result, 'pubbing and clubbing' are currently the most visible elements of the night time economy. At present, Cheltenham has the biggest nightlife scene between Bristol and Birmingham with 87 bars and 15 night clubs within the town's central area. There are signs, however, that the exponential growth of recent years is beginning to slow down due to market saturation. There are in total more than 210 liquor licensed premises in the town centre area (including Montpellier). This includes 93 'on-licences', 26 'off-licences', 63 licensed restaurants, 5 licensed hotels and 3 combined licences and there are also several 'private members' clubs.
- 3.8 Of the 93 'on-licences' there are 15 premises which could be described as having full 'nightclub' status with a combined capacity of 5,422 persons. Research conducted by the police shows this to be a high nightclub capacity for a town of Cheltenham's size. Benchmarking comparisons indicate that Cheltenham's scale of nightclub capacity would generally be found in places with c.150,000 -200,000 residents whereas the borough's overall population is 110,013 (2001 census).
- 3.9 Whilst the night time economy injects revenue into the local economy it is also associated with a number of issues that detract from its popular acceptance and wider use. Increasing local, and national, media attention paid to anti-social behaviour has created view that the night time economy revolves around issues of excessive antisocial behaviour. Cheltenham does enjoy a diverse night life, but, there are concerns about the impacts associated with 'youth culture' and alcohol fuelled activity. The main issues and associated challenges have been identified in the Night Time Economy Strategy.

The council and its partners are committed to the implementation and development of the strategy and achieving better regulation and management of the currently identified areas of concern. However, the night time economy is more than a vehicle for youth culture and it has steadily become an integral part of both our town's, and the UK's, mainstream economy.

4. Integrating strategies

- 4.1 Cheltenham Borough Council will continue the development of its work on the night time economy as a key linking mechanism to ensure that its licensing policies are properly integrated with other existing strategies and plans relating to crime reduction, planning, transport, economic development, tourism and culture.
- 4.2 Cheltenham Borough Council has developed a Race Equality Scheme to accord with the Race Relations Act 1976, as amended. The council will use the experience gained in implementing the Licensing Act 2003 to inform its judgements on the ways that these duties and responsibilities may impact on the general duty to:
- eliminate unlawful discrimination
 - promote equality of opportunity
 - promote good relations between persons of different racial groups.
- 4.3 The Night Time Economy Strategy has been developed through partnership working and its vision is to attain '**a safe and attractive town centre with a diverse night time economy, accessible to all while protecting the quality of life for residents**'. In formulating the draft strategy the community based strategic liaison group felt that the night time economy should not be focussed exclusively on the consumption of alcohol or linked exclusively with youth culture. The borough's night time economy does enjoy an enviable diversity but it is increasingly being overshadowed by the adverse publicity and perceptions about its pubs and clubs. The council, in fulfilling its duties under the Act, will seek to reflect this desire for greater inclusion and balance in its evening and night time offering. The Night Time Economy Strategy recognises that no 'quick fixes' exist and that its implementation must be seen as a long term undertaking. The strategy's vision is consistent with the government's intentions in introducing the first general reform of licensing legislation since the 1960s. Baroness Blackstone, when introducing the Bill to the House of Lords in 2002, said '*the Bill's aim to provide greater choice is tempered by its provision of strengthened protection. Modern laws are required to ensure that people may enjoy their leisure time while being adequately protected without fear of violence, intimidation or disorder*'.
- 4.4 The owners of public spaces within the borough, including the council itself, will be encouraged to apply for premises licences. This will enable performers and entertainers who wish to provide regulated entertainment to do so by obtaining the permission of the premises licence holder without needing to either obtain a licence or give a temporary event notice.

- 4.5 In undertaking its role as a licensing authority, the council will monitor the impact of licensing on regulated entertainment, and particularly on live music, dancing and theatre. The council's Cultural Strategy recognises the importance of the cultural development of the community and the opportunities it has to spend leisure time in a worthwhile and enjoyable way. It also acknowledges the important contribution that leisure and culture play in terms of economic vitality, regeneration and social development. The council as the licensing authority will have regard to the cultural strategy's aim: *'to offer everyone in Cheltenham access to the best possible cultural and leisure opportunities, enhancing the town's reputation and environment, in pursuit of a better quality of life for all'*.
- 4.6 To ensure that the Licensing Committee is able to properly reflect these issues in its deliberations, arrangements will be made for members to receive reports from time to time on: a) the night time economy strategy, b) the needs of the local tourism economy, c) cultural strategy developments, and; d) the local economic development and employment situation. Concerns about the inadequacy of public transport provision to serve the town's needs have already been identified through the Night Time Economy Strategy and this work will continue.
- 4.7 The council recognises that there must be a clear separation of the planning and licensing regimes and that licensing applications should not be a re-run of the planning application, decision or appeal processes. The need for improved co-ordination of the planning and licensing regimes has been recognised in the Night Time Economy Strategy and Council will ensure that the Licensing Committee provides reports to the Planning Committee on licensed premises in the town and the impact of alcohol related crime and disorder. This will ensure that the Planning Committee has regard to such matters in taking its decisions.
- 4.8 In general, the council will require applications for premises licences and club premises certificates to be supported by an appropriate grant of planning permission. The Licensing Committee may refuse an application following representations from the local planning authority that the activity to be authorised would amount to an unlawful land use. It will be for the applicant to demonstrate any special circumstances that may justify a departure from this policy.
- 4.9 The council recognises the need to avoid duplication with other regulatory regimes as far as possible, and will seek to prevent this as a matter of policy. However, the council is also mindful that other legislation does not always cover circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises where a condition(s) may be necessary.
- 4.10 The council has adopted the Enforcement Concordat and its corporate enforcement policy shows how the principles of good enforcement: clear standards, openness, helpfulness, consistency and proportionality are upheld in Cheltenham. (Appendix D can be found on the left hand menu in the A-Z of 'our services' on the council's website www.cheltenham.gov.uk).

The policy objectives

5. Crime and disorder

- 5.1 In addition to its duty to promote the licensing objectives, Cheltenham Borough Council also has a duty under Section 17 of the Crime and Disorder Act 1988 to do all it can to prevent crime and disorder. In undertaking its duties and responsibilities as a licensing authority, the council will seek to ensure that it consistently reflects local crime prevention strategies and priorities.
- 5.2 The council is aware from local research undertaken for the statutory Crime and Disorder Reduction Partnership that 35% of all people arrested in the town had been drinking and that alcohol was a major causative factor in those arrests. Of those people arrested, as many as 56% had previously been arrested for an alcohol related offence. Nationally over 70% of crime audits conducted by crime and disorder reduction partnerships have identified alcohol as an issue of concern, with 40% of audits highlighting drunkenness and 60% of them reflecting concerns about alcohol related public order problems. In Cheltenham, police research shows that incidents of disorder within the borough rose significantly in 2002-2003.
- 5.3 In Cheltenham, as elsewhere, a very large proportion of town centre violent crime occurs over the weekend period between 9pm and 3am within or in the vicinity of licensed premises. A similar pattern occurs with criminal damage, drunk and disorderly offences and other public order offences. Most arrests for alcohol related crime take place between 11pm and midnight on Friday and Saturday nights. In Britain, the most commonly used sharp weapon in an assault is a beer glass.
- 5.4 Home Office research into violence in the night time economy concluded that *'violence in and around pubs and clubs on weekend nights presents a significant public health, criminal justice and urban management problem.* The government's Alcohol Harm Reduction Strategy identifies alcohol misuse as: *'a major contributor to crime, disorder and anti-social behaviour, with alcohol-related crime costing society up to £7.3bn per annum'*. The strategy identifies the two most visible areas of concern for most of us as:
- *alcohol related disorder and anti-social behaviour in towns and cities at night: and,*
 - *underage drinking.*
- 5.5 Against this background the council will focus in this policy on nationally identified good practice to uphold and promote the licensing objectives. This is particularly in relation to the types of crime and disorder highlighted by the government in its action plan for tackling alcohol related crime and disorder.

The action plan aims to:

- reduce problems arising from underage drinking
- reduce public drunkenness
- prevent alcohol related violence.

In forming a view about the merits of individual applications the council will apply quality standards of socially responsible good management. Whilst elements of the standard already exist it will be further developed and codified in partnership with the police, representative trade bodies such as Nightsafe and the Cheltenham Innkeepers Association and other stakeholders. In this way the council will act to secure the strategic objectives referred to above by expecting licensees to demonstrate their competence to uphold the licensing objectives through their risk assessments and operating schedules.

The introduction by Nightsafe of an exclusion policy based on the National 'Pubwatch' Good Practice Guide, whereby licensees can exclude known criminals and troublemakers, is seen by the council as an overdue but welcome development. The council believes that unless licensees, particularly those responsible for nightclubs and town centre pubs / bars, participate in Nightsafe and contribute to the effective operation of its exclusion policy, they should not be permitted to enjoy maximum use of the new freedoms and flexibilities offered by the Licensing Act 2003. The council's community safety team have established a reputation for their use of anti social behaviour orders (ASBOs) and it is essential that the licensed trades contributes fully to sending out the message that Cheltenham does not welcome or want trouble makers.

The quality standards of socially responsible good management include:

- communications
- searching policy, confiscation and storage protocol
- venue drug policies
- CCTV provision and use
- employment of door supervisors: registration and numbers required
- proof of age requirements
- exclusion policy
- responsible alcohol serving practices
- design and management issues relating to the avoidance of alcohol related aggression (particularly relevant to large capacity 'vertical drinking' establishments)
- staff training
- removal of opened drinks containers from premises
- inappropriate sales promotions
- use of plastic / toughened drinks containers
- closed door / last orders arrangements
- information sharing and supporting enforcement action

- safe transport home for vulnerable customers
- membership schemes (voluntary).

These standards may be strengthened and improved once the Home Office Police Standards Unit publishes a good practice guide for tackling alcohol related violent crime which, according to the Alcohol Harm Reduction Strategy, will be issued in 2004.

- 5.6 The 'quality standards' approach is reflected in Appendix C which is Annexes D – H in the Secretary of State's guidance on the Act (this 'pool of conditions' is also available from our website at www.cheltenham.gov.uk under 'licensing policy statement' in the A-Z of our services). These include (Annex D) conditions relating to crime and disorder that may be drawn upon should the particular circumstances of a premises licence or club premises certificate make this appropriate. The council has a strong preference for a proactive approach by socially responsible licensees and certificate holders working in partnership to uphold and promote the licensing objectives. The council will be heavily reliant on the advice of Gloucestershire Police in determining whether or not the use of any of these conditions is appropriate.
- 5.7 Applicants are recommended to seek advice from the council's licensing officers and Gloucestershire police (***NB insert contacts***). In addition when planning and preparing operating schedules applicants are advised to take into account local planning and transport policies, tourism, cultural and crime prevention strategies as appropriate.

6. Public safety

- 6.1 The Licensing Act 2003 covers a wide range of premises that require licensing including cinemas, nightclubs, public houses, village and community halls, schools, cafes, restaurants and fast food outlets / takeaways. Each of these types of premises present a mixture of risks, some of which may be common to most premises whilst others will be unique to specific operations. In all cases, applicants' risk assessments will be used to determine what public safety measures are necessary given the nature and style of the venue.
- 6.2 Cheltenham Borough Council understands that the public safety objective is concerned with the physical safety of persons using the relevant premises or place and not with public health issues. A public safety condition may incidentally benefit public health but this will not be its prime purpose. Conditions will not be imposed which relate to cleanliness or hygiene and neither will smoking bans in premises be sought by condition.
- 6.3 A condition may require certain safety check documentation to be held but this requirement will not be applied where such a requirement exists in other legislation.

- 6.4 Safe occupancy capacities will only be imposed on relevant premises where applicants' risk assessments and / or advice from the fire and rescue service show them to be necessary in the interests of public safety. On occasion the council may act on police advice and use such a condition where overcrowding has raised concerns about the risk of disorder.
- 6.5 Where 'small premises' which hold no more than 200 people intend to make use of the exemption provisions in s177 of the Act, the council will in every such case either require confirmation of the permitted capacity through the premise's fire certificate or, where this is not available, the fire and rescue service will be asked to make a recommendation on the capacity for inclusion in a condition to be imposed by the council.
- 6.6 The council will draw conditions relating to public safety including fire safety, from the Secretary of State's guidance on the Act (Appendix C, which can also be found at www.cheltenham.gov.uk under 'licensing policy statement' in the A-Z of our services). Where justified, conditions will be imposed relating to CCTV system(s), the use of door supervisors (with a requirement that for every 100 persons, or part thereof present in licensed premises, no less than one supervisor be provided), use of plastic / toughened bottles and glasses and, the removal of opened drinks containers from licensed premises.

