

# LICENSING ACT 2003

## DARTFORD BOROUGH COUNCIL

### STATEMENT OF LICENSING POLICY

07 January 2019 - 06 January 2024

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**DARTFORD BOROUGH COUNCIL**  
**STATEMENT OF LICENSING POLICY**

**CONTENTS**

<b><u>SECTION</u></b>	<b><u>HEADING</u></b>	<b><u>PAGE</u></b>
1.0	INTRODUCTION	3
	Licensing and Planning	5
	Cumulative Impact	6
	Early Morning Restriction Orders	7
	Late Night Levy	8
	Advice & Guidance	8
	Consultation	9
	Reviews	9
	Enforcement	10
	Right of Appeal	10
	Annual Fees – Suspension For Non-Payment	10
2.0	LICENSING OBJECTIVES	11
3.0	PREVENTION OF CRIME & DISORDER	12
4.0	PUBLIC SAFETY	14
5.0	PREVENTION OF PUBLIC NUISANCE	15
6.0	PROTECTION OF CHILDREN FROM HARM	16
7.0	ADMINISTRATION, EXERCISE AND DELEGATION	18
	Delegation of Functions	20
APPENDIX 'A'	DEFINITIONS	21
APPENDIX 'B'	FURTHER INFORMATION & CONTACTS	26
APPENDIX 'C'	LICENSING ENFORCEMENT POLICY	28

# DARTFORD BOROUGH COUNCIL

## STATEMENT OF LICENSING POLICY

### 1.0 INTRODUCTION

1.1 The Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011 and its various statutory instruments (the 2003 Act), sets out the law on alcohol licensing. It provides for four different types of authorisation or permission, as follows:

- Premises Licence – to use Premises for Licensable Activities (i.e. the sale or supply of alcohol, the provision of entertainment, the provision of late night refreshment or any combination of these activities);
- Club Premises Certificate – to allow a Qualifying Club to engage in qualifying club activities as set out in Section 1 of the 2003 Act;
- Temporary Event Notice (TEN) – to carry out Licensable Activities at a temporary event;
- Personal Licence – to sell or authorise the sale of alcohol from Premises in respect of which there is a Premises Licence.

1.2 The statutory guidance issued under Section 182 of the 2003 Act (the Section 182 Guidance<sup>1</sup>), provides detailed advice to licensing authorities on the requirements and their responsibilities under the 2003 Act.

1.3 The Dartford Borough Council (the Licensing Authority) is responsible for administering the 2003 Act in the Borough of Dartford. This includes issuing licences and enforcing the Conditions of the licence, certificate or authorisation, often working with the Police and other Responsible Authorities.

1.4 The objective of the licensing process is for a unified system of regulation to allow Licensable Activities and Qualifying Clubs activities to be conducted in a manner, which promotes the following four objectives, each of which is considered to be of equal importance (the Licensing Objectives):

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

1.5 The 2003 Act requires that the Licensing Authority publish a 'Statement of Licensing Policy' that sets out the policies it will generally apply to promote the Licensing Objectives, when making decisions on applications made under the 2003 Act (the Policy).

*This Policy will take effect on 7 January 2019 and will remain in effect for a period of five years until 6 January 2024. This Policy may however be subject to Review at any time by the Licensing Authority, in accordance with paragraphs 1.45 and 1.46 of this Policy.*

1.6 The aims of this Policy are in line with the Licensing Objectives and:

- a. help build and maintain a fair and prosperous society that properly balances the rights of individuals and their communities;
- b. integrate its aims and objectives with other initiatives, policies plus strategies that will:

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<sup>1</sup> June 2013

- encourage people, especially young people, to participate in leisure and cultural activities
- reduce crime and disorder
- encourage visitors to the Borough of Dartford
- continue to develop the daytime economy and encourage an early evening and night time economy which is viable and sustainable
- reduce alcohol misuse, especially under-age drinking
- encourage employment
- encourage the self-sufficiency of local communities
- reduce the burden of unnecessary regulation on business
- continue to value music in licensed Premises

1.7 This Policy has been prepared in accordance with the provisions of the 2003 Act and having regard to the Section 182 Guidance. Where it is necessary to depart from the Section 182 Guidance, either in this Policy or at any other time, the Licensing Authority will give clear and cogent reasons for doing so. The Licensing Authority will endeavour to work with other local authorities (particularly where licensing authorities' boundaries meet), to ensure that a consistent approach is taken in licensing matters, whilst respecting the differing needs of individual communities.

1.8 When considering applications, the Licensing Authority will have regard to this Policy, the 2003 Act, the Licensing Objectives, the Section 182 Guidance and any supporting regulations that may from time to time be made. It will also seek proper integration with local crime prevention, planning, transport, employment and cultural strategies. To this end, the Licensing Committee may provide reports to the Development Control Board on matters regarding licensed Premises in the Borough of Dartford.

1.9 This Policy does not undermine the rights of any person to apply under the 2003 Act for a variety of permissions and have the application considered on its individual merits, as well as against any relevant policy and statutory framework. It does not override the right of any person to make representations on any application, or seek a Review of a licence or certificate or authorisation where permitted to do so under the 2003 Act.

1.10 The principles of a fair and public hearing are important when it comes to licensing matters. In formulating this Policy, the Licensing Authority has had regard to the provisions of the Human Rights Act 1998. This Act places a duty on public authorities to protect the rights of individuals in a variety of circumstances, and to balance those rights against the rights of persons trading in Licensable Activities and to achieve proportionality.

1.11 The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The Licensing Authority will have full and proper regard to the Equality Act 2010 in determining applications, so as to avoid any possible indirect discriminatory impact on particular groups.

1.12 The object of licensing is to maintain appropriate control of licensed Premises, Qualifying Clubs, TENS and the people who manage them or hold personal licences within the terms of the 2003 Act. Where Relevant Representations are made, the Licensing Authority will seek to make objective judgements as to whether Conditions may need to be attached to a licence, certificate or authorisation to secure achievement of the Licensing Objectives.

- 1.13 If no Relevant Representations are received, the Licensing Authority must grant the licence in the terms sought in the application, subject only to Conditions which are consistent with the Operating Schedule and any relevant Mandatory Conditions.
- 1.14 The Licensing Authority expects every individual, club or business holding a licence, certificate or authorisation, to be responsible for minimising the impact of their activities and anti-social behaviour by their customers/patrons, within the immediate area surrounding their licensed Premises. On receipt of Relevant Representations, Conditions may be imposed by the Licensing Authority, which seek to manage the behaviour of customers/patrons that are within the control of the individual, club or business holding the licence, certificate or authorisation concerned. Each case will be considered on its own merits.
- 1.15 Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed Premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Therefore, other mechanisms may be utilised, where appropriate, to tackle unruly or unlawful behaviour of patrons/customers when beyond the immediate area surrounding the licensed Premises. These include:
- Partnership working with the Kent Police (and other agencies as appropriate) to promote enforcement of the law concerning public safety, crime and disorder and antisocial behaviour, including the issuing of fixed penalty notices;
  - To control the consumption of alcohol in any part of the Borough of Dartford that is experiencing alcohol-related disorder or nuisance, through Designated Public Place Orders (does not include beer gardens or premise frontages);
  - Partnership working with businesses, transport operators and other Licensing Authority departments, to create a safe and clean environment.
- 1.16 A key aim of this Policy is to maintain a safe and family friendly environment in the Borough of Dartford. Conditions that would be relevant in the Dartford Town Centre may not be appropriate in rural areas. Each application will be considered on its merits.
- 1.17 Whilst the Licensing Authority will avoid imposing Conditions, which duplicate other statutory provisions, it is mindful that requirements and responsibilities are placed on it and licence holders by other legislation. Legislation, which may be relevant, includes:
- The Gambling Act 2005
  - The Environmental Protection Act 1990
  - The Noise Act 1996
  - The Clean Neighbourhoods and Environmental Act 2005
  - The Regulatory Reform (Fire Safety) Order 2005
  - Health and Safety (First-Aid) Regulations 1981
  - The Equality Act 2010

### **Licences and planning permission**

- 1.18 The Licensing Authority will ensure that planning permission, building control approvals and licensing regimes are separated to avoid duplication and inefficiency.
- 1.19 The use of any licensed Premises for the sale or supply of alcohol may be subject to planning controls. There are several key differences between licensing and planning regimes. Licensing is concerned with the fitness of the individual running or managing a business that sells or supplies alcohol and the detailed issues concerning the operation and management of the licensed Premises. Planning is concerned with the use of the licensed Premises.
- 1.20 The Licensing Authority expects in general, that any matter relating to the use of the licensed Premises under the planning regime, will have been resolved before an application

is made under the 2003 Act, for a licence, certificate or other authorisation. Applicants should seek advice regarding planning permission or building control approval from the Local Planning Authority, prior to submitting an application to the Licensing Authority under the 2003 Act.

- 1.21 The Licensing Authority is not bound by decisions made by the Local Planning Authority on any related planning application. However, a process of consultation will ensue with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 1.22 With the exception of the approval and Review of this Policy, decisions on licensing matters will be taken by the Licensing Authority in accordance with a published and approved scheme of delegation aimed at underlining the principles of timely, efficient and effective decision-making, as set out in paragraph 7.8 of this Policy.

### **Cumulative impact of a concentration of licensed Premises**

- 1.23 "Cumulative impact" is not mentioned specifically in the 2003 Act, but means the potential impact on the promotion of the Licensing Objectives of a significant number of licensed Premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance in Dartford Town Centre of a large concentration of licensed Premises in that part of the Borough. The cumulative impact of licensed Premises on the promotion of the Licensing Objectives is a proper matter for the Licensing Authority to consider in this Policy.
- 1.24 Where, after considering the available evidence and consulting the statutory authorities and other bodies/persons listed in paragraph 1.46 of this Policy, the Licensing Authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in this Policy, it will indicate by way of a policy statement, that it is adopting a special provision of refusing new licences whenever it receives Relevant Representations about the cumulative impact on the Licensing Objectives from Responsible Authorities and Any Other Persons, which it concludes after hearing those representations, should lead to refusal.
- 1.25 There will be an evidential basis for the decision to include special provisions relating to cumulative impact within this Policy. For example, the Dartford and Gravesham Community Safety Partnership will often have collated information that demonstrates cumulative impact as part of its general role on anti-social behaviour; and crime prevent strategies may have already identified cumulative impact as a local problem. Similarly, environmental health officers may be able to demonstrate concentrations of valid complaints relating to noise disturbance.
- 1.26 Cumulative impact assessments (CIAs) may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on or off the premises, and the provision of late night refreshment. This includes late night refreshment providers, which are not licensed to sell alcohol. A CIA may relate to all premises licences and Club Premises Certificates in the area described in the assessment or parts thereof, or only to Premises of a particular kind described in the assessment. For example, it may be appropriate for the Licensing Authority to only include off-licences or nightclubs within the scope of its assessment. The Licensing Authority must make clear, when publishing its CIA, which Premises types it applies to. CIAs do not apply to TENs, however it is open to the Police and EHA (as Relevant Persons) to refer to evidence published within a CIA when objecting to a TEN.
- 1.27 While the evidence underpinning the publication of a CIA should generally be suitable as the basis for a decision to refuse an application or impose conditions, it does not change the fundamental way that decisions are made under the 2003 Act. Each decision in an area subject to a CIA therefore still needs to be made on a case-by-case basis and with a view to what is appropriate for the promotion of the licensing objectives. Importantly, the publication of a CIA would not remove the Licensing

Authority's discretion to grant applications for new licences or applications to vary existing licences, where it considers this appropriate in the light of the individual circumstances of the case.

- 1.28 In summary, the steps to be followed in considering whether to adopt special provisions within this Policy are:
- identification of concern about crime and disorder or public nuisance;
  - consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed Premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point where a cumulative impact is imminent;
  - consultation with those specified by section 5(3) of the 2003 Act as part of the general consultation required in respect of the whole Policy;
  - subject to that consultation, inclusion of special provisions about future Premises Licence or Club Premises Certificate applications from that area within the terms of this Policy;
  - publication of the special provisions as part of this Policy required by the 2003 Act.
- 1.29 The effect of adopting special provisions of this kind is to create a rebuttable presumption that applications for new Premises licences or Club Premises Certificates or material variations will normally be refused if relevant representations to that effect are received, unless it can be demonstrated that the operation of the licensed Premises involved will not add to the cumulative impact already being experienced.
- 1.30 Applicants would need to address any special provisions in their Operating Schedules in order to rebut such a presumption. However, special provisions must stress that this presumption does not relieve Responsible Authorities or Any Other Persons of the need to make Relevant Representations before the Licensing Authority may lawfully consider giving effect to its special provisions. If no Relevant Representation is received, it would remain the case that any application must be granted in terms that are consistent with the Operating Schedule. However, Responsible Authorities, or Any Other Persons, can make a Relevant Representation maintaining that it is necessary to refuse the application for the promotion of the prevention of crime and disorder and referring to information that had been before the Licensing Authority when it developed this Policy.
- 1.31 The absence of special provisions does not prevent any Responsible Authority or Any Other Persons making representations on a new application for the grant of a licence on the grounds that the licensed Premises will give rise to a negative cumulative impact on one or more of the Licensing Objectives.
- 1.32 If adopted, special provisions will be reviewed regularly to assess whether they are needed any longer or need expanding. While special provisions are in existence, applicants will need to demonstrate why the operation of the licensed Premises would not add to the cumulative impact being experienced.
- 1.33 The Licensing Authority recognises that the diversity of licensed 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. The Licensing Authority will not consider representations for a saturation policy based purely on the numbers of a specific type of business located in a defined area.
- 1.34 The Licensing Authority recognises that, within this Policy, it may be able to approve licences that are unlikely to add significantly to the problems arising from saturation, and will consider the circumstances of each individual application.

## **Early Morning Restriction Orders (EMROs)**

- 1.35 The Section 182 Guidance states *“EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.”*
- 1.36 Through an EMRO, the Licensing Authority can restrict the sale of alcohol between 12 midnight and 06.00am on all or some days, where it considers that there are alcohol related crime and disorder issues in the whole or a part of the Borough.
- 1.37 The Licensing Authority will consider evidence from Responsible Authorities, the Dartford and Gravesham Community Safety Partnership, together with its own evidence, to determine whether an EMRO is appropriate for the promotion of the Licensing Objectives. The Licensing Authority must be satisfied that it has sufficient evidence to identify a problem in a specific area attributable to the supply of alcohol at two or more licensed Premises in that area. Evidence will be considered in the same manner as with other licensing decisions. The Licensing Authority will also consider whether other measures may address the problems that it has identified as the basis for introducing an EMRO and consider the potential burden that would be imposed on licence holders as well as the potential benefits in terms of promoting the Licensing Objectives.
- 1.38 Other measures that could be taken instead of making an EMRO might include:
- introducing a cumulative impact policy (evidence based with Police data support);
  - reviewing licences of specific problem licensed Premises;
  - encouraging the creation of business-led best practice schemes in the area involving those licence holders with an interest in the late night economy and agencies who support the Licensing Objectives.
- 1.39 Where the Licensing Authority proposes to make an EMRO, it must follow the statutory advertisement and notification procedures set out in the Licensing Act 2003 (Early Morning Restriction Orders) Regulations 2012. Any person wishing to make representations for, or against, the proposal, will have 42 days in which to lodge their comments. If, following representations, there are any changes to the original proposal, the Licensing Authority will consult on any new EMRO proposal. Representations will be heard by the Licensing Sub-Committee.
- It is for the General Assembly of the Council to decide the area, days and times in relation to which the EMRO would apply. However, EMROs will not apply to any licensed Premises on New Year's Eve.
- 1.40 The Licensing Authority will monitor the effectiveness of any EMRO, to ensure it continues to be appropriate for the promotion of the Licensing Objectives and periodically review whether it is appropriate to continue to apply it.

## **Late Night Levy**

- 1.41 The late night levy enables the Licensing Authority to raise a contribution from late-opening alcohol suppliers towards the costs of policing crime and disorder connected to the supply of alcohol in the Borough of Dartford, between midnight and 6am. If the levy is introduced (a local power that the Licensing Authority can choose whether or not to exercise), it is payable by all holders of Premises Licences or Club Premises Certificates which authorise the supply of alcohol at times beginning at or after midnight and ending at or before 6am (the Licensing Authority may determine the times but these must be the same each night).
- 1.42 Licensed Premises that do not wish to operate in the levy period will be able to make a free minor variation to their licence before the levy is introduced. The Licensing Authority may

decide what exemptions and reductions should apply from a list set out in Late Night Levy (Expenses, Exemptions and Reductions) Regulations 2012<sup>2</sup>. Licensed Premises which are not part of the wider night-time economy (e.g. bingo halls, community halls, theatres and cinemas etc.) will be exempted from the levy. Other licensed Premises will have to meet specific criteria to be considered for these exemptions. The Licensing Authority has the discretion to exempt licensed Premises that only open late on New Year's Eve.