In addition, the council and responsible authorities and those preparing operating schedules should consider:

- The Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance ISBN 1 904031 11 0
 - The Events Safety Guide – A Guide to health, safety and welfare at music and similar events (HSE 1999) ISBN 0 71762453 6
 - Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
 - 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804.
- 6.7 The council also encourages all club owners, managers and event promoters to have regard to the Safer Clubbing Guide which was prepared by the Home Office in conjunction with the Department of Health and the DCMS. It can be viewed in full on www.drugs.gov.uk and the guide's checklist is set out in Appendix E.
- 6.8 Applicants are encouraged to seek advice from the council's environmental health officers and licensing officers and the fire safety section of Gloucestershire fire and rescue service. The council will determine on a case by case basis which application premises require an inspection and, in all cases, the council's licensing officers will seek to reduce inconvenience, confusion and inconsistency by co-ordinating inspections and visits with the fire authority, police, building control and environmental health officers, as appropriate.

7. Prevention of nuisance

- 7.1 Licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances that impact on people living, working or sleeping in their vicinity.
- 7.2 Cheltenham Borough Council wishes to do all in its power to protect the amenity of residents and businesses in the vicinity of licensed premises, and for these purposes 'vicinity' is taken to mean the immediate area around licensed premises. As the council is fully aware of the importance of the licensed trade in terms of the local economy and its culture and leisure aspiration, it will seek to work in partnership with all interested parties to ensure a mutual and productive co-existence.
- 7.3 The council is keen to stress, however, that as well as the licensing function there are other mechanisms for addressing issues of unruly behaviour that occur away from licensed premises. These include:
- planning controls
 - powers to designate parts of the borough as places where alcohol may not be consumed publicly
 - the confiscation of alcohol from adults and children in designated areas
 - police powers to close for up to 24 hours any licensed premises or temporary events in extreme cases of disorder or its likelihood or excessive noise
 - police enforcement of the normal law concerning disorder and antisocial behaviour
 - the power of the police, other responsible authorities, or a local business or resident to seek a review of a licence or certificate
 - enforcement action against a personal licence holder or member of staff who is selling alcohol to people who are already drunk.
- 7.4 When considering licence applications, the council will take into account the location of the premises, the type and construction of the building as well as the adequacy of measures proposed to deal with the potential for nuisance and / or antisocial behaviour having regard to all the circumstances of the application.
- 7.5 The council will consistently seek to ensure that its judgements about what constitutes public nuisance are balanced, as are decisions about any conditions that are considered necessary to prevent it. In particular the council will consider the appropriate action having regard to the following:
- prevention of noise and vibration escaping from the premises, including music; noise from ventilation equipment, and human voices. Such measures may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
 - prevention of disturbance by customers arriving at or leaving the premises., particularly between 11pm and 7am

- prevention of queuing by pedestrians or vehicular traffic, or if some queuing is inevitable then ensuring the queues are diverted away from neighbouring premises or are otherwise managed to prevent disturbance or obstruction
- ensuring staff leave the premises quietly. arrangements for parking by patrons and staff, and the effect of the parking on local residents
- provision for public transport (including taxis and private hire vehicles) for patrons
- whether licensed taxis or private hire vehicles are likely to disturb local residents
- whether routes to and from the premises on foot, by car or other services pass residential premises
- the installation of any special measures where licensed premises are, or are proposed to be, located near sensitive premises such as nursing homes, hospitals, hospices or places of worship
- the use of gardens and other open-air areas
- the location of external lighting, including security lighting that is installed inappropriately
- other appropriate measures to prevent nuisance including action by registered door supervisors or the use of CCTV
- how the premises addresses refuse storage or disposal problems, or additional litter (including fly posters and illegal placards)
- any history of previous nuisance complaints proved against the premises, particularly where statutory action has been taken.

7.6 When considering the use of licence conditions to prevent unnecessary noise, disturbance and public nuisance to residents and businesses, the council may include restrictions on the times when music or other licensable activities may take place and may include technical restrictions on sound levels at the premises.

8. Protection of children

8.1 Cheltenham Borough Council recognises that there are a range of activities for which licences may be sought and that children can be expected to visit premises, often on their own, for food and / or other entertainment. The Licensing Act 2003 only prohibits unaccompanied children (persons aged under 16) from visiting certain licensed premises. The council recognises that locally, limitations may have to be considered where it is considered necessary for the prevention of physical, moral, or psychological harm. Concerns may be raised about particular premises where:

- current members of staff have convictions for serving alcohol to minors or the premises are associated with underage drinking
- there is a known association with drug taking or dealing
- there is a strong element of gambling on the premises

- entertainment or services of an adult or sexual nature are commonly provided
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- where there is a presumption that children under 18 should not be allowed (eg to nightclubs, except when under 18 discos are being held).

8.2 When deciding whether or not to limit the access of children to premises the council will judge each application on its own merits. To assist with this the council will consult with Gloucestershire Police and other agencies as appropriate including the Area Child Protection Committee or Social Services Department. Where concerns have been identified in respect of individual premises and it is felt that access to the premises by children should be restricted, the options available would include:

- limitations on the hours when children may be present
- age limitations for persons under 18
- limitations on the exclusion of children under certain ages when specified activities are taking place
- full exclusion of person under 18 when certain licensable activities are taking place
- limitation of access to certain parts of the premises for person under 18
- a requirement for an accompanying adult to be present.

8.3 The council will not impose any conditions that specifically require the access of children to the premises.

8.4 Where no conditions or restrictions are imposed, the issue of access for children remains a matter for the discretion of individual licensees or clubs or person who has given a temporary event notice. The Act does not impose any restrictions on individual applicants volunteering prohibitions or restrictions in their operating schedules because their own risk assessments have shown that the presence of children is undesirable or inappropriate. In the absence of any relevant representations the volunteered prohibitions or restrictions would become conditions of the licence or certificate.

8.5 The Act details a number of offences that are designed to protect children in licensed premises and the council will work closely with the police and Trading Standards Services to ensure appropriate and effective enforcement, particularly in relation to the sale and supply of alcohol to children.

8.6 **Cinemas**

Films cover a vast range of subjects, some of which deal with adult themes and / or contain, for example, scenes of horror or violence that may be considered unsuitable for children with certain age ranges. In order to prevent children from seeing such films, the council will impose conditions requiring licensees to restrict children from viewing age restricted films classified by the British Board of Film Classification.

8.7 In considering applications, the council will take into account any evidence that age restrictions for film exhibitions are not being properly observed.

8.8 **Children and public entertainment**

Many children attend or take part in an entertainment arranged especially for them, for example children's film shows, dance and drama or school productions. In these cases specific additional arrangements to safeguard them are required.

8.9 Where a regulated entertainment is specially presented for children, the council will require the following arrangements in order to control their access and egress and to assure their safety:

- an adult member of staff to be stationed in the vicinity of each of the exits from any level, subject to there being a minimum of one member of staff per 50 children of part thereof
- no child, unless accompanied by an adult, to be permitted in the front row of any balcony
- no standing to be permitted in any part of the auditorium during the performance.

8.10 Where children are taking part in any regulated entertainment, the council will expect the arrangements that are set out in its guidance note 'Children in Performances' to be in place.

8.11 The council will expect these matters to be satisfactorily addressed in applicants' operating schedules.

9. Cumulative impact

- 9.1 Cheltenham Borough Council will not take 'need' into account when considering an application. Need relates to the commercial demand for another pub, restaurant or hotel and is not a matter for a licensing authority.
- 9.2 On the other hand, the cumulative impact of licensed premises on the promotion of Cheltenham Borough Council's licensing objectives is a proper matter for the council and its Licensing committee to consider.
- 9.3 The council, through its experience of licensing enforcement and the development of the Night Time Economy Strategy, recognises that potentially, the cumulative impact of a number of late night premises may result in serious problems of nuisance and disorder outside or at some distance from licensed premises. It is possible that the behaviour of customers from all premises has an impact on an area that is greater when taken together, than the usual impact from individual premises. This may be seen in terms of a number of undesirable consequences, for example:
- increases in crime against property and person
 - increased noise causing disturbance to residents
 - traffic congestion and / or parking problems
 - littering
 - public urination.
- 9.4 As result, the amenity enjoyed by local residents is placed under considerable pressure. It will not always be possible to attribute a particular problem to the customers of particular premises. Consequently, whilst enforcement action may be taken to ensure conditions are complied with, this may not secure satisfactory or sufficient levels of improvement as licence conditions can only relate to matters which the licensee can be expected to control in relation to the carrying on of licensable activities.
- 9.5 Cheltenham Borough Council has established that it has a remarkably vigorous night time economy for the size of the town. It is apprehensive about current trends in crime and disorder when associated with an increase in people either passing through or congregating in streets during the night. The principal focus of concern is the town centre and whilst there is some evidence that this part of the borough is already suffering adverse effects from the concentration of late night premises, the council does not believe that they are currently so unusual or exceptional as to call for the immediate development of a special saturation policy. However, this is an area of particular concern and will, with stakeholders, be kept under close review along with the impacts of the Act and the council's 'quality standards' approach to upholding the licensing objectives.

- 9.6 In the future, representations may be received from a responsible body or interested party that an area has become saturated with premises and that exceptional problems of disorder and nuisance over and above the impact of individual premises have been created because the area has become a focal point for large groups of people to gather as they circulate away or towards the licensed premises themselves.
- 9.7 In these circumstances the council may consider, as indicated above, that the imposition of conditions or restrictive terms is unlikely to address these problems. It may determine that a special policy of refusing new premises licences or club premises certificates should be adopted as the granting of any more would undermine one or more of the licensing objectives. In this situation, the council's starting point would be in terms of seeking a reduction in crime and disorder, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998, and an improvement in local amenity through the reduction of antisocial behaviour. Licences would be granted where applicants could demonstrate to the council's satisfaction that a reduction in crime and disorder will result, or that it will not increase, or that local amenity will be improved, as a result of the application being granted.
- 9.8 The council will take the following steps when considering whether to adopt a special saturation policy:
- identification of serious and chronic concern from a responsible authority or representatives of residents about nuisance and disorder
 - Identification of the area from which problems are arising and the boundaries of that area, where it can be demonstrated that disorder and nuisance is arising as a result of customers from licensed premises
 - assessment of the causes
 - adoption of a policy about future licence applications from that area.
- 9.9 The council will consider representations based on the impact on the promotion of the licensing objectives when determining the grant of any particular application before them. However, the onus would be on the objectors to provide evidence to support any assertion that the addition of the premises in question would produce the cumulative impact claimed, taking into account that the impact will be different for premises with different styles and characteristics.
- 9.10 The council will review any special saturation policies every three years to see whether they have had the effect intended, and whether they are still needed.
- 9.11 The council will not use such policies solely:
- as the grounds for removing a licence when representations are received about problems with existing licensed premises, or
 - to refuse modifications to a licence, except where the modifications are directly relevant to the policy, for example where the application is for a significant increase in the capacity limits.

- 9.12 The council recognises that the diversity of premises selling alcohol, serving food and providing entertainment covers a wide range of contrasting styles and characteristics and will have full regard to those differences and the differing impact these will have on the local community.
- 9.13 The council therefore also recognises that, within a special saturation policy, it may be able to approve licences that are unlikely to add significantly to the saturation, and will consider the circumstances of each individual application.

10. Licensing hours

- 10.1 The council subscribes to the government's belief that in the case of alcohol, fixed and artificially early closing times promote rapid binge drinking near to closing times. This system is also considered to be a key cause of disorder and disturbance where large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at fast food outlets, taxi ranks and private hire booking and pick up points. The council has introduced extended licensing hours for public entertainment and received some positive feedback on the knock on benefits noted at a town centre private hire office.
- 10.2 The council will not impose arbitrary restrictions on trading hours that undermine the principle of flexibility. The movement of people through the town centre at night and incidents at gathering places are particular areas of concern and the council wishes to see reduced concentrations and a slower dispersal of people from licensed premises with benefits in terms of promotion of the licensing objectives.
- 10.3 The council will expect the operating schedules for late night venues to address these issues by making it attractive for customers to spend their whole evening, or the latter part of it, at a single venue.
- 10.4 Whether or not operating hours are extended as a result of the Act, the council seeks (through its 'quality standards' approach) for licensees to carefully manage the final 30-60 minutes of their trading period with appropriate measures to prevent customers leaving en masse and 'hyped up' as a result of loud music. Good practice includes:
- adequate warnings of bar closing and at least 30 minutes 'drinking up' time
 - last admission times or a closed door policy
 - membership schemes with promotions / benefits
 - continued availability of food
 - progressive introduction of lower music volumes
 - door staff supervision of departing patrons
 - notice requesting customers to leave quietly.

It is also helpful for venues to have:

- taxi /private hire booking facilities
- venue transport home
- a cash back service.

10.5 The council will not impose fixed trading hours within specified parts of the borough, neither will it seek to engineer staggered closing times by setting quotas for particular times.

10.6 In reaching a judgement on the individual merits of applications, the council will have regard to the implications for nuisance generation and the impacts on residents that are posed by operating hours and types of regulated entertainment. The council will take into account requests for terminal hours in the light of the:

- environmental quality
- residential amenity
- character or function of a particular area
- nature of the proposed activities to be provided at the premises.

Consideration may, however, be given to imposing stricter controls on noise and disturbance from particular licensed premises, such as those in mainly residential areas.

10.7 Generally the council will consider licensing shops, stores and supermarkets to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes. There may, however, be instances where it is considered that there are good reasons for restricting those hours, for example, where police representations are made in respect of individual shops that are known to be the focus of disorder and / or public nuisance.

10.8 The council wants all licensees and their customers to continue to enjoy the benefits of the pattern of extended hours for bank holidays and major horseracing events that has been established in Gloucestershire. Therefore all premises that are licensed for on sales, whose operating hours would otherwise preclude them from trading, should include the following extended hours in their applications:

1) National Hunt Festival Week	Monday -Friday	11pm - 12.30 am*
2) Easter Bank Holiday	Good Friday Easter Eve Easter Day Easter Monday	10.30 pm – 12 midnight 11pm – 12 midnight 10.30 pm – 12 midnight 11pm – 12 midnight
3) May Day Bank Holiday Weekend	Friday Saturday Sunday Monday	11pm – 12 midnight 11pm – 12 midnight 10.30 pm – 12 midnight 11pm – 12 midnight
4) Whitsun Bank Holiday Weekend	Friday Saturday Sunday Monday	11pm – 12 midnight 11pm – 12 midnight 10.30 pm – 12 midnight 11pm – 12 midnight
5) August Bank Holiday Weekend	Friday Saturday Sunday Monday	11pm – 12 midnight 11pm – 12 midnight 10.30 pm – 12 midnight 11pm – 12 midnight
6) November Open Festival	Friday Saturday Sunday	11pm – 12.30 am* 11pm – 12.30 am* 10.30 pm – 12 midnight
7) Christmas Eve	24 th December	11pm – 12 midnight
8) Christmas Day	25 th December	11am – 12 noon
9) Boxing Day	26 th December	11pm – 12 midnight
	27 th December 2003	11pm – 12 midnight
10) New Years Eve - De-Regulation Order applies		
11) New Years Day	1 st January	11pm – 12 midnight

*Closed door policy

As a result of the large number of people attending the race meetings licensees will, in accordance with established practice, be expected to include in their operating schedules a policy of prohibiting admission or re-admission to their premises after 11pm to reduce the risk of disorder and disturbance to members of the public late at night.

11. The licensing process

- 11.1 One of the major principles underlying the Licensing Act 2003 is that the licensing functions contained within the Act should be delegated to an appropriate level so as to ensure speedy, efficient and cost effective service delivery. The types of applications that the council will deal with, where this policy statement is relevant, are personal licences, premises licences including provisional statements, variations, interim authorities and reviews, club premises certificates, designated premises supervisors and permitted temporary activities.
- 11.2 The council will be involved in a wide range of licensing decisions and functions and has established a Licensing Committee to administer them. The draft Probity Guide (Appendix B, this can also be found at www.cheltenham.gov.uk under 'L' in the A-Z of council services) shows how the council intends to ensure that fairness and consistency as well as human rights and natural justice considerations are integral to the licensing process. As stated in 2.7 above Cheltenham Borough Council has approved the draft guide for the purposes of consultation and, subject to the responses received, may formally approve and adopt it when this policy statement is finalised.
- 11.3 Appreciating the need to provide a speedy, efficient and cost effective service to all parties involved in the licensing process, the Committee will delegate certain decision and functions and establish one or more Sub-Committees to deal with them.
- 11.4 The Act creates a presumption that applications will be granted where no relevant representations are made. Where decisions and functions are largely administrative and / or are non contentious, including those licences and certificates where no relevant representations have been made, these are delegated to officers. The Licensing Committee will receive periodic 'information only' briefings on matters that have been dealt with by officers.
- 11.5 Appendix A shows the proposed scheme of delegation. These delegations are without prejudice to officers referring an application to a Sub Committee or to the Licensing Committee or a Sub Committee referring a matter to the full Committee if considered appropriate in the circumstances of the case.
- 11.6 The council will work with the other Gloucestershire districts to develop, operate and review uniform administrative procedures and practices.

12. Enforcement and complaints

- 12.1 Once licensed, it is essential that premises are maintained and operated so as to ensure the continued promotion of the licensing objectives and compliance with the specific requirements of the Licensing Act 2003. The council will provide adequate licensing enforcement resources to monitor premises and take any appropriate enforcement action to ensure compliance.
- 12.2 The council will establish and maintain enforcement protocols with Gloucestershire Police and other enforcement agencies to ensure that the most effective use is made of enforcement resources. The protocols will be designed to secure proportionate and effective targeting of agreed problems and high risk premises which require greater attention. Low risk and well run premises will operate under a 'light touch' enforcement regime.
- 12.3 The council's corporate enforcement policy shows how the principles of good enforcement: clear standards, openness, helpfulness, consistency, proportionality, and effective and timely complaints procedures are upheld in Cheltenham.
- 12.4 The council is happy to investigate complaints about unlicensed activities. In some cases it may be appropriate for a joint meeting of interested parties to be set up to address, clarify and try to resolve issues of concern. This process will not override the statutory rights of any interested party.

Further information

For further information about Cheltenham Borough Council's Licensing Policy, the Licensing Act 2003 and any other licensing matters please contact:

George Rowlinson, Assistant Director Public Protection, or

Derek Perry, Licensing Services Manager

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Appendix A

Delegated functions

Matter to be dealt with	Full Committee	Sub Committee	Ast Director (PP)
Application for personal licence		If a police objection	If no objection is made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate	If a relevant representation is made		If no relevant representation is made
Application for provisional statement	If a relevant representation is made		If no relevant representation is made
Application to vary premises licence/club premises certificate		If a relevant representation is made	If no relevant representation is made
Application to vary designated personal licence holder		If a police objection	All other cases
Request to be removed as designated personal licence holder			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint or objection is irrelevant, frivolous, vexatious etc			All cases
Decision to object when Local Authority is a consultee and not the lead authority		All cases	
Determination of a police objection to a temporary event notice		All cases	

CHELTENHAM BOROUGH COUNCIL

LICENSING COMMITTEE

PROBITY IN LICENSING

**A guide to procedures and
protocol for Councillors and Officers
involved in making decisions
on Licensing applications and
other Licensing matters**

Approved by Council 26 April 2004

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INTRODUCTION

Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters. Most applications are free of objection and are determined under powers delegated to the Assistant Director Public Protection. This Code is written having regard to the Council's commitment to the principles of good enforcement, particularly openness and consistency, that are included within the national Enforcement Concordat.

The Committee deals with most of the Council's statutory licensing and registration responsibilities including: licensable activities under the Licensing Act 2003 (alcohol, regulated entertainment and late night refreshment); hackney carriages and private hire; sex establishments; gaming; charity collections; street trading; acupuncture, tattooing and ear piercing; pet shops; riding establishments; animal boarding; dog breeding; dangerous wild animals; zoos; and, tables and chairs on the highway. The Committee hears major and contentious applications and is responsible for most policy and policy guideline issues. Applications are referred for Members' consideration where they are contentious and/or objections have been lodged by statutory consultees, residents, other third parties or where officers have reservations about the appropriateness of an application or the suitability of an applicant. Hackney Carriage and Private Hire disciplinary matters are also dealt with by the Committee in accordance with the provisions of the Council's procedures that were adopted on 3 March 2000.

The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.

Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions **must**:

- Be made on the individual merits of a case
- Have regard to all relevant national and local guidance
- Be made impartially and in good faith
- Be made by the body that receives all the relevant information and evidence
- Relate to the issue or question placed before the committee
- Be based only on consideration of relevant and material matters
- Be rational and reasoned
- Be made in a way that does not give rise to public suspicion or mistrust

The purpose of this local Code of Practice is to set out in detail how Members should act and the procedures which should be followed to ensure that Members not only act in a fair and proper manner, but are also seen to do so.

This Code has been prepared with a particular emphasis on Members who serve on the Council's Licensing Committee but its content is also relevant to all other Councillors and also to Officers in all other services.

The Borough Council, along with all other local authorities, adopted a Code of Conduct which specifies the obligations imposed on Members and defines personal and prejudicial interests and how these will affect the way a Member behaves. This Code of Conduct, which every Member has signed up to, is the statutory base to which this Code of Practice is added. In some areas this Code of Practice will extend, or go further than the Code of Conduct. In the case of a conflict between the two the Code of Conduct will take precedence.

It is possible that breaches of this Code of Practice could be considered to be a breach of the Code of Conduct.

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PART ONE: CONDUCT OF COUNCILLORS AND OFFICERS

A. Voting and Impartiality

- 1. Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.***

The over-riding duty of a Committee Member is to the whole community, rather than just the people living in their Ward. This is a fundamental principle of the local democratic system but is not universally known or regularly referred to.

- 2. Members of the Licensing Committee must not declare which way they intend to vote in advance of the consideration of an application by the Committee.***

This can be a difficult issue for Members as they may be exposed to pressure from residents or the media to express a particular viewpoint. However it is essential that Members are measured and circumspect in the comments they make. If a Member declares which way they intend to vote it would in effect be pre-judging the application without having considered all of the relevant information. This could expose the Council to the possibility of legal challenge or a charge of maladministration. Members must not make their minds up until they have read the relevant Committee reports and heard the evidence and arguments on both sides.

- 3. If a Member of the Licensing Committee declares support for or opposition to a proposal before the matter has been put before the Committee, the Member must make an open declaration of their views to the Committee and take no part in the consideration of and voting on that particular item.***

This rule follows on from item 2 above. It does not mean that Members cannot make a comment or reflect local concerns about a proposal before the Licensing Committee considers it. However the view or comment must not pre-determine or be seen to pre-determine the way that Member will vote.

- 4. Licensing Committee Members who are also members of a Parish Council must exercise particular care in reconciling their two roles.***

This rule would apply in the case of a Member(s) holding office in both the Borough Council and a Parish Council. Such Member(s) may find that they are expected to express a view at a Parish Council meeting or vote on whether or not the Parish should object or comment on a proposal from a Parish point of view. In such circumstances Members are advised to abstain from both the debate and voting at the Parish Council. This is not inconsistency, but the consequence of having to fulfil two totally separate roles. If a Member does declare his or her support for or opposition to a licensing proposal at a Parish Meeting or elsewhere they must make an open declaration to the Borough Council's Licensing Committee to that effect and take no part in the voting and debate on that item, and leave the meeting.

5. Licensing Committee Members who are also County Councillors must exercise particular care in reconciling their two roles.

There are often a number of Members that hold office in both the Borough and County Councils. As a general rule such Members should declare an interest in any applications either made by the County Council or by third parties in relation to County Council premises or land. When an interest is declared Members should withdraw from the meeting. This will ensure that the Borough's licensing process is not unfairly influenced or perceived as being susceptible to unfair influence by a Councillor(s) who has two roles.

6. Licensing Committee Members should not organise support for or against a Licensing application and should not lobby other Councillors.

Committee Members should not place themselves in a position where they may give the impression that they had made up their mind before hearing the evidence. Each Member should make up his or her own mind on the evidence and facts presented to the Committee (See Section G on lobbying). With regard to other Members it could give the impression that they were seeking to influence Committee Members (again see section G on lobbying). In addition, Committee Members should not campaign against any particular type of licensable activity that Parliament has determined are lawful such as alcohol sales or sex establishments.