1.43 The amount of the late night levy is set at a national level. The charge is calculated according to rateable value. This system applies to the existing licence fee and the levy charge is collected by the Licensing Authority, alongside the annual licence fee.

1.44 The Late Night Levy (Application and Administration) Regulations 2012 sets out the consultation procedure with the Police and other parties, which the Licensing Authority must comply with, before deciding whether to introduce the late night levy in the Borough of Dartford.

### **Advice and Guidance**

1.45 The Licensing Authority recognises the valuable cultural, social and business importance that licensed Premises and events requiring a licence under the 2003 Act provide and welcomes the diversity of activities that are provided by licence holders. For this reason, pre-application discussions will be encouraged to assist applicants to develop their Operating Schedule to the standards the Licensing Authority will normally expect. The Licensing Authority will offer as much advice and guidance to applicants, as resources permit.

1.46 The Licensing Authority will also seek to liaise with applicants and/or encourage mediation between applicants and others who may make Relevant Representations, to achieve a satisfactory outcome for all involved wherever possible and where resources permit. Where an applicant considers that Relevant Representations may be likely or probable, the applicant is advised to discuss the proposal with the Licensing Authority and those from whom they think Relevant Representations are likely, prior to submitting their application. Once an application has been lodged, there are statutory timescales imposed upon the application and determination process, which restrict the opportunity for such discussions, liaison and informal resolution, through mediation, between the applicant and those making Relevant Representations.

### **Consultation**

1.47 The Licensing Authority is required to formally review this Policy every five years, as a minimum. However, subject to the consultation provisions set out below, the Licensing Authority will keep this Policy under review to give effect to the Licensing Objectives and/or any changes to legislation or otherwise as it considers necessary. Amendments will be published, either as a statement of the revisions, or as a revised 'Licensing Policy Statement'.

1.48 There are a number of stakeholders who have an interest/stake in the leisure industry, including businesses, customers, residents and regulators, all of whom have views and concerns that require consideration as part of the licensing function and promotion of the Licensing Objectives. When reviewing this Policy, the Licensing Authority will consult with:

- Chief Officer of Kent Police;
- Kent & Medway Towns' Fire and Rescue Authority;
- Dartford and Gravesham Community Safety Partnership;
- Representatives of holders of Premises Licences, Club Premises Certificates and Personal Licences issued by the Licensing Authority;

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<sup>2</sup> see Home Office Guidance 'Police Reform and Social Responsibility Act 2011 - Late Night Levy'

- Representatives of businesses and residents in the Borough of Dartford;
- Licensing Committee.

## Reviews

- 1.49 The Section 182 Guidance recognises that the promotion of the Licensing Objectives relies heavily on a partnership between the Licensing Authority, Responsible Authorities and licence holders and/or Any Other Persons, in pursuit of common aims. It is considered good practice for the Licensing Authority and/or Responsible Authorities to give licence holders early warning of their concerns about problems identified at the licensed Premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings, would lead to a decision to request a Review.
- 1.50 The 2003 Act specifies that only Responsible Authorities or Any Other Persons may seek a Review of a Premises Licence and in the case of a Club Premises Certificate, this will also include members of the club. No more than one Review will normally be permitted by the Licensing Authority within any 12 month period, on identical or substantially similar grounds, other than in exceptional and compelling circumstances (e.g. where new problems have arisen) or where a Review is required, following a Closure Order.
- 1.51 The Licensing Authority will first consider whether the reasons for the Review are relevant to one or more of the Licensing Objectives. Secondly, the Licensing Authority must be satisfied that the application is not frivolous, vexatious or repetitious.
- 1.52 The Licensing Authority is a Responsible Authority for Premises Licences and Club Premises Certificates' applications and will have the power to make Relevant Representations, which could lead to the refusal, removal or Review of a licence without representation from the Police or other Responsible Authority.

## Enforcement

- 1.53 The Licensing Authority has adopted the principals of the Regulators' Compliance Code in the administration and enforcement of the licensing regime. Specifically, the Licensing Authority is committed to the principles of good enforcement practice by carrying out its regulatory functions in a fair, open and consistent manner.
- 1.54 The Regulators' Compliance Code is based on the principles that businesses should:
- receive clear explanations from enforcers of what they need to do and by when;
  - have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
  - receive an explanation of their rights of appeal.
- 1.55 The Licensing Authority recognises the interests of both individual citizens and the requirements of businesses and will work closely with partners to assist licence holders to comply with the law and the Licensing Objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or persistently break the law. The Licensing Authority has set clear standards of service and performance that the public and businesses can expect. In particular, a Licensing Enforcement Policy (see Appendix C) has been adopted that explains how the Licensing Authority will undertake and apply the principles of effective enforcement. This Licensing Enforcement Policy can be also be viewed on the Licensing Authority's website [www.dartford.gov.uk](http://www.dartford.gov.uk)
- 1.56 The Licensing Authority has established protocols with Kent Police, Kent & Medway Towns' Fire and Rescue Authority and Kent County Council Trading Standards on enforcement issues. These protocols provide for the targeting of resources towards high-

risk licensed Premises and licensing activities that require greater attention, while providing a lighter touch in respect of low risk licensed Premises that are well operated.

- 1.57 The principle of using a scoring scheme based on risk factors, will normally prevail and proactive inspections will usually be undertaken by the Licensing Authority in accordance with a priority inspection scheme. This will ensure that resources are more effectively allocated to higher risk or 'problem licensed Premises'. Monitoring visits will also take place in around licensed Premises (see Appendix 'C').

### **Right of Appeal**

- 1.58 The applicant, Any Other Persons and the Police, have a right of appeal to the Magistrates' Court, against the Licensing Authority's decision.

- 1.59 It is important that the Licensing Authority gives comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to this Policy and the Guidance. Reasons will be promulgated to all the parties of any process, which might give rise to an appeal under the terms of the 2003 Act.

- 1.60 It is important that the Licensing Authority also provides all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

- 1.61 Appeals must be lodged within 21 days, beginning with the day on which they are notified of the decision of the Licensing Authority.

### **Annual Fees - Suspension for Non-Payment**

- 1.62 The Licensing Authority will suspend a Premises Licence or Club Premises Certificate for non-payment of annual fees when they become due. There are a limited number of exceptions to this rule:

- if the failure to pay was due to an administrative error (whether by the licence holder, the Licensing Authority or anyone else);
- if before or when the fee becomes due, the licence holder notifies the Licensing Authority in writing, that they dispute either their liability for or the amount of the fee; or
- the grace period of 21 days after the fee becomes due, has not expired.

Should these exceptions not apply, the Licensing Authority will serve a 'notice of suspension' on the licence holder, specifying a day, at least 2 working days after the date of the notice, on which the suspension will begin. The suspension will last, until the fee is paid and the Licensing Authority has served an 'acknowledgement of receipt'. The receipt day specified on this acknowledgement, will be the date on which the suspension will be lifted.

## **2.0 LICENSING OBJECTIVES**

- 2.1 The following sections set out the Licensing Authority's policy relating specifically to the Licensing Objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance

- The protection of children from harm<sup>3</sup>

- 2.2 The Licensing Objectives are the only matters, which will be taken into account by the Licensing Authority when considering and determining applications. Where the Licensing Authority receives Relevant Representations from a Responsible Authority or Any Other Persons, it may consider attaching Conditions to licences, certificates or authorisations, to promote the Licensing Objectives, as appropriate.
- 2.3 Conditions imposed by the Licensing Authority are 'preventative' as opposed to 'punitive' and are proportionate, reasonable and appropriate for the promotion of the Licensing Objectives. Conditions are tailored to the individual style and characteristics of the particular licensed Premises and events concerned and may be drawn from the 'Model Pool of Conditions' (not an exhaustive list) set out in supporting guidance to the Section 182 Guidance. The Licensing Authority may consider it appropriate to impose Conditions not in the 'Model Pool.' Each application and the imposition of Conditions, will be considered on its merits.
- 2.4 This Policy provides lists of possible factors and control measures that would influence the achievement of the Licensing Objectives but, because of the wide variety of licensed Premises and Licensable Activities to which this Policy applies, the listed factors and control measures are not exhaustive. Applicants know their licensed Premises best and are encouraged to address each Licensing Objective relevant to the individual style and characteristics of their licensed Premises and events in their Operating Schedule.
- 2.5 The Licensing Authority recommends the selection of control measures, to be based upon a risk assessment of the licensed Premises, events, activities and the customers expected to attend (e.g. their age, number, etc.) Applicants will therefore need to identify whether additional measures will be taken on an occasional or specific basis, such as when a special event or promotion is planned, which is intended to, or likely to attract, larger audiences.
- 2.6 Whilst the Licensing Authority may not require risk assessments to be documented (other than where required by legislation), it considers such documentation to be good practice and a useful tool in the instruction and training of staff. It is also a sound basis for review by the licence holder, in the event of an application for variation or a response to changing circumstances/conditions at the licensed Premises being required.
- 2.7 The Licensing Authority considers the effective and responsible management of the licensed Premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the Licensing Objectives.