7. Licensing Committee Members must not favour or show bias against any particular person, company or group, or any particular site or locality in respect of licensing matters.

Furthermore they should not put themselves in a position where they may appear to do so.

8. Confidentiality

It will be unusual for licensing applications or other matters to be treated as confidential items discussed and determined after the exclusion of the press and public, but it may occur.

The grounds why this may occur are set down in the Local Government Act 1972 and the Council's Constitution, and are most likely to be in relation to the conduct of legal proceedings, or disclosure of personal details.

Information outside committee may also be provided to Members which is of a confidential nature.

Members are expected to treat the information as confidential and are referred to the Code of Conduct which indicates that a breach of this confidentiality may be a breach of the Code of Conduct and result in a complaint to the Standards Committee.

B. Gifts and Hospitality

1. *Members and Officers must abide by the Council's policy on gifts and hospitality.*

The policy on gifts and hospitality is contained in the Council's Constitution and Members and officers must be extremely careful in this respect to ensure no question of bias can be raised. Notwithstanding the Council's protocol on gifts and hospitality as far as licensing is concerned the general rule is that only gifts of nominal value should be accepted and that only modest hospitality connected with the work concerned should be accepted.

C. Independence and Impartiality of Licensing Officers

1. *Members or other Officers within the Council must not instruct or lobby Licensing Officers to make or not to make a particular recommendation on a licensing application.*

Licensing Officers are trained to deal with licensing issues and will be aware of Government advice, case law etc., and will put forward a professional recommendation. Other officers will help inform that recommendation.

2. *Officers must always act impartially and advise the Council of their professional opinion.*

The Borough Council's Licensing Officers must always act impartially to give advice based upon a professional assessment of the individual merits of each case taking in to account all relevant policies, guidance and other relevant material considerations. If they do not, or even if it appears that they are not, the integrity of the licensing process is severely compromised. Where an appeal has been made against a decision made against officer recommendation officers will always present the Council's case to the best of their ability.

D. Declarations of Interest

1. *Members must always declare personal, and personal and prejudicial, interests in accordance with the Council's Code of Conduct.*

The Council adopted the Code of Conduct on the 24 April 2002. This changed the system of declaration of pecuniary and non pecuniary interests to the need to declare personal and personal and prejudicial interests.

The Code of Conduct is contained in the Council's Constitution and must be read in conjunction with this Code of Practice. A personal interest (Paragraph 8 of the Code of Conduct) is one relating to a matter affecting or connected to something declared in the Register of Members Interests; or if a decision on that matter would affect the member, a relative or friend more than another person in the area.

A personal interest must be disclosed at the start of the meeting or when such an interest becomes apparent, and an agenda item on this is included on the agenda for every meeting. The Member, under the Code of Conduct, does not need to leave the meeting and can still take part in the debate and voting. However, under this Probity in Licensing Code of Practice, Members should declare the interest, not take part in the debate or vote and leave the meeting.

A personal and prejudicial interest (Paragraphs 9 - 12 of the Code of Conduct) is defined as a personal interest (see above) which a member of the public, knowing all the relevant facts, would reasonably consider is so significant that it would be likely to affect the Members judgement of the public interest. There are exemptions in Paragraph 10 (2) which means that membership of e.g the County or a Parish Council would not be a personal and prejudicial interest, but Members must be aware that under this Code of Practice they would have an interest which means they should not take part in the meeting, debate and vote on that item.

A personal and prejudicial interest must be disclosed at the start of the meeting or when such an interest becomes apparent. The Member, under the Code of Conduct, must leave the room when the matter is being discussed unless a dispensation has been granted by the Standards Committee, and they must not seek to improperly influence any decision on that matter.

The test Members should apply is not whether they themselves think they have an interest but whether others, knowing the relevant facts, would think they have.

If a Member has any doubt advice can be taken, but if that doubt still remains it is best that an interest either personal, or personal and prejudicial, be declared. However, the responsibility for declaring an interest must lie on the Member.

There is an item on all Committee agendas which reminds Members of declaration of interests and a form with notes which explains the declaration procedure is attached to every agenda. The completed form is retained by the committee administrator. This is a convenient way to record the declaration but does not obviate the necessity for Members orally to declare the interest and it's nature.

There will however, be times when it only becomes apparent during the meeting that there is a declarable interest. Then the interest must be declared as soon as the Member becomes aware of it, even if it is during discussions on that particular item.

The duty is on each Member to declare interests and these will be noted in the Committee minutes. The Assistant Director (Legal and Democratic Services) should be informed of any declarable interests which should also be registered in the Register of Members Interests.

E. Involvement of Councillors with Applicants

- 1. Members of the Licensing Committee should not act as agents, or submit licensing applications for other parties or voluntary bodies.***

Any close involvement, or even perception of close involvement, can compromise the integrity of the licensing process. A Member acting as a licensing agent could give rise to suspicion that the Member was not impartial or may influence other Members in the decision making process.

- 2. Any Member who is a Licensing advisor or similar agent will not be appointed to the Licensing Committee.***

Where Members need to submit licensing applications on their own behalf, or on behalf of their employer as part of their job, they must declare an interest and take no part in the processing of the application or in the decision making process. Decisions on any proposals submitted by or relating to premises / land / vehicle(s) etc owned or controlled by a serving Member(s) should only be determined by the Licensing Committee (or the full Council). The Committee (or Council) alone should determine an application submitted by a Members employer, irrespective of whether the Member is involved in the application, its preparation or submission.

F. Council Licensing Applications

- 1. Proposals to licence the Council's own land or premises must be dealt with the same as all other applications.***

The Council's own proposals, or those of others on Council owned premises/ land, must be dealt with on exactly the same basis as applications submitted by any other applicant. Members must not have any regard to any other benefit, financial or otherwise, which may accrue to the Council as a result of any particular decision on a licensing proposal.

All licensing applications, irrespective of the applicant, must be considered and dealt with on the merits of the application, not any extraneous gain or loss that might accrue to the Council.

- 2. Other proposals that may have an impact on a Council land holding or application / proposal must be dealt with strictly on their licensing merits.***

Local Authorities are often landowners. They may operate licensed premises and may submit their own applications or third parties may submit applications for new licensed premises on land or premises due to be sold to them by the Council. Furthermore situations may arise where a licensing proposal may have an impact on the prospects and value of a Council landholding or premises.

These circumstances present special challenges to ensure that the licensing system operates, and is seen to operate, fairly.

G. Lobbying of Councillors and Formal Submission of Information

1. Any lobbying of Members must be dealt with carefully to minimise the perception of influence

Members should treat lobbying with care and should ensure that “unofficial” views, promises or documents do not unduly influence them. Members should advise lobbyists to present their views in writing to the licensing case officer in order that they can be formally considered in a balanced way at the Committee meeting. Alternatively Members may choose to pass on the views and or submissions of lobbyists to the officer but should make clear that they are not giving their own views as this is a matter for formal consideration by the Licensing Committee.

This is a complex area and one that requires special care. Lobbying is an attempt to influence a Member’s view in order to achieve a particular decision. It is a normal part of the political process but where Members are making statutory decisions, such as licensing decisions, it can result in decisions being made improperly.

Licensing decisions must be rational and be made strictly on the basis of the relevant facts, guidance and policies relating to each case. Members must not only act in a way that is fair to all parties but must be seen to do so. In particular Members must not prejudge proposals before they have read the officer’s reports and considered all the evidence.

Lobbying can take two forms:

- Lobbying of Councillors by applicants, agents or objectors.
- Lobbying by other Councillors.

Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors.

Lobbying can be particularly problematical if Members are given information or assurances by applicants that do not form part of their formal application and are, therefore, unenforceable. Problems can also arise if Members are given information by objectors which may be misleading, untrue or irrelevant. Officers face particular difficulties if they are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about them.

This would cause particular problems if the Committee based a refusal on matters which neither officers, applicant(s) nor objectors had had an opportunity to consider and comment upon.

Circulation of unofficial papers at a Committee meeting also constitutes a form of lobbying.

- 2. Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.**

Only submissions from applicants, agents or objectors, which are formally received by licensing officers, can properly be taken into account in making a decision. The Committee could be materially misled if Members or other parties circulated 'unofficial' documents or introduced new information on behalf of an applicant or objector, or expressed what they believed to be an applicant's intention, if this did not form part of the application documents and correspondence. In all circumstances copies of any letters, documents or correspondence should be given to the licensing officer to consider and comment on. Such material should always be provided at least 7 clear working days ahead of a committee meeting. Where fresh information comes to light after a committee report has been finalised and circulated it may only be tabled with the Chair's consent.

H. Political Decisions on Licensing Applications

Decisions on licensing applications must be made on the individual merits of each case with adherence to the other principles that are set out on page 1 of this guide. The establishment of a party whip or "party lines" made in political group meetings prior to a committee meeting would be wholly inappropriate.

The view of the Ombudsman is that '*the use of political whips at group meetings is contrary to the National Code and amounts to maladministration*'. It could also give rise to a legal challenge of any decision by Judicial Review.

I. Application by Councillors, Officers or their relatives or friends

These applications must be dealt with, and be seen to be dealt with, openly, fairly and without any bias. Accordingly despite the scheme of delegation to officers to decide certain application, all such applications will be reported to Committee.

PART TWO: THE DECISION MAKING PROCESS

A. Pre-Application Discussions and Negotiations on submitted applications

1. Councillors should not, themselves, seek to advise applicants or agents about the likely acceptability of licensing proposals.

Pre application discussions should always be undertaken by the Council's officers to ensure that advice is given professionally, comprehensively and in a way that is clearly removed from the political forum. Licensing Committee Members should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. If Members, whether or not they sit on the Licensing Committee, do give an indication of their initial reaction to a proposal they must make clear that any proposals will need to be formally considered by officers and / or the Licensing Committee. They should also make clear that officers and/or the Licensing Committee could only make a final decision after a full and formal consideration of the proposal.

Similarly Members should not normally be involved in negotiations and discussions about submitted applications. There may be exceptional circumstances in respect of major or contentious applications where there may be merit in Member involvement to explain a particular local viewpoint or issue. However such discussions should take place only where at least one officer is present. The officer(s) will make a written record of any such meetings held and will place a copy on the application / premises file. Such a record will constitute a Background Paper for the purposes of the Access to Information Act and may be inspected by any interested person.

The fact that Committee Member(s) have discussed any such proposal with the applicant or objectors must be made clear when the application is before the Committee for determination. Under no circumstances should Members put pressure on Officers to make, or change, any recommendations on an application.

2. Officers role in processing licensing applications

The Council employs professional officers whose job is to deal with the applications received, ensure the necessary publicity requirements are dealt with, negotiate with the applicant and/or their agents, and then report to Committee with their recommendations.

Officers will have pre-application discussions and/or issue guidance to help applicants to submit applications in accordance with Council policies and to assist with the smooth processing of the application.

The officers will always put forward their professional view to Committee and be available to answer Members questions.

B. Reports to Committee

- 1. Officers will provide written reports for all matters to be considered by the Licensing Committee (with the exception of matters of urgency) or when Committee has requested verbal updates on ongoing matters.**

There will be occasions when matters arise after the committee papers have been prepared and sent out, but a decision of Committee will be required. If possible a written report will be tabled, or if this is not possible the appropriate officer will provide a detailed verbal report on the issue, explaining why it is urgent and providing recommendations. This shall be minuted.

Members are also permitted to raise matters of urgency under the Local Government Act 1972. However if they do intend to do this the Licensing Officers should be informed prior to the meeting of the nature and content of the matter. Officers will attempt to answer any questions, but depending on the length of notice of the matter of urgency this may not be possible at that meeting.

Any matters of urgency can only be raised with the agreement of the Chair of the Licensing Committee who must give reasons as to why it is considered to be an urgent item.

- 2. Officer reports to the Licensing Committee will be accurate and will, subject to statutory requirements, comprehensively cover all relevant: i) policies, guidance, considerations and issues; ii) information about the application / case; and, iii) the views of consultees and objectors.**
- 3. In all cases applicants / licensees will be given the opportunity of providing written material for inclusion in the report. Material for inclusion must be received by the Licensing Officers at least 7 clear working days before the committee meeting. Where reliance is placed upon case law advance notice must be given of the case(s) in question.**
- 4. Each committee report will include a clear recommendation.**

In exceptional circumstances where, at the time of circulation of the report, negotiations are still ongoing or an essential consultation or other response / information is awaited, officers will give a clear oral recommendation and this will be minuted.

The report will be in the name of the Assistant Director Public Protection or the appropriate case officer.

- 5. Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.**

Written reports have always been a cornerstone of probity in the Council's system for committee determination of licensing matters. In the context of planning malpractice the Audit Commission and others have made it clear that written reports are essential. The same principles should apply to the Council's licensing functions.

C. The Committee Hearing

- 1. The Council's Constitution will apply to the conduct of business.**
- 2. Applicants / Licensees will be invited to attend the committee and be represented if they so choose, they will be sent a full copy of the report about their application / case including all appendices and details of objections.**

If they do not attend the Committee can decide whether or not to deal with their item in their absence on the basis of the written report and the procedure as set out below.

3. Committee Procedure

- Chair introduces the item on the Agenda, briefly stating what it is about and inviting applicant / licensee / representative(s) to come forward to be seated. Where exempt information under the Local Government Act 1972 (as amended) is included in the report it will be written and circulated as a confidential item. In such cases the Chair will offer the licensee / representative(s) the opportunity of a public hearing and the press and public will only be excluded once a preference for a confidential hearing has been expressed.
- Members who intend to vote must be present in the meeting room throughout the committee's consideration of an item so that they hear all of the evidence and hear / participate in the debate.
- Report author or other appropriate officer presents the report to the committee, outlining the key issues and background to the recommendation(s). This must be done in a maximum of 5-10 minutes unless the Chair expressly approves otherwise. Members and the applicant / licensee will have the opportunity of asking the officer questions.
- In appropriate cases objectors will be given the opportunity to make representations through their appointed spokesperson, this must be done in a maximum of 5 minutes unless the Chair expressly approves otherwise. The applicant / licensee, Members and, if appropriate officers, will have the opportunity of asking the spokesperson questions.
- The applicant / licensee (or their representative) will present their application / case and, if they choose, put forward witnesses. This must be done in a maximum of 5-10 minutes unless the Chair expressly approves otherwise. The applicant / licensee (or their representative) has the right to present their case without undue interruptions. When they have done so questions may be asked by Members and in some cases by officers and representatives of statutory bodies who are licensing consultees, e.g. the police, fire and rescue service.
- The Chair will then invite responses from officers and if appropriate the representatives of statutory bodies. The applicant / licensee (or their representative) and Members are to be given the opportunity to ask questions.
- The applicant / licensee (or their representative) will be given the final right of reply.

- The Committee Members debate the application and reach their decision. In cases involving disciplinary and / or confidential matters the Members will retire to another room (usually the Members Room) and the applicant / licensee / representative, witnesses, officers and representatives of statutory bodies will be asked by the Chair to remain and await the Committee's return.
- When the Committee has reached a decision the Members will re-enter the room to announce their decision.
- The decision will be confirmed in writing giving reason(s) for the decision and details of any appeal rights. The decision notice / letter will be sent as soon as practicable after the meeting and any statutory time-scales will be followed.
- The following good practice rules assist the smooth operation of the Committee and promote probity:
 1. The meeting will be conducted without any undue formality.
 2. Members should not report new information that they may have been given by applicants or third parties which has not been submitted to officers for formal consideration and comment (see rule on lobbying in Part 1 section G).
 3. Members should seek any necessary clarification from officers on key issues before the meeting as this enables full replies to be given.
 4. Members should not introduce any non-licensing matters to the debate.
 5. Members should not speak at length on items where they are in full agreement with the Officer report.
 6. At the discretion of the Chair of the Committee a Ward Councillor(s) may be allowed to speak at Committee to express their own views or those of their constituents

D. The Committee's Decisions

- 1. Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.***

The Member, or Members, proposing the decision contrary to the report recommendations must give clear reasons for their proposal before any vote is taken. Their reasons must be relevant and material considerations.

- 2. The Chair will give the Licensing Officer or other representative of the Assistant Director Public Protection and the applicant / licensee (or representative) an opportunity to comment before a vote is taken.***

Decisions must be reasoned, rational and in accordance with the facts of the case and have regard to the provisions of all relevant policies and guidance.

However decision making requires assessment and judgement of the weight to be attached to policies and guidance issues which, no matter how current, will never provide an answer for all, or even most, applications. Any decision made by the Licensing Committee which is contrary to the provisions of existing policy or guidance must be clearly justified and recorded.

E. Deferrals and Committee Site Visits.

- 1. Where Members propose to defer consideration of an application they must set out clear reasons for doing so and these will be minuted.***
- 2. All site inspections whether involving Members individually or collectively will be conducted in a strictly fact finding way and there shall be no on site debate about the merits of the proposal or any negotiations or discussions with applicant, agents or residents.***

A proposal to defer any application must be valid and defensible. Justification for deferring a decision might be to ensure that all the proper consultation procedures have been followed, or to secure amendments, without which the application would have to be refused. The reason for deferring for a site visit must be clearly set out by the proposer and recorded in the Minutes. Political expediency such as deferring a contentious application until after Elections is never an acceptable course of action.

F. Public Attendance at Committee Meetings

- 1. Most Licensing applications on the Committee agenda will be considered in public session.***

Open public debate is a fundamental prerequisite of probity in the Licensing system. However where exempt information under the Local Government Act 1972 (as amended) is included in a report it will be circulated as a confidential item and, subject to the applicant / licensee's right to a public hearing (see Part Two Section C3 above) such items will be considered with press and public excluded.

Any person in attendance at the Licensing Committee meetings is entitled to make use of the Public Question Time item to speak. Applicants, licensees or their agents will only be allowed to speak or make representations during consideration of their particular agenda item in accordance with (Part Two) Section C above.

Any member of the public who disrupts the meeting in any way will not be allowed to remain in the room.

- 2. Great care should be taken by Members, officers and representatives of statutory bodies mingling or speaking to applicants or objectors as conversations may give the perception of bias even though it does not exist.**

Members of the Committee should be extremely careful in meeting with and talking to applicants or objectors either before or after the meeting. This could give the impression that Members had either prejudged a particular application, or had supported a particular view without looking at, and taking into account all the facts presented by the Officers.

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PART THREE: ADMINISTRATIVE MATTERS

A. Member Training

Members who are exercising powers to determine applications are exercising a quasi judicial function, in an area where there is a large amount of Government advice and law. Members must ensure they are adequately trained to carry out the task. Accordingly any Member who is on the Licensing Committee must take part in training organised by the Assistant Director Public Protection either before the first meeting of the Committee or within 3 months after being nominated to serve on the Committee, whichever is the later. If they do not, or cannot, they must step down.

Members are also encouraged to research pertinent issues by reference to the Assistant Director Public Protection who can arrange access to publications, legislation, policy documents and guidance.

Members will be given regular updates to keep them informed of important changes in legislation, procedures or practices either orally, at training sessions, or as briefing notes.

B. Record Keeping

Officers will ensure that Licensing application records contain sufficient information so that the reason for the ultimate decision can be understood by anyone who reads a file / record without a detailed knowledge of the application.

C. Complaints

Any complaints received in writing about the way in which a Licensing application or other licensing matter have been dealt with in terms of probity, procedures or fairness, will be investigated under the Council's Complaints Procedure. However, the fact that someone may disagree with the decision reached in relation to a particular application or other matter is not a complaint which will necessitate investigation as such, although officers will always endeavour to explain the reasons for the Council's decision.

Where any complaint about a Council decision made contrary to the officer's recommendation is received, a copy will be forwarded to the Chair of the Committee.

Complaints can also be made to the Local Government Ombudsman regarding administrative maladministration, or the Standards Board regarding breaches of the Code of Conduct.

D. Further Advice

This Code deals with the main issues of probity and conduct but cannot be expected to cover all eventualities that may arise. If Members are in any doubt about any probity related issue they are advised to contact the Assistant Director Public Protection George Rowlinson (01242 264 214), or the Licensing Services Manager Derek Perry (01242 774 921).

E. Bibliography.

Some of the key documents and publications used to produce and develop the rules and advice contained in this code are:

Audit Commission - Building in Quality: A Study of Development Control 1992.

John Barlow - External Inquiry into Issues of Concern about the Administration of the Planning System in Warwick 1994.

Commission for Local Administration in England. Guidance on Good Practice 1993 and 1994.

Code of Conduct – Council's Constitution

Committee on Standards in Public Life – Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report (The Nolan Report) 1997.

Department of the Environment - National Code of Local Government Conduct (Annex to Circular 8/90.1990.

Charles George - Independent Inquiry into Planning Decisions in the London Borough of Brent 1986-1990 - 1991.

Local Government - Modernising Local Government. HMSO. 1998.

Local Government Association - Probity in Planning – the Role of Councillors and Officers. Local Government Association 1997.

Appendix C

Pool of licence conditions

(Annex D)

Conditions relating to the prevention of crime and disorder

It should be noted in particular that it is unlawful under the 2003 Act:

- knowingly to sell or supply or attempt to sell or supply alcohol to a person who is drunk
- knowingly to allow disorderly conduct on licensed premises
- for the holder of a premises licence or a designated premises supervisor knowingly to keep or to allow to be kept on licensed premises any goods that have been imported without payment of duty or which have otherwise been unlawfully imported
- to allow the presence of children under 16 who are not accompanied by an adult between midnight and 5am at any premises licensed for the sale of alcohol for consumption on the premises, and at any time in premises used exclusively or primarily for the sale and consumption of alcohol

Conditions enforcing these arrangements are therefore unnecessary

General

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, when responsible authorities are considering such applications and when licensing authorities are considering applications following the receipt of any relevant representations from a responsible authority or interested party, the following options should be considered as measures which, if necessary, would promote the prevention of crime and disorder.

Whether or not any risk assessment shows these options to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved. It should also be borne in mind that club premises operate under codes of discipline to ensure the good order and behaviour of members.

Necessary conditions for the licence or certificate will also depend on local knowledge of the premises.

Under no circumstances should the following measures be regarded as standard conditions to be automatically imposed in all cases. They are designed to provide a range of possible conditions drawn from experience relating to differing situations and to offer guidance.

Any individual preparing an operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become enforceable under the law and a breach of such a condition could give rise to prosecution.

Text/Radio pagers

Text and radio pagers connecting premises licence holders, designated premises supervisors, managers of premises and clubs to the local police can provide for rapid response by the police to situations of disorder which may be endangering the customers and staff on the premises.

Such pagers provide two-way communication, both enabling licence holders, managers, designated premises supervisors and clubs to report incidents to the police, and enabling the police to warn those operating a large number of other premises of potential trouble-makers or individuals suspected of criminal behaviour who are about in a particular area. Pager systems can also be used by licence holders, door supervisors, managers, designated premises supervisors and clubs to warn each other of the presence in an area of such people.

The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. Following individual consideration of the particular circumstances of the venue, such conditions may also be appropriate and necessary in other areas for the prevention of crime and disorder.

It is recommended that a condition requiring the text/radio pager links to the police should include the following elements:

- a requirement that the text/pager equipment is kept in working order at all times;
- a requirement that the pager link be activated, made available to and monitored by the designated premises supervisor or a responsible member of staff at all times that the premises are open to the public;
- a requirement that any police instructions/directions are complied with whenever given; and
- a requirement that all instances of crime or disorder are reported via the text/radio pager link by the designated premises supervisor or a responsible member of staff to an agreed police contact point.

Door supervisors

Conditions relating to the provision of door supervisors and security teams may be valuable in:

- . • preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- . • keeping out excluded individuals (subject to court bans or imposed by the licence holder);
- . • searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- . • maintaining orderly queuing outside of venues prone to such queuing.

Where door supervisors conducting security activities are to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority, conditions may also need to deal with the number of such supervisors, the displaying of name badges, the carrying of proof of registration, where and at what times they should be stationed on the premises, and whether at least one female supervisor should be available (for example, if female customers are to be the subject of body searches). Door supervisors also have a role to play in ensuring public safety (see Annex E).

Bottle bans

Glass bottles may be used as weapons inflicting more serious harm during incidents of disorder. A condition can prevent sales of drinks in glass bottles for consumption on the premises.