### **3. PREVENTION OF CRIME AND DISORDER**

- 3.1 The Licensing Authority is committed to further improving the quality of life for the people of the Borough of Dartford, by continuing to reduce crime and the fear of crime.
- 3.2 The Licensing Authority will consult and involve the Dartford and Gravesham Community Safety Partnership (CSP) in its decision making, in order to maximise the effectiveness of reducing crime, misuse of drugs and the fear of crime.
- 3.3 Section 17 of the Crime and Disorder Act 1998 provides a wide range of measures for preventing crime and disorder and imposes a duty on the Licensing Authority (and its CSP partners), to consider crime and disorder reduction in the exercise of all its duties. The 2003 Act reinforces this duty.

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<sup>3</sup> The responsible authority for the protection of children from harm is: North Kent Social Services, C/o Civic Centre, Home Gardens, Dartford, Kent, DA1 1DR

- 3.4 The promotion of the Licensing Objective, 'to prevent crime and disorder', places a responsibility on individuals, clubs or businesses holding a licence, certificate or authorisation to co-operate with the Licensing Authority in achieving this Objective. Applicants will be encouraged to demonstrate in their Operating Schedule, when necessary, that suitable and sufficient measures relevant to the individual style and characteristics of their licensed Premises and events, have been identified and which will be implemented and maintained, to reduce or prevent crime and disorder on and in the immediate area surrounding their licensed Premises.
- 3.5 When addressing the issue of crime and disorder, the applicant must consider any factors that may impact on crime and disorder. These might include:
- Underage drinking
  - Drunkenness on licensed Premises
  - Public drunkenness
  - Drugs
  - Violent behaviour
  - Anti-social behaviour
- 3.6 The following examples of control measures are given to assist applicants when preparing their Operating Schedule, having regard to the individual style and characteristics of their licensed Premises and events:
- Effective and responsible management of licensed Premises
  - Training and supervision of staff
  - Adoption of best practice guidance (e.g. Safer Clubbing, National Alcohol Harm Reduction Strategy Toolkit<sup>4</sup> and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by the British Beer and Pub Association)
  - Acceptance of accredited 'proof of age' cards for example "PASS Card" promoted by Kent Trading Standards and Kent Police – verification must include the individual's photograph, date of birth and a holographic mark .e.g. driving licence, passports or military ID
  - Provision of effective CCTV in and around licensed Premises
  - Employment of Security Industry Authority Licensed Door Supervisors
  - Provision of toughened or plastic glasses
  - Provision of secure deposit boxes for confiscated items ('sin bins')
  - Provision of litterbins and other security measures, such as lighting, outside the licensed Premises
  - Membership of the Dartford Town against Crime (D-TAC) Partnership.
- 3.7 With the exception of community premises e.g. church and village halls etc., anyone who authorise the sale or supply of alcohol must apply for a Personal Licence. A premises supervisor must be designated by individuals, clubs or businesses holding a licence, certificate or authorisation and named in the Operating Schedule (the **Designated Premises Supervisor (DPS)**). The DPS must also hold a Personal Licence. The Licensing Authority will normally expect the DPS to have been given day-to-day responsibility for running the licensed Premises, by the Premises Licence holder. In exceptional circumstances, the Police may object to the designation of a new premises supervisor as a DPS, where they believe that such appointment would undermine the crime prevention Licensing Objective.
- 3.8 Certain **temporary events** (at which Licensable Activities are to be undertaken) which are not authorised by a Premises Licence or Club Premises Certificate do not have to be authorised by the Licensing Authority *on an application*. Instead, a person/organiser wishing to hold an event at which such activities are proposed to be carried on (the 'Premises User') must notify the Licensing Authority, the Police and the EHA of the event,

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<sup>4</sup> Department of Health, the Home Office and the Department of Children, Schools, and Families - 2008

using the form of Temporary Event Notice (TEN) prescribed by legislation<sup>5</sup>. Depending on the nature and location of such events, these events can have serious crime and disorder/public nuisance implications.

- 3.9 Under the 2003 Act 'premises' can mean any place. Events authorised under a TEN will therefore not always be in a building with a formal address and can take place, for example, in public parks and plots within larger areas of land. In all cases, the premises user should provide a clear description of the area in which they propose to carry on licensable activities, including whether the premises are, for example, an open field or a beer tent.
- 3.10 The 2003 Act provides for two types of Temporary Event Notices (TENs) – the 'standard TEN' and the 'late TEN'.
- 3.11 A 'standard TEN' must be submitted no less than 10 Working Days' before the day of the event. The Premises User is encouraged to provide the earliest possible notice of any events planned, particularly as a Licensing Sub-Committee hearing may need to be convened, if objections have been received and to enable the Licensing Authority, Police and/or the EHA to work with the Premises User to identify and reduce the risk of crime and disorder.
- 3.12 The Police and/or the EHA may submit an Objection Notice to the Licensing Authority. A Licensing Sub-Committee hearing may need to be convened to decide on the basis of the Licensing Objectives, whether the event should go ahead.
- 3.13 Objections to a 'standard TEN' may result in the Licensing Sub-Committee imposing conditions on the TEN, but only where the venue at which the event is to be held, has an existing Premises Licence or Club Premises Certificate. One or more Conditions (from the existing Conditions on the Premises Licence or Club Premises Certificate) will be imposed on the 'standard TEN', but only if the Licensing Sub-Committee considers it appropriate for the promotion of the Licensing Objectives. It is to be noted that the Police and/or the EHA may agree a modification of the proposed arrangements directly with the 'Premises User'.
- 3.14 A 'late TEN' must be submitted no later than 5 clear working days and no earlier than 9 working days before the event is due to take place. The Police and/or the EHA may intervene to prevent a 'late Ten' taking place by submitting an Objection Notice to the Licensing Authority if they are satisfied that the event will undermine any of the Licensing Objectives. If an objection is made to a 'late TEN', then the Licensing Authority will issue a counter notice. In effect, a 'late TEN', which receives an objection, cannot go ahead. There is no scope under the 2003 Act for the modification of a 'late TEN'.
- 3.15 When giving a TEN, the Premises User must consider the promotion of the Licensing Objectives.
- 3.16 A TEN does not relieve the Premises User from any requirements under planning law for appropriate planning permission, where it is required.
- 3.17 Premises Users may find the following documents helpful:
  - 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
  - Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 0 7176 1580 4
  - The Guide to Safety at Sports Grounds (The Stationary Office 1997) ("The Green Guide") ISBN 0 11 300095 2

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<sup>5</sup> The Licensing Act 2003 (Permitted Temporary Activities) (Notices) (Amendment) Regulations 2012

- Safety Guidance for Street Arts, Carnivals, Processions and Large Scale Performances, published by the independent Street Arts Network, copies of which may be obtained through: [www.streetartnetwork.org/pages/publications](http://www.streetartnetwork.org/pages/publications).

3.18 Exceptional events of local, national or international significance may arise, which could not have been anticipated when the application for a Premises Licence or Club Premises Certificate was first made. In these circumstances, the Secretary of State may make a 'licensing hours order' to allow licensed Premises to open for specified, generally extended hours on these special occasions. This avoids the need for the Licensing Authority to process large numbers of TENS' or applications to vary Premises Licences and Club Premises Certificates. Typical events might include a one-off local festival or a Royal Jubilee.

3.19 Where the Licensing Authority has given notice in writing to the holder of the Premises Licence, prohibiting the exhibition of a film on the grounds that it contains matter, which, if exhibited, would be likely to:

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

the Licensing Authority will expect that the film will not be exhibited in the licensed Premises, except with its written consent and in accordance with any Conditions attached to such consent.

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

#### **4.0 PUBLIC SAFETY**

4.1 The Licensing Authority is committed to ensuring that the safety of any person visiting or working in licensed Premises is not compromised. To this end, applicants will be encouraged to demonstrate in their Operating Schedule, where necessary, that suitable and sufficient measures relevant to the individual style and characteristics of their licensed Premises and events, have been identified and will be implemented and maintained to ensure public safety.