It is recommended that a condition requiring that no sales of beverages in glass bottles for consumption on the premises should be expressed in clear terms and include the following elements:

- . • no bottles containing beverages of any kind, whether open or sealed, shall be given to customers on the premises whether at the bar or by staff service away from the bar;
- . • no customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public (note: this needs to be carefully worded where off-sales also take place);

In appropriate circumstances, the condition could include exceptions, for example, as follows:

- . • but bottles containing wine may be sold for consumption with a table meal by customers who are seated in an area set aside from the main bar area for the consumption of food.

Plastic containers and toughened glass

Glasses containing drinks may be used as weapons during incidents of disorder and in untoughened form can cause very serious injuries. Consideration could therefore be given to conditions requiring either the use of plastic containers or toughened glass which inflicts less severe injuries where considered necessary. Location and style of the venue and the activities carried on there would be particularly important in assessing whether a condition is necessary. For example, the use of glass containers on the terraces of some outdoor sports grounds may obviously be of concern, and similar concerns may also apply to indoor sports events such as boxing matches. Similarly, the use of such plastic containers or toughened glass during the televising of live sporting events, such as international football matches, when high states of excitement and emotion fuelled by alcohol might arise, may be a necessary condition.

It should be noted that the use of plastic or paper drinks containers and toughened glass may also be relevant as measures necessary to promote public safety (see Annex E).

CCTV

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider a requirement to have CCTV on the premises, but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

The police should provide individuals conducting risk assessments when preparing operating schedules with advice on the use of CCTV to prevent crime.

Open containers not to be taken from the premises

Drinks purchased in licensed premises or clubs may be taken from those premises for consumption elsewhere. Where premises are licensed for the sale of alcohol for consumption off the premises that would be entirely lawful. However, consideration should be given to a condition preventing the taking of alcoholic and other drinks from the premises in open containers (e.g. glasses and opened bottles). This may again be necessary to prevent the use of these containers as offensive weapons in surrounding streets after individuals have left the premises.

Restrictions on drinking areas

It may be necessary to restrict the areas where alcoholic drinks may be consumed in premises after they have been purchased from the bar. An example would be at a sports ground where the police consider it necessary to prevent the consumption of alcohol on the terracing of sports grounds during particular sports events. Such conditions should not only specify these areas, but indicate the circumstances in which the ban would apply and times at which it should be enforced.

Capacity limits

Although most commonly made a condition of a licence on public safety grounds, consideration should also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

Proof of age cards

It is unlawful for children under 18 to attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent such crimes, it may be necessary to require a policy to be applied at certain licensed premises requiring the production of “proof of age” before such sales are made. This should not be limited to recognised “proof of age” cards, but allow for the production of other proof, such as photo-driving licences, student cards and passports. The Secretary of State strongly supports the PASS accreditation system (see paragraph 12.8 of the Guidance) which aims to approve and accredit various proof of age schemes that are in existence. This ensures that such schemes maintain high standards, particularly in the area of integrity and security, and where appropriate and necessary, conditions may refer directly to PASS accredited proof of age cards, photo-driving licences and passports.

It should be noted that many adults in England and Wales do not currently carry any proof of age. This means that the wording of any condition will require careful thought. For example, the requirement might be to ensure sight of evidence of age from any person appearing to those selling or supplying alcohol to be under the age of 18 and who is attempting to buy alcohol. This would ensure that most minors – even those looking older – would need to produce proof of age appropriately before making such a purchase.

Under such an arrangement only a minority of adults might be affected, but for the majority there would be no disruption to their normal activity, for example, when shopping in a supermarket.

Crime prevention notices

It may be necessary at some premises for notices to be displayed which warn customers of the prevalence of crime which may target them. Some premises may be reluctant to volunteer the display of such notices for commercial reasons. For example, in certain areas, a condition attached to a premises licence or club premises certificate might require the displaying of notices at the premises which warn customers about the need to be aware of pickpockets or bag snatchers, and to guard their property. Similarly, it may be necessary for notices to be displayed which advise customers not to leave bags unattended because of concerns about terrorism. Consideration could be given to a condition requiring a notice to display the name of a contact for customers if they wish to report concerns.

Drinks promotions

Standardised conditions should not be attached to premises licences or club premises certificates which promote fixed prices for alcoholic drinks. It is also likely to be unlawful for licensing authorities or police officers to promote voluntary arrangements of this kind. This can risk creating cartels. Using conditions to control the prices of alcoholic drinks in an area may also breach competition law. Conditions tailored to the individual circumstances of particular premises which address irresponsible drinks promotions may be permissible provided they are necessary for the promotion of the licensing objectives, but licensing authorities should take their own legal advice before a licence or certificate is granted in that form. Judgements may be subjective, and on occasions, there will be a very fine line between responsible and irresponsible promotions but an even greater distinction to whether the promotion in question can be subject to the imposition of a condition. It is therefore vital that such matters are considered objectively in the context of the licensing objectives and with the benefit of appropriate legal advice.

In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or discounting and levels of crime and disorder on or in the vicinity of the premises, it would be appropriate for the licensing authority to consider whether the imposition of a new condition prohibiting irresponsible sales promotions or discounting of prices of alcoholic beverages is necessary at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice.

Signage

It may be necessary for the normal hours under the terms of the premises licence or club premises certificate at which licensable activities are permitted to take place to be displayed on or immediately outside the premises so that it is clear if breaches of the terms of the licence or certificate are taking place.

Similarly, it may be necessary for any restrictions on the admission of children to be displayed on or immediately outside the premises so that the consequences of breaches of these conditions would also be clear and to deter those who might seek admission in breach of those conditions.

Large capacity venues used exclusively or primarily for the “vertical” consumption of alcohol (HVVDs)

Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons.

Where necessary and appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises (if not volunteered by the venue operator and following representations on such grounds) which require adherence to:

- . • a prescribed capacity;
- . • an appropriate ratio of tables and chairs to customers based on the capacity; and
- . • the presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit.

Conditions relating to public safety (including fire safety)

It should be noted that conditions relating to public safety should be those which are necessary, in the particular circumstances of any individual premises or club premises, and should not duplicate other requirements of the law. Equally, the attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc. Act 1974, associated regulations and especially the requirements under the Management of Health and Safety at Work Regulations 1999 and the Fire Precautions (Workplace) Regulations 1997 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control these risks. Conditions enforcing those requirements would therefore be unnecessary.

General

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, responsible authorities are considering such applications and licensing authorities are considering applications following the receipt of relevant representations from a responsible authority or interested party, the following options should be considered as measures that, if necessary, would promote public safety. Additional matters relating to cinemas and theatres are considered in Annex F. It should also be recognised that special issues may arise in connection with outdoor and large scale events.

Whether or not any risk assessment shows any of the measures to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

Necessary conditions for the licence or certificate will also depend on local knowledge of the premises.

In addition, to considering the points made in this Annex, those preparing operating schedules or club operating schedules, licensing authorities and responsible authorities should consider:

- Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance ISBN 1 904031 11 0 (Entertainment Technology Press – ABTT Publications)

- . • The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- . • Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- . • 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- . • The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- . • Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through:
www.streetartsnetwork.org.uk/pages/publications.htm
- . • The London District Surveyors Association’s “Technical Standards for Places of Public Entertainment” ISBN 0 9531229 2 1

The following British Standards should also be considered:

- . • BS 5588 Part 6 (regarding places of assembly)
- . • BS 5588 Part 9 (regarding ventilation and air conditioning systems)
- . • BS 5588 Part 9 (regarding means of escape for disabled people)
- . • BS 5839 (fire detection, fire alarm systems and buildings)
- . • BS 5266 (emergency lighting systems)

However, in consulting these texts, which were prepared prior to the coming into force of the Licensing Act 2003, those creating operating schedules or club operating schedules, licensing authorities and responsible authorities should again note that under no circumstances should any conditions be regarded as standard for all premises.

Any individual preparing an operating schedule or club operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become enforceable under the law and a breach of such a condition could give rise to prosecution.

Disabled people

In certain premises where existing legislation does not provide adequately for the safety of the public, consideration might also be given to conditions that ensure that:

- . • when disabled people are present, adequate arrangements exist to enable their safe evacuation in the event of an emergency; and
- . • disabled people on the premises are made aware of those arrangements.

Escape routes

It may be necessary to include conditions relating to the maintenance of all escape routes and exits including external exits. These might be expressed in terms of the need to ensure that such exits are kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified. In restaurants and other premises where chairs and tables are provided this might also include ensuring that internal gangways are kept unobstructed.

In certain premises where existing legislation does not provide adequately for the safety of the public, consideration might also be given to conditions that ensure that:

- . • all exits doors are easily openable without the use of a key, card, code or similar means;
- . • doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept;
- . • any removable security fastenings are removed whenever the premises are open to the public or occupied by staff;
- . • all fire doors are maintained effectively self-closing and shall not be held open other than by approved devices (for example, electromagnetic releases operated by smoke detectors);
- . • fire resisting doors to ducts, service shafts, and cupboards shall be kept locked shut; and
- . • the edges of the treads of steps and stairways are maintained so as to be conspicuous.

Safety checks

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- . • safety checks are carried out before the admission of the public; and
- . • details of such checks are kept in a Log-book.

Curtains, hangings, decorations and upholstery

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- . • hangings, curtains and temporary decorations are maintained in a flame-retardant condition;
- . • any upholstered seating meets on a continuous basis the pass criteria for smouldering ignition source 0, flaming ignition source 1 and crib ignition source 5 when tested in accordance with section 5 of BS 5852:1990;
- . • curtains, hangings and temporary decorations are arranged so as not to obstruct exits, fire safety signs or fire-fighting equipment; and

- temporary decorations are not used without prior notification to the licensing authority/fire authority.

Accommodation limits

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- arrangements are made to ensure that any capacity limit imposed under the premises licence or club premises certificate are not exceeded; and
- the licence holder, a club official, manager or designated premises supervisor should be aware of the number of people on the premises and required to inform any authorised person on request.

Fire action notices

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- notices detailing the actions to be taken in the event of fire or other emergencies, including how the fire brigade should be summoned, are prominently displayed and protected from damage and deterioration.

Outbreaks of fire

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- the fire brigade must be called at once to any outbreak of fire, however slight, and the details recorded in a Fire Log-book.

Loss of water

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- the local Fire Control Centre are notified as soon as possible if the water supply to any hydrant, hose reel, sprinkler, drencher or other fire extinguishing installation is cut off or restricted.

Access for emergency vehicles

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- access for emergency vehicles is kept clear and free from obstruction.

First aid

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- adequate and appropriate supply of first aid equipment and materials is available on the premises;
- if necessary, at least one suitably trained first-aider shall be on duty when the public are present; and if more than one suitably trained first-aider that their respective duties are clearly defined.

Lighting

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- in the absence of adequate daylight, the lighting in any area accessible to the public, members or guests shall be fully in operation when they are present;
- fire safety signs are adequately illuminated;
- emergency lighting is not altered;
- emergency lighting batteries are fully charged before the admission of the public, members or guests; and
- in the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being re-charged; and, if the emergency lighting battery has a capacity of three hours, the appropriate period by the end of which the public should have left the premises is one hour.

Temporary electrical installations

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- . • temporary electrical wiring and distribution systems are not provided without [notification to the licensing authority at least ten days before commencement of the work] [prior inspection by a suitable qualified electrician];
- . • temporary electrical wiring and distribution systems shall comply with the recommendations of BS 7671 or where applicable BS 7909; and
- . • where they have not been installed by a competent person, temporary electrical wiring and distribution systems are inspected and certified by a competent person before they are put to use.

With regard to the first bullet above, it should be recognised that ten days notice may not be possible where performances are supported by outside technical teams. For example, where temporary electrical installations are made in theatres for television show performances. In such circumstances, the key requirement is that conditions where necessary should ensure that temporary electrical installations are only undertaken by competent qualified persons, for example, employed by the television company.

Indoor sports entertainments

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- . • if necessary, an appropriately qualified medical practitioner is present throughout a sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature;
- . • where a ring is involved, it is constructed and supported by a competent person and inspected by a competent authority and any material used to form the skirt around the ring is flame-retardant;
- . • at any wrestling or other entertainments of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring; and
- . • at water sports entertainments, staff adequately trained in rescue and life safety procedures are stationed and remain within the vicinity of the water at all material times (see also Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Commission and Sport England).