4.2 When addressing the issue of public safety, the applicant must consider the factors that may impact on the standards of public safety. These may include:

- The occupancy capacity of the licensed Premises
- The age, design and layout of the licensed Premises, including means of escape in the event of fire
- The nature of the Licensable Activities to be provided, in particular the sale or supply of alcohol, and including whether those activities are of a temporary or permanent nature
- The hours of operation noting the difference between opening hours and the hours of Licensable Activities ("drinking up time")
- Customer profile (e.g. age, disability)
- The use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, strobe lighting etc.

4.3 The following examples of control measures are given to assist applicants when preparing their Operating Schedule, relevant to the individual style and characteristics of their licensed Premises and events:

- Suitable and sufficient risk assessments

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

## **5.0 PREVENTION OF PUBLIC NUISANCE**

- 5.1 Licensed Premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed Premises, whilst recognising the valuable cultural, social and business importance that such licensed Premises provide.
- 5.2 The Licensing Authority interprets 'public nuisance' in its widest sense and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living or working in or around the licensed Premises. Individuals, clubs or businesses holding a licence, certificate or authorisation, are responsible for minimising the impact of their activities and public nuisance by their customers/patrons, within the immediate area surrounding their licensed Premises, for example on the pavement, in a beer garden or in a smoking shelter, where and to the extent that these matters are within their control.
- 5.3 Applicants need to clearly understand that the Licensing Authority will pay particular attention to whether or not stricter Conditions should be imposed, including controls on licensing hours, where licensed Premises are in residential areas, with a view to protecting the quality of life of residential occupiers.
- 5.4 In the case of shops, stores, supermarkets and garages selling alcohol, for consumption off the licensed Premises, the general policy will be to allow sales of alcohol at all times when the licensed Premises are open for business. Any decision not to allow sales of alcohol at particular times, will be based on evidence of the need to prevent crime, disorder and public nuisance (following Relevant Representations).
- 5.5 Applicants will be encouraged to demonstrate in their Operating Schedule, when necessary, that suitable and sufficient measures relevant to the individual style and characteristics of their licensed Premises and events, have been identified and will be implemented and maintained to prevent public nuisance.
- 5.6 When addressing the issue of prevention of public nuisance, the applicant must consider factors likely to contribute to public nuisance. These factors may include:
- The location of licensed Premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, schools, nurseries and places of worship
  - The hours of operation, particularly if between 23.00 and 07.00
  - The nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside the licensed Premises
  - The design and layout of the licensed Premises and in particular the presence of noise limiting features

- The occupancy capacity of the licensed Premises
- The availability of public transport
- Last admission time
- The steps the applicant has taken or proposes to take to ensure that staff leave the licensed Premises quietly
- The steps the applicant has taken or proposes to take to prevent disturbance by patrons arriving or leaving the licensed Premises
- Whether routes to and from the Premises, on foot or by car or service or delivery vehicles, pass residential premises
- Whether other measures have been taken or are proposed such as the use of CCTV or the employment of SIA Registered Door Supervisors
- The arrangements made or proposed for parking by patrons, and the effect of this parking on local residents
- The likelihood of any violence, disorder or policing problems arising if a licence were granted
- Whether taxis and private hire vehicles serving the licensed Premises are likely to disturb local residents
- The siting of external lighting, including security lighting that is installed inappropriately
- Whether the licensed Premises would result in increased refuse storage or disposal problems or additional litter in the vicinity of the licensed Premise and any measures or proposed measures to deal with this
- The history of previous nuisance complaints proved against the licensed Premises, particularly where statutory notices have been served on the present licensees.

5.7 The following examples of control measures are given to assist applicants when preparing their operating schedule, relevant to the individual style and characteristics of their licensed Premises and events:

- Effective and responsible management of the licensed Premises
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance
- Control of operating hours for all or parts (e.g. garden areas) of the licensed Premises, including such matters as deliveries
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs<sup>6</sup>, produced by Institute of Acoustics or "Licensed Property: Noise Control" available from [www.beerandpub.com](http://www.beerandpub.com)).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving the licensed Premises
- Liaison with public transport providers
- Siting of external lighting, including security lighting
- Management arrangements for collection and disposal of litter
- Effective ventilation systems to prevent nuisance from odour.

## 6.0 PROTECTION OF CHILDREN FROM HARM

6.1 In the context of many licensed Premises such as pubs, restaurants, café bars and hotels, the Licensing Authority does not wish to see the development of family-friendly environments frustrated by overly restrictive Conditions in respect of children, where there is no good reason to impose them. Nothing, therefore, in this Policy limits the access of children to licensed Premises unless it is appropriate for the prevention of harm to children. No statement of policy can properly anticipate every issue of concern that could arise in respect of children with regard to individual licensed Premises and as such, general rules

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<sup>6</sup> March 2003

will be avoided. Consideration of the individual merits of each application remains the best mechanism for judging such matters.

- 6.2 Applicants are encouraged to demonstrate in their Operating Schedule, when necessary, that suitable and sufficient measures relevant to the individual style and characteristics of their licensed Premises and events, have been identified and will be implemented and maintained to protect children from harm. The Licensing Authority commends the Portman Group Code of Practice<sup>7</sup> on the naming and packaging of alcoholic drinks.
- 6.3 The protection of children from harm is an important issue and the risk of harm to children remains a paramount consideration when determining applications. The Licensing Authority will work actively with the Police and child protection agencies/bodies in enforcing the 2003 Act, where there are concerns regarding under-age sales and/or drinking.
- 6.4 In certain circumstances, children are more vulnerable and their needs will require special consideration. This vulnerability includes their susceptibility to suggestion, peer group influences, inappropriate example, the unpredictability of their age and the lack of understanding of danger. The 'protection of children from harm' includes:
- (a) the protection of children from moral, psychological and physical harm and, in relation to the exhibition of films, the transmission of programmes; and
  - (b) the protection of children from exposure to strong language, sexual imagery and sexual expletives.
- 6.5 Whilst children may be adequately protected from harm by the action taken to protect adults, they may also need special consideration and no policy can anticipate every situation. When addressing the issue of protecting children from harm, the applicant must consider factors that may lead to or impact on harm to children. These factors include the potential for children to:
- Purchase, acquire or consume alcohol
  - Being exposed to drugs, drug taking or drug dealing
  - Being exposed to gambling
  - Being exposed to activities of an adult or sexual nature
  - Being exposed to incidents of violence or disorder
  - Being exposed to environmental pollution such as noise or smoke
  - Being exposed to special hazards such as falls from a height
- 6.6 The following examples of control measures are given to assist applicants when preparing their Operating Schedule, relevant to the individual style and characteristics of their licensed Premises and events:
- Effective and responsible management of the licensed Premises
  - Provision of a sufficient number of people employed or engaged to secure the protection of children from harm
  - Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm
  - Limitations on the hours when children may be present, in all or parts of the licensed Premises
  - Limitations or exclusions by age when certain activities are taking place
  - Imposition of requirements for children to be accompanied by an adult
  - Acceptance of accredited 'proof of age' cards for example "PASS Card" promoted by Kent Trading Standards and Kent - verification must include the individual's photograph, date of birth and a holographic mark .e.g. driving licence, passports or military ID

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<sup>7</sup> 5<sup>th</sup> Edition – 31 May 2013

- The placing of machines to comply with the codes of practice under the Gambling Act 2005 so that they can be properly supervised.

- 6.7 Where a Premises Licence or Club Premises Certificate authorises the **exhibition of a film** (including the exhibition of adverts), it must include a Condition requiring the admission of children to films to be restricted in accordance with the recommendations of the British Board of Film Classification (BBFC) or by the Licensing Authority.
- 6.8 The Licensing Authority will expect licensees to implement measures that restrict children from viewing age-restricted films classified according to the recommendations of the BBFC or the Licensing Authority. In the case of a film exhibition that has not been classified, the Licensing Authority will expect the licensee to certify that an assessment of the suitability of the film for exhibition to children in accordance with the BBFC guidelines has been carried out and that this has been confirmed by the Licensing Authority in writing, prior to public viewing.
- 6.9 Where **Regulated Entertainment** is provided, the Licensing Authority will require the presence of an adequate number of adult staff to control the access and egress of children and to protect them from harm whilst on the licensed Premises (see the Section 182 Guidance). Where children are present as performers, the Licensing Authority will normally require an adequate number of adult staff to be responsible for the child performers.
- 6.10 Complete bans on children entering all or part of licensed Premises will be rare, but the options for limiting the access of children, where appropriate, for the prevention of harm to children, include the following:
- (1) limitations on the hours when and/or where children may be present;
  - (2) age limitations (below 18);
  - (3) limitations or exclusions when certain activities are taking place.
  - (4) requirements for an accompanying adult;
  - (5) full exclusion of people under 18 from the licensed Premises when any Licensable Activities are taking place;
  - (6) limitation on parts of the licensed Premises.
- 6.11 Examples of licensed Premises where children's access will be limited, include where:
- (1) there have been convictions for serving alcohol to minors or where there is some evidence of under-age drinking
  - (2) there is a known association with drug taking or dealing
  - (3) there is a strong element of gambling on the licensed Premises
  - (4) entertainment of an adult or sexual nature is commonly provided
  - (5) there is a presumption that children under 18 should not be allowed (e.g. to nightclubs, except where under 18 discos are being held)
  - (6) Licensable Activities are taking place during times when children under 16 may be expected to be attending compulsory full-time education.