Alterations to the premises

Premises should not be altered in such a way as to make it impossible to comply with an existing licence condition without first seeking a variation of the premises licence proposing the deletion of the condition relating to public safety in question. The applicant will need to propose in a new operating schedule reflecting the proposed alteration to the premises how he or she intends to take alternative steps to promote the public safety objective.

The application for variation will enable the responsible authorities with expertise in safety matters to consider whether the proposal is acceptable.

Special effects

The use of special effects in venues of all kinds being used for regulated entertainment is increasingly common and can present significant risks. Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

Specials effects which should be considered include:

- . • dry ice machines and cryogenic fog;
- . • smoke machines and fog generators;
- . • pyrotechnics, including fireworks;
- . • real flame;
- . • firearms;
- . • motor vehicles;
- . • strobe lighting;
- . • lasers (see HSE Guide The Radiation Safety of lasers used for display purposes [HS(G)95] and BS EN 60825: Safety of laser products);
- . • explosives and highly flammable substances.

In certain circumstances, it may be necessary to require that certain special effects are only used with the prior notification of the licensing authority or [inspection by] the fire authority.

Annex F

Theatres, cinemas, concert halls and similar places (promotion of public safety)

In addition to the points made in Annex E, there are particular matters in the context of public safety and fire safety which should be considered in connection with theatres and cinemas. The principle remains that conditions must be necessary and should be established through risk assessment and standardised conditions should be avoided. The points which follow are for consideration and do not represent a mandatory list.

Premises used for closely seated audiences

Attendants

(a) The number of attendants on each floor in a closely seated auditorium should be as set out on the table below:

Number of members of the audience present on a floor	Minimum number of attendants required to be present on that floor
1 – 100	One
101 – 250	Two
251 – 500	Three
501 – 750	Four
751 -1000	Five
And one additional attendant for each additional 250 persons (or part thereof)	

(b) Attendants shall not be engaged in any duties that would hinder the prompt discharge of their duties in the event of an emergency or entail their absence from that floor or auditorium where they are on duty.

(c) Any attendant shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).

(d) The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to any authorised person on request.

(e) No article shall be attached to the back of any seat which would reduce the clear width of seatways or cause a tripping hazard or obstruction.

(f) A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any authorised person on request.

Standing and sitting in gangways etc.

(a) Sitting on floors shall not be permitted except where authorised in the premises licence or club premises certificate.

(b) Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.

(c) In no circumstances shall anyone be permitted to-

- (i) sit in any gangway;
- (ii) stand or sit in front of any exit; or
- (iii) stand or sit on any staircase including any landings.

Drinks

Except as authorised by the premises licence or club premises certificate, no drinks shall be sold to or be consumed by a closely seated audience except in plastic and paper containers.

Balcony Fronts

Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.

Special effects

Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

Specials effects include:

- . • dry ice machines and cryogenic fog;
- . • smoke machines and fog generators;
- . • pyrotechnics, including fireworks;
- . • real flame;
- . • firearms;
- . • motor vehicles;
- . • strobe lighting;
- . • lasers (see HSE Guide The Radiation Safety of lasers used for display purposes [HS(G)95] and BS EN 60825: Safety of laser products);
- . • explosives and highly flammable substances.

In certain circumstances, it may be necessary to require that certain special effects are only used with the prior notification of the licensing authority or [inspection by] fire authority.

Scenery

Any scenery should be maintained flame-retardant.

Safety curtain

Where a safety curtain is provided, it should be arranged so as to protect the audience from the effects of a fire or smoke on stage for sufficient time to enable the safe evacuation of the auditorium.

Where a stage with a proscenium arch is not equipped with a safety curtain, any curtains provided between the stage and the auditorium should be heavyweight and be made of non-combustible material or inherently or durably treated flame-retardant fabric.

Ceilings

All ceilings in those parts of the premises to which the audience are admitted should be inspected by a suitably qualified person who will decide when a further inspection would be necessary and a certificate concerning the condition of the ceilings forwarded to the licensing authority.

Seating

Where the potential audience exceeds 250 all seats in the auditorium should, except in boxes accommodating not more than 8 persons, be either securely fixed to the floor or battened together in lengths of not fewer than four or more than twelve.

Premises used for film exhibitions

Attendants – premises without a staff alerting system

Where the premises are not equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty
1 – 250	Two
And one additional attendant for each additional 250 members of the audience present (or part thereof)	
Where there are more than 150 members of an audience in any auditorium or on any floor	At least one attendant shall be present in any auditorium or on any floor

Attendants – premises with a staff alerting system

(a) Where premises are equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty	Minimum number of other staff on the premises who are available to assist in the event of an emergency
1 – 500	Two	One
501 – 1000	Three	Two
1001 – 1500	Four	Four
1501 or more	Five plus one for every 500 (or part thereof) persons over 2000 on the premises	Five plus one for every 500 (or part thereof) persons over 2000 on the premises

(b) Staff shall not be considered as being available to assist in the event of an emergency if they are:

- (i) the holder of the premises licence or the manager on duty at the premises; or
- (ii) a member of staff whose normal duties or responsibilities are likely to significantly affect or delay his response in an emergency situation; or
- (iii) a member of staff whose usual location when on duty is more than 60 metres from the location to which he is required to go on being alerted to an emergency situation.

(c) Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the audience have access.

(d) The staff alerting system shall be maintained in working order.

Minimum lighting

The level of lighting in the auditorium should be as great as possible consistent with the effective presentation of the film; and the level of illumination maintained in the auditorium during the showing of films would normally be regarded as satisfactory if it complies with the standards specified in BS CP 1007 (Maintained Lighting for Cinemas).

Flammable films

No flammable films should be allowed on the premises without the prior notification of the licensing authority/fire authority.

Annex G

Conditions relating to the prevention of public nuisance

It should be noted that provisions of the Environmental Protection Act 1990 and the Noise Act 1996 provide some protection to the general public from the effects of noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

General

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, responsible authorities are considering such applications and licensing authorities are considering applications following the receipt of relevant representations from a responsible authority or interested party, the following options should be considered as measures that, if necessary, would promote the prevention of public nuisance.

Whether or not any risk assessment shows them to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

Necessary conditions for licences and certificates will also depend on local knowledge of the premises.

Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted (other than where they are protected by the transitional provisions of the Licensing Act 2003) by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance.

But this must be balanced by the potential impact on disorder which results from artificially early fixed closing times.

Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue.

Restrictions might be necessary on the parts of premises that might be used for certain licensable activities at certain times. For example, while the provision of regulated entertainment might be permitted while the premises is open to the public or members and their guests, regulated entertainment might not be permitted in garden areas of the premises after a certain time.

Noise and vibration

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- . • noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by a simple requirement to keep doors and windows at the premises closed, or to use noise limiters on amplification equipment used at the premises;
- . • prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly;
- . • the use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted; and
- . • the placing of refuse – such as bottles – into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

Noxious smells

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- noxious smells from licensed premises are not permitted so as to cause a nuisance to nearby properties and the premises are properly vented.

Light pollution

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- flashing or particularly bright lights on or outside licensed premises do not cause a nuisance to nearby properties. Any such condition needs to be balanced against the benefits to the prevention of crime and disorder of bright lighting in certain places.

Annex H

Conditions relating to the protection of children from harm

It should be noted that it is unlawful under the 2003 Act to permit unaccompanied children under the age of 16 to be present on premises exclusively or primarily used for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or a temporary event notice when open for the purposes of being used for the supply of alcohol for consumption there. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at all premises supplying alcohol for consumption on those premises under the authorisation of any premises licence, club premises certificate or temporary event notice. Conditions duplicating these provisions are, therefore, unnecessary.

Access for children to licensed premises – in general

Restrictions on the access of children under 18 to premises where licensable activities are being carried on should be made where it is necessary to protect children from harm. Precise policy and details will be a matter for individual licensing authorities. Conditions attached to premises licences and club premises certificates may reflect the concerns of responsible authorities and interested parties who have made representations but only where the licensing authority considers it necessary to protect children from harm. Whilst applications in relation to premises licences and club premises certificates must be judged by licensing authorities on their individual merits and characteristics, the Secretary of State recommends (unless there are circumstances justifying the contrary) that:

- for any premises with known associations (having been presented with evidence) with or likely to give rise to heavy or binge or underage drinking, drugs, significant gambling, or any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature, there should be a strong presumption against permitting any access at all for children under 18 years. Applicants wishing to allow access for children to premises where these associations may be relevant, when preparing operating schedules or club operating schedules or variations of those schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
 - explain their reasons; and
 - outline in detail the steps that they intend to take to protect children from harm on such premises.
- for any premises, not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time. Applicants wishing to allow access when preparing operating schedules or variations of those schedules or club operating schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
 - explain their reasons; and – outline in detail the steps that they intend to take to protect children from harm on such premises.
- in any other case, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children subject to the terms of the 2003 Act. An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely, which would mean there would be no need to detail in the operating schedule steps that the applicant proposes to take to promote the protection of children from harm. Otherwise, where entry is to be permitted, the operating schedule should outline the steps to be taken to promote the protection of children from harm while on the premises.

Age Restrictions – specific

Under the 2003 Act a wide variety of licensable activities could take place at various types of premises and at different times of the day and night. Whilst it may be appropriate to allow children unrestricted access at particular times and when certain activities are not taking place, licensing authorities following relevant representations made by responsible authorities and interested parties will need to consider a range of conditions that are to be tailored to the particular premises and their activities where these are necessary. Licensing authorities are expected to consider:

- the hours of day during which age restrictions should and should not apply. For example, the fact that adult entertainment may be presented at premises after 8.00pm does not mean that it would be necessary to impose age restrictions for earlier parts of the day;
- types of event or activity in respect of which no age restrictions may be needed, for example;
 - family entertainment; or
 - non-alcohol events for young age groups, such as under 18s dances,
- Similarly, types of event or activity which give rise to a more acute need for age restrictions than normal, for example;
 - during “Happy Hours” or on drinks promotion nights;
 - during activities outlined in the first bullet point in the first paragraph above.

Age restrictions – cinemas

The Secretary of State considers that, in addition to the mandatory condition imposed by virtue of section 20, requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 or by the licensing authority itself, conditions restricting the admission of children to film exhibitions should include:

- a condition that where the licensing authority itself is to make recommendations on the admission of children to films, the cinema or venue operator must submit any film to the authority that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority time to classify it so that the premises licence holder is able to adhere to any age restrictions then imposed;
- a condition that when films are classified, by either the film classification body as specified in the licence or the licensing authority, they should be classified in the following way:
 - U – Universal. Suitable for audiences aged four years and over
 - PG – Parental Guidance. Some scenes may be unsuitable for young children.
 - 12A – Passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
 - 15 – Passed only for viewing by persons aged 15 years and over.
 - 18 – Passed only for viewing by persons aged 18 years and over.

- that conditions specify that immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the classification of the film;
- a condition that when a licensing authority has made a recommendation on the restriction of admission of children to a film, notices are required to be displayed both inside and outside the premises so that persons entering can readily be made aware of the classification attached to any film or trailer. Such a condition might be expressed in the following terms:

“Where a programme includes a film recommended by the licensing authority as falling into the 12A, 15 or 18 category no person appearing to be under the age of 12 and unaccompanied, or under 15 or 18 as appropriate, shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms –

**PERSONS UNDER THE AGE OF [INSERT APPROPRIATE AGE]
CANNOT BE
ADMITTED TO ANY PART OF THE PROGRAMME**

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction.

This condition does not apply to members of staff under the relevant age while on-duty provided that the prior written consent of the person’s parent or legal guardian has first been obtained.”

Theatres

The admission of children to theatres, as with other licensed premises, is not expected to normally be restricted unless it is necessary to promote the licensing objective of the protection of children from harm. However, theatres may be the venue for a wide range of activities. The admission of children to the performance of a play is expected to normally be left to the discretion of the licence holder and no condition restricting the access of children to plays should be attached. However, theatres may also present entertainment including, for example, variety shows, incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary. Entertainment may also be presented at theatres specifically for children (see below).

Licensing authorities are also expected to consider whether a condition should be attached to a premises licence which requires the presence of a sufficient number of adult staff on the premises to ensure the well being of children present on the premises during any emergency (See Annex F).

Performances especially for children

Where performances are presented especially for unaccompanied children in theatres and cinemas conditions are anticipated to be needed which require:

- an attendant to be stationed in the area(s) occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children or part thereof.