## **7.0 ADMINISTRATION, EXERCISE & DELEGATION**

- 7.1 The Licensing Authority is involved in a wide range of licensing decisions and functions and has established a Licensing Committee to discharge its licensing functions under the 2003 Act. Powers/functions are further delegated to officers, under the Scheme of Delegations to Officers and to the Licensing Sub-Committee.
- 7.2 The Licensing Sub-Committee provides a speedy, efficient and cost effective service to all parties involved in the licensing process.
- 7.3 Many of the decisions and functions are largely administrative in nature, such as the grant of non-contentious applications, including for example, the grant of Premises Licences,

Club Premises Certificates and authorisations where no relevant representations have been made. These decisions are delegated to officers.

- 7.4 Where Relevant Representations are received, the application will be dealt with by the Licensing Sub-Committee, unless such Representations are considered irrelevant, frivolous or vexatious, or withdrawn or informally resolved before the Licensing Sub-Committee hearing.
- 7.5 The table at paragraph 7.8 of this Policy, sets out the how the Licensing Authority exercises it licensing functions, which, where appropriate, will include the imposition of Conditions relevant to the Licensing Objectives.
- 7.6 Any arrangements made by virtue of the Scheme of Delegations to Officers, do not to prevent the Licensing Authority, Licensing Committee or Licensing Sub-Committee from exercising those functions.
- 7.7 Meetings of the Licensing Committee and Licensing Sub-Committee are open to the public, except where confidential and/or exempt matters are being discussed. Licensing Sub-Committee members may retire into private session, to consider their decision.

## 7.8 Delegation of Functions:

Matter to be dealt with	General Assembly of the Council	Licensing Committee	Licensing Sub-committee	Officers
Approval of Statement of Licensing Policy	In all cases			
Establish a Sub-Committee		In all cases		
Application for a Personal Licence			If a Police representation received	If no representation received
Application for a Personal Licence with unspent convictions			In all cases	
Application for a Premises Licence/Club Premises Certificate			If a relevant representation received	If no relevant representation received
Application for a Provisional Statement			If a relevant representation received	If no relevant representation received
Application to vary Premises Licence/Club Premises Certificate			If a relevant representation received	If no relevant representation received
Application for a Minor Variation				In all cases
Application to vary the Designated Premises Supervisor			If a Police representation received	If no representation received
Request to be removed as Designated Premises Supervisor				In all cases
Application for Transfer of Premises Licence			If a Police representation received	If no representation received
Application for Interim Authorities			If a Police representation received	If no representation received
Application to Review Premises Licence/Club Premises Certificate			In all cases	
Decision on whether a representation is relevant, frivolous, vexatious etc.				In all cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		In all cases		
Determination of a Police and or EHA objection to a 'standard' Temporary Event Notice			In all cases	

## **Appendix A - Definitions**

The following provides an explanation of the terminology referred to in this Policy:

### **'Any Other Persons'**

Anyone who can demonstrate that their business or residence is affected (or is likely to be affected) by Licensable Activities at the licensed Premises and entitled to make Relevant Representations.

### **'Appeals'**

Appeals against decisions of the Licensing Authority are to the Magistrates' Court. The appeal must be lodged within 21 days of being notified of the Licensing Authority's decision. On appeal, a Magistrates' Court may, dismiss the appeal; substitute its own decision; remit the case to the Licensing Authority with directions; and make an order for costs.

### **'Associate [of the proposed 'premises user']'**

Is:

- a. the spouse or civil partner of that person;
- b. a child, parent, grandchild, grandparent, brother or sister of that person;
- c. an agent or employee of that person; or
- d. the spouse or civil partner of a person within (b) or (c).

For these purposes, a person living with another as that person's husband or wife is to be treated as that person's spouse.

### **'Closure Order'**

Powers exercisable by the Police:

- (a) to seek court orders to close licensed Premises in the Borough of Dartford, which are experiencing or likely to experience disorder; and
- (b) to close down instantly, individual licensed Premises that are:
  - disorderly;
  - likely to become disorderly; or
  - are causing nuisance as a result of noise from the licensed Premises; or
  - persistently selling alcohol to children.

These powers are available in relation to Premises licensed for the provision of Regulated Entertainment; and Late Night Refreshment and to Premises for which a TEN has effect.

### **'Club Premises Certificate'**

Authorises the supply of alcohol and Regulated Entertainment in a Qualifying Club. There is technically no sale by retail of alcohol (except to guests) because members of the club already own all the assets of the club, including the alcohol. The money passing across the bar is merely a mechanism to preserve equity between members, where one may consume more than another. There is no requirement for a Personal Licence or to specify a Designated Premises Supervisor. The supply of alcohol must only be to a club member or a bona fide guest of a member.

### **'Conditions'**

Can only be attached to Premises Licences and Club Premises Certificates and must be tailored to the individual type, location and characteristics of the licensed Premises and events concerned. Conditions must be appropriate to promote one or more of the Licensing Objectives and be proportionate.

### **'Designated Premises Supervisor (DPS)'**

The individual who holds a valid Personal Licence and is named on a Premises Licence which authorises the sale by retail of alcohol. The DPS is the key person who will usually be charged with day to day management of the licensed Premises by the Premises Licence holder. The DPS

will provide an essential point of contact for police, fire officers or Licensing Authority officers so that problems can be dealt with swiftly.

### **'EHA'**

Dartford Borough Council exercising its environmental health functions.

### **'Interim Authority Notice'**

Issued following death, mental incapacity, insolvency or dissolution of the Premises Licence holder and allows for the Premises Licence to be reinstated for a maximum of three months to allow time for a Transfer application.

### **'Late Night Refreshment'**

The supply of hot food heated to above ambient temperature or that, after it has been sold, can be heated on the licensed Premises) and/or drink to members of the public (whether for consumption on or off the licensed Premises) between the hours of 11.00pm and 05.00am.

### **'Licensable Activities'**

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club, or to the order of a member of the club;
- The provision of Regulated Entertainment;
- The provision of Late Night Refreshment.

### **'Live Music'<sup>8</sup>**

*Amplified* live music is not considered to be Regulated Entertainment, provided the following criteria are satisfied:

- there is a Premises Licence or Club Premises Certificate in place permitting "on sales";
- the Premises are open for the sale or supply of alcohol for consumption on the licensed Premises;
- live music is taking place between 8am and 11pm;
- if the live music is amplified, the audience consists of no more than 200 people.

Where a Premises Licence or Club Premises Certificate permits live music beyond 11pm, any related conditions on the licence will still be applicable after that time.

Any Condition attached to the Premises Licence relating to live music, granted before 1 October 2012, ceases to have effect in respect of the live music when offered between 8am and 11pm, unless the Condition has been or is reinstated by the Licensing Authority, on Review of the licence.

*Unamplified* live music provided anywhere, is not regarded as Regulated Entertainment, if it takes place between 8am and 11pm, regardless of the number of people in the audience.

Unamplified live music after 11pm and amplified live music in non-licensed venues will still require formal authorisation from the Licensing Authority by way of a Premises Licence, Club Premises Certificate or Temporary Event Notice.

The provision of facilities for making music, the provision of facilities for dancing and the provision of facilities for anything similar to either music or dancing are not classed as Licensable Activities.

Morris dancing and any other similar forms of dance, such as maypole dancing, which is accompanied by amplified, live music and recorded music are exempt under the 2003 Act

Examples of performances that generally don't need a licence are:

- karaoke
- busking

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<sup>8</sup> Live Music Act 2012

- spontaneous singing – e.g. people singing along to recorded music in a pub;
- incidental music - live music that is incidental to other activities that aren't classed as Regulated Entertainment;
- rehearsals and sound checks (unless members of the public are charged admittance for the purpose of making profit)
- DJ playing tracks (unless he/she performs a set which consists mixing recorded music to create new sounds).