Licensing authorities are expected, having regard to any representations made by responsible authorities on the issue, to also consider whether or not standing should be allowed. For example, there may be reduced risk for children in the stalls than at other levels or areas in the building.

Children in performances

There are many productions each year that are one-off shows where the cast is made up almost entirely of children. They may be taking part as individuals or as part of a drama club, stage school or school group. The age of those involved may range from 5 to 18. The Children (Performances) Regulations 1968 as amended set out requirements for children performing in a show. Licensing authorities should familiarise themselves with the requirements of these Regulations and not duplicate any of these requirements. However, if it is necessary to consider imposing conditions, in addition to these requirements, for the promotion of the protection of children from harm then the licensing authority should consider the matters outlined below.

- **Venue** – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.
- **Fire safety** – all chaperones and production crew on the show should receive instruction on the fire procedures applicable to the venue prior to the arrival of the children.
- **Special effects** – it may be inappropriate to use certain special effects, including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.

- **Care of children** – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important mechanism in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors.

Where appropriate and necessary, consideration can be given to attaching conditions to premises licences and club premises certificates that require compliance with the Portman Group's Retailer Alert Bulletins.

Proof of Age cards

Proof of age cards are discussed under Annex D in connection with the prevention of crime and disorder. However, where necessary and appropriate, a requirement for the production of proof of age cards before any sale of alcohol is made could be attached to any premises licence or club premises certificate for the protection of children from harm. Any such requirement should not be limited to recognised "proof of age" cards, but allow for the production of other proof, such as photo-driving licences and passports. The Secretary of State strongly supports the PASS accreditation system (see paragraph 12.8 of the Guidance) which aims to approve and accredit various proof of age schemes that are in existence.

This ensures that such schemes maintain high standards, particularly in the area of integrity and security, and where appropriate and necessary, conditions may refer directly to PASS accredited proof of age cards, photo-driving licences, student cards and passports. As for conditions relating to crime and disorder, it should be noted that many adults in England and Wales do not currently carry any proof of age. This means that the wording of any condition will require careful thought. For example, the requirement might be to ensure sight of evidence of age from any person appearing to those engaged in selling or supplying alcohol to be under the age of 18 and who is attempting to buy alcohol. This would ensure that most minors – even those looking older – would need to produce proof of age appropriately before making such a purchase. Under such an arrangement only a minority of adults might be affected, but for the majority there would be no disruption to their normal activity, for example, when shopping in a supermarket.

Proof of age cards can also ensure that appropriate checks are made where the presence of children is restricted by age at certain times, such as 16.

DRAFT

Corporate enforcement policy

1.0 GENERAL ENFORCEMENT POLICY

- 1.1 This Council supports the judicious use of its statutory enforcement powers, including the prosecution of offenders, as an effective means of ensuring that local premises, practices and activities comply with statutory requirements and do not put the health, safety, well being or amenity of the general public, employees and consumers at risk.

2.0 DECISION MAKING - AUTHORISATIONS

- 2.1 The appropriate Director will authorise Officers to act under relevant statutes subject to being satisfied as to the Officer's competence, appropriateness of qualifications and experience.
- 2.2 When exercising their powers authorised Officers will have regard to any relevant enforcement guidance current at the time the action is taken and will act in accordance with this policy and all relevant Council procedures.

3.0 ENFORCEMENT OPTIONS

- 3.1 Having considered all relevant information and evidence, the choices of action will be:
- to take no action
 - to take informal action
 - to use statutory notices
 - to use formal cautions
 - to prosecute
 - to proceed by way of injunctions
- 3.2 In coming to any decision, Officers will need to consider the consequences of non-compliance and the likely effectiveness of the various enforcement options.

4.0 CIRCUMSTANCES RELEVANT TO ALL OPTIONS

- 4.1 Where appropriate, inspection reports will be issued following inspection of a premises or vehicles.
- 4.2 It is important that the recipient of any enforcement action knows exactly what to do and why.
- 4.3 Any written documentation issued will:-
- (a) contain all the necessary information to make it clear what action is required and why,

- (b) indicate the legislation being contravened, the measures required to achieve compliance and, if appropriate, any other alternative means of attaining the same effect,
- (c) clearly indicate those matters which are considered to be good practice rather than legislative requirements.

4.4 In any verbal communication, if the person appears to have an impairment or there is doubt about his/her hearing or speaking ability to understand English then the Enforcement Officer will call upon the services of an Interpreter.

4.5 Where the recipient's first language is not English a suitable written translation of all written communications, in the recipient's first language, will also be issued in addition to an English version.

5.0 CIRCUMSTANCES RELEVANT TO FORMAL ACTION

5.1 Before formal enforcement action is taken, Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for instance in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

5.2 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

6.0 INFORMAL ACTION

5.1 Informal action includes offering advice, verbal warnings and requests for action, the use of letters and inspection reports.

Informal action will be adopted where:-

- (a) the act or omission is not serious enough to warrant formal action,
- (b) from past experience of the offender it can reasonably be expected that compliance will be achieved within a reasonable period,
- (c) confidence in the offender is high,
- (d) the sequence of non-compliance will not pose a significant risk to public health or safety,

Even where some of the above criteria are not met, there may be circumstances where informal action may be more effective e.g. in relation to voluntary organisations using volunteers.

7.0 STATUTORY NOTICES

7.1 General

7.1.1 Statutory Notice Procedures will be considered as a positive alternative to the more confrontational approach of prosecution in respect of contraventions of statutory requirements.

- 7.1.2 Enforcement Officers will give a realistic time period for compliance to be achieved but they should also take into account any previous informal notice issued to the recipient. Where statutory provisions allow officers may extend the time period of statutory notices if they are satisfied that the recipient is making reasonable progress with the work or has genuine reason for requesting more time.
- 7.1.3 Failure to comply with a statutory notice will invariably result in the appropriate sanctions being applied as a consequence of that failure e.g. works in default, prosecution etc. Officers will not, therefore, issue statutory notices unless they are satisfied that such proceedings are likely to succeed.
- 7.1.4 All notices will give details of the recipient's rights of appeal, where such a provision exists.

7.2 Improvement Notices

- 7.2.1 Such notices will be seen as an obligation by the recipient to the Council to complete programmes of remedial work within specified time limits.
- 7.2.2. Improvement notices will be issued to secure significant improvements provided the following criteria are satisfied:-
- (i) the Enforcement Officer has reason to believe that an informal approach would not result in expeditious compliance with his/her requirements ;
 - (ii) a previous informal approach has failed to result in compliance;
 - (iii) the improvements are required to remove a significant health or safety hazard.

7.3 Prohibition Notices

- 7.3.1 The judicious use of prohibition notices will ensure that premises, practices or processes can be stopped quickly and efficiently if, by their continuance, the health or safety of the public, employees or consumers is put at risk.
- 7.3.2 Where Enforcement Officers believe that there is an imminent risk to health or safety, action should be taken to close the business or prohibit the use of the process, practice or equipment giving rise to the risk. Officers must, however, ensure that the extent of prohibition is limited to that necessary to remove the risk.

7.4 Other Enforcement Notices

- 7.4.1 Abatement Notices and notices requiring the execution of works, which by their issue create an offence in the event of non-compliance, will be served:
- (1) if there is clear evidence that the service of the notice is necessary to ensure compliance with legislation or abatement of a situation which is prejudicial to health or a nuisance;
 - (2) if Enforcement Officers are satisfied that an informal approach would not achieve the required result.

8.0 FORMAL CAUTIONS

8.1 Consideration will be given to the use of formal cautions if the criteria in Section 9.2 of this policy are met and it would be appropriate to:

- (a) deal quickly and simply with a less serious offence
- (b) avoid unnecessary appearances in the Courts
- (c) to reduce likelihood of re-offending.

No conditions will be applied where a formal caution is administered.

8.2 A formal caution is a serious matter. It will be recorded. It will influence any decision as to whether to prosecute if there is a further offence. A formal caution may be cited in any subsequent Court proceedings.

8.3 Before a formal caution is given the following conditions must be met:-

- (a) there must be sufficient evidence of guilt in order to provide a realistic prospect of conviction,
- (b) the offender must admit the offence,
- (c) the offender must understand the significance of a caution and consents to it,
- (d) it is in the public interest, and
- (e) the views of the person offended against, if appropriate, have been sought as to this proposed course of action.

9.0 PROSECUTION

9.1 The prosecution of offenders will be used judiciously, but without hesitation, against those businesses or individuals where the health, safety, well being or amenity of the public, employees and consumers are subject to serious risk.

9.2 Prosecution will only be considered if one or more of the following conditions are satisfied:

- the alleged offence involves a serious breach of law such that public health, safety, well being or amenity is or has been put at risk.
- the alleged offence involves failure by the suspected offender to correct an identified serious risk to public health, safety, well being or amenity, having been given a reasonable opportunity to comply with the lawful requirements of an authorised Officer.
- the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- there is a history of similar offences related to risk to public health, safety, well being or amenity.

If at least one of the above conditions cannot be satisfied the facts of the case should be reported to the Committee for a decision on whether to prosecute.

10.0 INJUNCTION

10.1 In certain circumstances, if the Authority is of the opinion that proceedings in the Magistrates' Court would afford an inadequate remedy, it may take proceedings for injunctive relief. Having regard to the potential consequences, authority to proceed via this route must be given by the appropriate Committee and Council.

11.0 ENFORCEMENT OF TENANCY CONDITIONS, MANAGEMENT OF COUNCIL OWNED RESIDENTIAL PROPERTY AND ACTION TO CONTROL ANTI SOCIAL BEHAVIOUR

11.1 The preceding clauses of this policy do not apply to enforcement of tenancy conditions, other action taken in respect of Council owned residential property and action to control anti social behaviour save for clauses 1.1, 2.1, 4.4 and 4.5.

11.2 Where it is considered appropriate, action will be taken to enforce tenancy conditions, deal with others who may be occupying Council owned residential property (e.g. squatters) and to control anti social behaviour. This includes action against those who have rent arrears. In deciding whether to take action regard will be had to any relevant guidance, the interests of the Council, the cost of the action, the likely outcome of the action and, in the case of anti social behaviour, the effect of the behaviour on others.

11.3 Before action is taken, warning will, normally, be given to the person(s) that action will follow if the behaviour complained of is not suitably modified. Before possession proceedings are commenced a Notice of Seeking Possession will be served unless it is intended to ask the court to waive the requirement to do so. In serious cases of anti social behaviour it may not be desirable or possible to give a warning before action is taken. This may arise, for instance, where the current whereabouts of the target is known or where to give notice to the target may frustrate the purpose of it (e.g. where notice may lead to intimidation of witnesses or further harassment of victims).

11.4 Any warning given will, in general terms, set out what it is that is complained of, what must be done to put matters right (if they can be put right) and details of the intended action if matters are not put right. Generally, any warning should be given in writing unless the circumstances are such that a verbal warning is necessary. Any verbal warning given will subsequently be confirmed in writing so that there can be no argument about what is being complained of and sought.

11.5 If formal action is required consideration will be given to the use of all available powers including possession proceedings, injunctions and available orders under the Crime and Disorder Act 1998. Where appropriate assistance of other agencies will be sought which will include the sharing of information and joint working in accordance with agreed protocols between the Council and those agencies.

The safer clubbing guide checklist

The role of club owners, managers and event promoters is to ensure that all aspects of their venue are designed and run in ways which maximise the safety of customers, performers and staff.

Key activities of club owners, managers and event promoters include:

- Communicating all safety requirements clearly to performers ensuring that they are familiar with and understand the safety requirements for the venue
- Developing a constructive working relationship with local authority licensing officers and police officers with licensing responsibilities
- Developing a venue drug policy in consultation with licensing and police officers
- Ensuring that all staff are aware of their responsibilities within the drug policy and that they receive training and support to discharge these fully
- Employing door supervisors from a reputable company
- Employing experienced and fully trained first aiders
- Providing free and easily accessible supplies of cold water and ensuring the provision of water is supervised to prevent contamination of water by others
- Liaising with appropriate drug service personnel to provide training to staff, and information, advice and support to clubbers
- Considering inviting and supporting drug outreach work, including integrating outreach workers into the staff team
- Sharing intelligence on drug use and drug dealing with police officers and other local venues
- Informing clubbers of their rights and responsibilities, and encouraging feedback on safety issues
- Considering the provision of safe transport home
- Ensuring that all staff are aware of the law and the responsibilities of the club to work within it