Entertainment facilities such as dance floors, microphone stands and pianos made available for use by the public are not licensable.

### **'Local Planning Authority'**

Dartford Borough Council exercising its planning functions.

### **'Mandatory Conditions'**

Conditions which the Licensing Authority is required (by the 2003 Act) to impose on a Premises Licence and Club Premises Certificate e.g. conditions relating to door supervision, exhibition of films, plays and where the licence authorises the supply of alcohol.

### **'Objection Notice'**

By the Police on a Personal Licence application, where an applicant has an unspent conviction for a relevant or foreign offence;

By the Police and/or EHA in relation to a TEN;

By the Police in relation to an Interim Authority Notice

### **'Operating Schedule'**

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

- Steps to address the Licensing Objectives
- The Licensable Activities to be conducted on the licensed Premises
- The times during which the Licensable Activities are to take place and any other times when the licensed Premises are open to the public
- Where the licence is required only for a limited period, that period
- Where the Licensable Activities include the supply of alcohol, the name and address of the individual to be specified as the Designated Premises Supervisor.

### **'Personal Licence'**

Granted to an individual and which authorises that individual to supply alcohol or authorises the supply of alcohol in accordance with a Premises Licence. A Personal Licence lasts for 10 years and can be renewed. It ceases to have effect when revoked, forfeited, surrendered or suspended. A Personal Licence holder is not required where the licensed Premises concerned do not supply alcohol as one of its Licensable Activities or for the supply of alcohol in a club which holds a Club Premises Certificate. Only the Police can object to the grant of a Personal Licence (there is no equivalent to Relevant Representations as for Premises Licences).

### **'Premise or Premises'**

Means 'any place' in the 2003 Act. Licensed Premises will therefore not always be a building with a formal address and postcode but may include, for example, public parks, recreation grounds and private land.

### **'Premises Licence'**

Granted in respect of any licensed Premises used for one or more Licensable Activities. Has effect until revoked, surrendered or on the death, insolvency etc. of the licence holder.

### **'Qualifying Club'**

There must be at least 25 members, a bona fide membership scheme in place, and the club must be conducted in good faith. Instant membership is not permitted.

## **'Regulated Entertainment'**

Covers the provision of entertainment where the entertainment takes place in the presence of an audience and is provided, at least partly, to entertain that audience. The descriptions of entertainment in the 2003 Act are:

- A performance of a play (but note the changes brought in on 27 June 2013 by the Licensing Act 2003 (Descriptions of Entertainment)(Amendment)(Order) 2013 referred to below\*)
- An exhibition of a film
- An indoor sporting event ((but note the changes brought in on 27 June 2013 by the Licensing Act 2003 (Descriptions of Entertainment)(Amendment)(Order) 2013 referred to below\*)
- A boxing or wrestling entertainment (indoors or outdoors)(including a contest, exhibition or display which combines boxing or wrestling with one or more martial arts (“combined fighting sports”);
- A performance of live music (but note the changes brought in on 1 October 2012 by the Live Music Act 2012 referred to above);
- Any playing of recorded music
- A performance of dance ((but note the changes brought in on 27 June 2013 by the Licensing Act 2003 (Descriptions of Entertainment)(Amendment)(Order) 2013 referred to below\*)
- Entertainment of a similar description to the performance of live music, the playing of recorded music and the performance of dance.

Will require a Premises Licence, Club Premises Certificate or TEN if the entertainment is provided for members of the public or a section of the public, or for members of a club or its guests, or at a charge with the intention of making a profit unless the activities

\*The following are no longer classified as 'Regulated Entertainment' and as such, are not required to be licensed where they are performed between 8a.m and 11p.m:

- A performance of a play (up to audience limits of 500 people)
- A performance of dance (up to audience limits of 500 people and NOT including exhibitions of a sufficiently adult nature)
- An indoor sporting event (up to audience limits of 1000 people)

## **'Relevant Representations'**

Made by a Responsible Authority or Any Other Persons for example in opposition to, or in support of, an application for a Premises Licence, Club Premises Certificate or a proposed EMRO. Relevant Representations must relate to the Licensing Objectives. The making of Relevant Representations engages the Licensing Authority's discretion to take 'steps' consistent with the Licensing Objectives when considering the application.

## **'Responsible Authority'**

Are automatically notified of all new applications. Whilst all Responsible Authorities may make Relevant Representations regarding applications for Premises Licences and Club Premises Certificates and full variation applications, it is the responsibility of each Responsible Authority to determine when they have appropriate grounds to do so.

Responsible Authorities are:

- the Licensing Authority and any other licensing authority in whose area part of the licensed Premises is situated
- the Chief Officer of Police for the Borough of Dartford
- the Kent and Medway Towns' Fire and Rescue Authority
- Kent Public Health Department
- the Health and Safety Executive
- Dartford Borough Council exercising its local planning authority functions

- Dartford Borough Council exercising its environmental health functions for minimising or preventing the risk of pollution of the environment or of harm to human health
- North Kent Social Services – Safeguarding Children’s Services (the body responsible for the protection of children from harm)
- in relation to a vessel, a navigation authority, the Environment Agency, or the British Waterways Board
- Kent Trading Standards
- Home Office Immigration Enforcement (on behalf of the Secretary of State).

### **'Review'**

At any stage, following the grant of a Premises Licence or Club Premises Certificate, a Responsible Authority and/or Any Other Person, may ask the Licensing Authority to Review the licence or certificate because of a matter arising at the licensed Premises in connection with any of one or more of the Licensing Objectives. The Licensing Authority will hold a Licensing Sub-Committee hearing and as a result, may take any appropriate steps to promote the Licensing Objectives, such as modifying the Conditions, excluding Licensable Activities; removing a DPS, suspending the licence/certificate for up to three months, revoke the licence/certificate or reinstate Conditions.

### **'Temporary Event Notice (TEN)'**

A permitted temporary activity involving one or more Licensable Activities subject to the following limitations:

1. The number of standard TENS a person may give per annum - limited to 50 times p.a. for a Personal Licence holder and 5 times p.a. for other people
2. The number of late TENS a person may give per annum – limited to 10 times p.a. for a Personal Licence holder and 2 times p.a. for other people
3. The number of times a TEN may be given in respect of any particular licensed Premises – limited to 12 times in a calendar year
4. The length of time a TEN – limited to 168 hours or 7 days;
5. The maximum aggregate duration of the periods covered by TENS at any individual licensed Premises - limited to 21 days per calendar year
6. The scale of the event in terms of the maximum number of people attending at any one time - a maximum of 499 persons.

For the purposes of determining the overall limits of 50 TENS per Personal Licence holder (in a calendar year) and of 5 for a non-personal licence holder (in a calendar year), TENS given by an Associate or a person who is in business with a ‘premises user’ (and that business involves carrying on Licensable Activities) count towards those totals. The limits applying to late temporary event notices are included within the overall limits applying to the total number of TENS.

A TEN may only be given by an individual and not, for example, by an organisation or club or business. The individual giving the notice is the proposed “premises user”. For businesses, clubs or organisations, an individual will therefore need to be identified as the proposed ‘premises user’.

A TEN is only required for an indoor sporting event or the performance of dance or a play if the activity takes place before 08:00 or after 23:00 on any day. As no more than 499 people can be permitted on authorised Premises by a TEN, a TEN cannot authorise the performance of a play or dance, or an indoor sporting event, where such an activity is licensable, because the relevant audience limit is exceeded. Other Regulated Entertainment, or the sale or supply of alcohol, would need to be authorised by a TEN or a Premises Licence or Club Premises Certificate.

### **'Transfer'**

On an application to transfer the Premises Licence into a new name e.g. if a Premises Licence holder sells his licensed Premises, an application may be made to transfer the Premises Licence to the new owner.

## **Appendix B - Further Information & Contacts**

Further information about the Licensing Act 2003 (as amended) and the Licensing Authority's 'Statement of Licensing Policy' can be obtained from:

Licensing Section  
Dartford Borough Council  
Civic Centre  
Home Gardens  
Dartford  
Kent  
DA1 1DR

Tel: 01322 343024  
Fax: 01322 343607  
Email: [licensing@dartford.gov.uk](mailto:licensing@dartford.gov.uk)  
Website: [www.dartford.gov.uk](http://www.dartford.gov.uk)

Information is also available from:

Home Office (Guidance to the Act)  
The Alcohol Team  
The Home Office  
4<sup>th</sup> Floor, Fry Building (North West)  
2 Marsham Street  
London  
SW1P 4DF

Email: [alcoholstrategy@homeoffice.gsi.gov.uk](mailto:alcoholstrategy@homeoffice.gsi.gov.uk)  
Website: [www.gov.uk](http://www.gov.uk)

HMSO (The Licensing Act 2003)  
Website: [www.hmso.gov.uk](http://www.hmso.gov.uk)

### **Responsible Authorities:**

Medway Police Station  
Eastbridge  
Purser Way  
Gillingham  
Kent  
ME7 1NE

Tel: 01634 792733

Email: [licensing.north.division@kent.police.pnn.uk](mailto:licensing.north.division@kent.police.pnn.uk)

Health & Safety/Environmental Health/Planning  
Dartford Borough Council  
Civic Centre  
Home Gardens  
Dartford  
Kent  
DA1 1DR

Tel: 01322 343434

Fax: 01322 343422

Email: [environmental.admin@dartford.gov.uk](mailto:environmental.admin@dartford.gov.uk) (H & S/Environmental)  
[planning.admin@dartford.gov.uk](mailto:planning.admin@dartford.gov.uk) (Planning)

Kent Fire & Rescue Service  
Fire Safety Office  
Dartford Fire Station  
Watling Street  
Dartford  
Kent  
DA2 6EG

Tel: 01322 278729

Fax: 01322 227962

Email: [Dartford.firesafety@kent.fire-uk.org](mailto:Dartford.firesafety@kent.fire-uk.org)

Area Manager  
North Kent Social Services  
Safeguarding Children's Services  
c/o Civic Centre  
Home Gardens  
Dartford  
Kent  
DA1 1DR

Kent Public Health Department  
Room 3.45, Sessions House  
County Hall  
County Road  
Maidstone  
Kent  
ME14 1XQ

Tel: 0300 3336379

KCC Trading Standards  
Legal & Licensing Department  
1<sup>st</sup> Floor, Invicta House  
Maidstone  
Kent  
ME14 1XX

Tel: 01732 525291  
Email: [ts.licensing@kent.gov.uk](mailto:ts.licensing@kent.gov.uk)

**OTHER USEFUL CONTACTS:**

The British Institute of Inn-keeping  
(BII)  
Wessex House  
80 Park Street  
Camberley  
Surrey  
GU15 3PT

Tel: 01276 684449  
Fax: 01276 23045  
Website: [www.bii.org.uk](http://www.bii.org.uk)

British Beer & Pub Association  
(BBPA)  
Market Towers  
1 Nine Elms Lane  
London. SW8 5NQ  
SW8 5NQ

Tel: 020 7627 9191  
Fax: 020 7627 9123  
Website: [www.beerandpub.com](http://www.beerandpub.com)

The Portman Group  
7-10 Chandos Street  
Cavendish Square  
London  
W1G 9DQ

Tel: 020 79073700  
Website: [www.portman-group.org.uk](http://www.portman-group.org.uk)

Security Industry Authority  
(S.I.A.)  
PO Box 9  
Newcastle Upon Tyne  
NE82 6YX

Tel: 08702 430100  
Fax: 08702 430125  
Web: [www.the-sia.org.uk](http://www.the-sia.org.uk)

Bar, Entertainment & Dance  
Association (BEDA)  
5 Waterloo Road  
Stockport  
Cheshire  
SK1 3BD

Tel: 01614 290012  
Fax: 01614 297214  
Website: [www.beda.gov.uk](http://www.beda.gov.uk)

Alcohol Concern  
Waterbridge House  
32-36 Loman Street  
London  
SE1 0EE

Tel: 020 7928 7377  
Web: [www.alcoholconcern.org.uk](http://www.alcoholconcern.org.uk)

## **Appendix C - Licensing Enforcement Policy**

### **1. Aim**

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

- Prevention of crime and disorder
- Public Safety
- Prevention of public nuisance
- Protection of children from harm

The Licensing Authority will assist and advise wherever appropriate, but proportionate action will be taken against those who breach the provisions of the 2003 Act.

The Licensing Authority has adopted the provisions of the Regulators' Compliance Code<sup>9</sup>. In accordance with this Code, this Licensing Enforcement Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

In certain instances, the Licensing Authority may conclude that a provision in the Regulators' Compliance Code is either not relevant or is outweighed by another provision. In exercising its licensing functions, the Licensing Authority will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

### **2. Liaison with Police and other Responsible Authorities**

The Licensing Authority takes a proactive stance towards the proper regulation of, and enforcement of the provisions of the 2003 Act. The Licensing Authority promotes and endorses multi-agency co-operation where appropriate and will work actively with the Police and other Responsible Authorities, in enforcing the licensing legislation. This may necessitate the sharing of information in relation to those persons involved in licensing and relevant licensed Premises based on the requirements of the 2003 Act, Criminal Justice and Police Act 1994, Crime and Disorder Act 1998, the Violent Crime Reduction Act 2006 and other relevant legislation.

Under the Data Protection Act 2018, the Licensing Authority collects and uses personal information where it is necessary:

- for compliance with a legal obligation;
- for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Licensing Authority.

The Licensing Authority also shares personal information (through the Kent & Medway Information Sharing Agreement 2018) with other bodies.

On occasions, complaints about licensed Premises may be dealt with by other agencies/bodies such as Trading Standards and/or Kent Police. The Licensing Authority will normally take a lead on issues including:-

- Noise
- Production and display of relevant licences and documents
- Unauthorised Licensable Activities in relation to the provision of regulated entertainment
- Breaches of Conditions of Premises Licences
- Breaches of requirements under a Temporary Event Notice
- Exposing and keeping of alcohol on licensed Premises for unauthorised sale.

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<sup>9</sup> Issued by BERR - 17 December 2007

This Licensing Enforcement Policy does not restrict or prevent other regulatory bodies from carrying out enforcement under their own regulatory powers.

### **3. Licensing Premises' Visits**

Officers will make licensing visits to licensed Premises, and may on occasion be accompanied by the Police and/or other regulatory agencies.

The Licensing Authority considers that working with business is the primary method to achieve the Licensing Objectives, but will take appropriate enforcement action if necessary.

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

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

The Licensing Authority will monitor patron movement to, from and between licensed Premises and the provision and accessibility of transport to assist dispersal of persons away from licensed Premises. The information gained from these monitoring exercises will inform the development of this Licensing Enforcement Policy.

### **4. Consistency**

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

There will be specific circumstances when the Licensing Authority, exercising its licensing functions will share an enforcement role with the Police or other regulatory agencies. When this occurs, the same degree of consistency and fairness will be applied.

### **5. Proportionality**

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

The Licensing Authority will take into account the cost of compliance by ensuring that any enforcement or remedial action required is proportionate to the risks. However, clear breaches of the 2003 Act may attract prosecution and/or recommendations for Review of the licence, where it is deemed to be in the public interest.

### **6. Enforcement Action/Options**

- i. The initial contact between Licensing Authority and business/licensees, will normally be informal, with the provision of advice, guidance and support.
- ii. Enforcement action can include the following progressive approach to achieve compliance:
  - Verbal advice - which may be documented
  - Written advice
  - Verbal warning - which may be documented
  - Written warning
  - Statutory Notice

- Formal Caution
- Prosecution

The individual circumstances of the breach of the 2003 Act will determine the level of enforcement by the Licensing Authority. All actions will be considered in accordance with the requirements of the Human Rights Act 1998 and on the individual merits of each case.

iii. A Responsible Authority or Any Other Persons may make an application to the Licensing Authority for the Review of a Premises Licence or Club Premises Certificate because of a matter arising at the licensed Premises in connection with any of the Licensing Objectives. The Licensing Sub-committee will consider a Review application and further evidence from the licence holder against any claims made and may consider one or more of the following steps as necessary;

- modify the Conditions of the Premises licence/Club Premises Certificate;
- exclude a licensable activity from the scope of the licence;
- remove the Designated Premises Supervisor;
- suspend the licence for a period not exceeding 3 months;
- revoke the licence.

Alternatively, the Licensing Sub-Committee may consider that no action is required or issue a warning regarding future conduct.

It is to be noted that the Licensing Authority is a Responsible Authority for Premises Licences and Club Premises Certificates' applications and will have the power to refuse, remove or Review a licence without representation from the Police or other Responsible Authority.

iv Before deciding whether to prosecute for any breaches of the 2003 Act, the following factors will be considered by the Licensing Authority:-

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

On conviction of a relevant offence under the 2003 Act, Magistrates' may endorse, suspend or revoke a Personal Licence.