

**Council**  
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**G122**



## **BABERGH DISTRICT COUNCIL**

# **LICENSING ACT 2003 : STATEMENT OF LICENSING POLICY**

**Effective: 07 January 2008 until 07 January 2011  
(unless any revision required)**

**BABERGH DISTRICT COUNCIL  
LICENSING ACT 2003: STATEMENT OF LICENSING POLICY**

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## **BABERGH DISTRICT COUNCIL**

### **Second version Licensing Act 2003 Statement of Licensing Policy**

#### **INTRODUCTION:**

The Licensing Act 2003 became fully implemented on 24 November 2005, and brought about the single biggest change to the licensing arrangements for many types of leisure premises in 40 years.

The Act integrated six separate licensing regimes covering the sale and supply of alcohol, the provision of regulated entertainment, the provision of late night hot food or drink (between the hours of 11pm and 5am), night café, theatres and cinemas.

This document is the second version of the local 'Statement of Licensing Policy' for Babergh District Council and revisions will endeavour to incorporate the Authority's practical experience of the legislation to date, including addressing as far as possible some of the ambiguities of the Act, the fully revised Guidance document published under section 182 of the Licensing Act 2003 by the Secretary of State for Culture, Media & Sport (DCMS) in June 2007, and feedback from all relevant stakeholders.

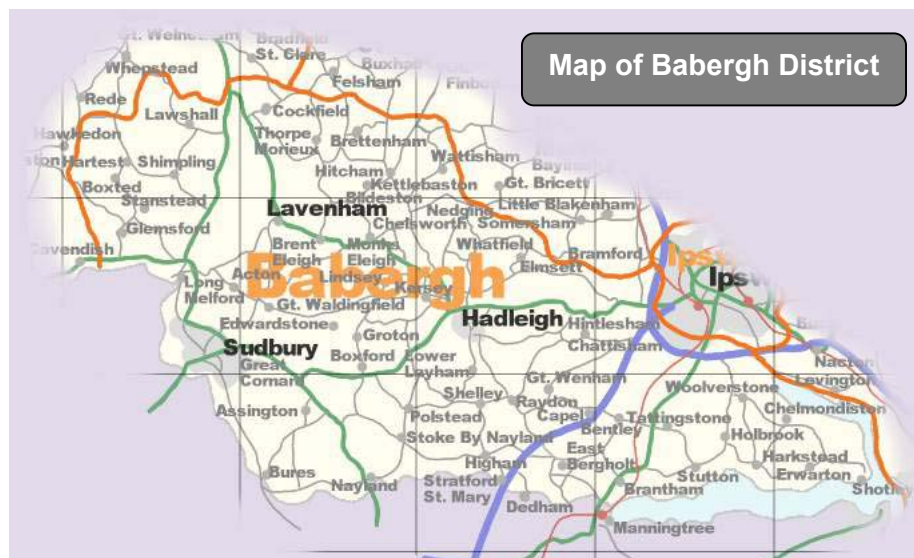
The Licensing Authority recognises that it is not always straightforward to reach decisions that satisfy all parties, but the Authority shall always endeavour to carefully balance the interests of owners, employees, customers and neighbours of licensable premises, and will remain focused on the promotion of the four licensing objectives, which are:

- 1. The prevention of crime and disorder**
- 2. Public safety**
- 3. The prevention of public nuisance**
- 4. The protection of children from harm**

The Secretary of State for Culture, Media & Sport has commented in the introduction of revised guidance to Licensing Authorities issued in June 2007, that the Act:

- Allows local people a bigger voice in licensing decisions;
- Helps local Authorities' broader efforts in creating safer and more civilised evening and night-time economies;
- Assists with providing a better system of regulation for business, greater choice for consumers, and where possible help for areas in need of economic regeneration;
- Encourages effective multi-agency partnership working to clamp down on the irresponsible minority of retailers; and
- Cannot in isolation provide a solution to many of the problems associated with alcohol misuse, and must be part of a broader strategy to achieve better management of the night-time economy and a better balance between the rights and responsibilities of everyone living and working in each community.

#### **THE BABERGH DISTRICT:**



Babergh is an attractive district in the southern part of Suffolk and has a long border with the county of Essex. Whilst it remains predominately rural, it is within close and convenient distance of London and the Continent. The district has a population of approximately 84,000 residents divided between 76 parishes. It covers an area of 230 square miles and contains several areas of historical significance, including the nationally renowned villages of Lavenham and Long Melford - both of which retain much of their original outstanding character and appearance.

The largest town in Babergh is Sudbury which, along with its neighbouring village of Great Cornard, has a population of approximately 20,000. The other market town of Hadleigh - where the Council's offices are located - has a population of approximately 7,000. Ipswich (10 miles from Hadleigh) is now spilling over into the district, and has a population of 130,000 people.

The highest concentrations of licensed premises in the district are, predictably, within the Sudbury and Hadleigh town centre areas. The main licensing activity arises as a consequence of the large leisure and tourism industry. Most premises are under economic pressure within the community, as a result of which many are seeking to diversify and offer more flexibility and greater choice to the consumer. Many traditional public houses now offer both food and entertainment to improve their economic viability, and many village halls and community facilities are seeking additional flexibility in their relevant licences in order to provide their local communities with a greater choice in how to spend their leisure time.

The Licensing Act 2003 catches 'any premises' involved in providing licensable activities, and Babergh District Council have issued licences to a broad variety of different types of premises, including:

- **Pubs, commercial clubs, restaurants, hotels, conference centres**
- **Private members clubs**
- **Shops, supermarkets, off-licences, breweries, farm shops, village tearooms**
- **Village halls, community facilities, schools, sports clubs**
- **Warehouses for mail order and internet sales of alcohol**
- **Mobile late night fast food vans, florists, garages**
- **Festivals, concerts, street fairs, bonfire parties, agricultural shows, fairs**
- **Takeaways (serving hot food or drink between 11pm and 5am)**
- **Local Authority public open spaces**

Between February 2005 and July 2007, Babergh District Council have issued 340 premises licences, 46 club premises certificates, 543 personal licences and 856 Temporary Event Notices. In the same period the Licensing Authority has arranged over 80 licensing hearings to determine contested applications.

## **THE ROLE OF THE LICENSING AUTHORITY IN THE DECISION MAKING PROCESS:**

It is important for any person reading this Statement of Licensing Policy to note that the Licensing Authority's discretion and decision making role, referred to throughout this Statement of Licensing Policy, is **only** engaged following a relevant representation being lodged in respect of an application, and where that representation is not withdrawn. The application will then ordinarily be heard by a sub-committee of the Council's Licensing and Appeals Committee.

The Licensing Act 2003 provides for a mediation process between parties. Where it is appropriate for the Licensing Authority to do so, following a relevant representation being made, the Authority shall make all reasonable efforts to facilitate mediation. In doing so the Licensing Authority will be mindful of the legislative framework and any relevant government guidance.

In cases where a premises licence application or club premises certificate has been lawfully made, and no responsible authority or interested party has made a representation, the Licensing Authority **must** grant the application on the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions in the Act. This should be undertaken as an administrative process by the Licensing Authority's officers who will translate the proposals contained within the operating schedule to promote the licensing objectives into clear and understandable conditions.

It is the intention of the Licensing Authority to work closely with licensees and their representatives, responsible authorities, interested parties and other partner authorities in order to promote the licensing objectives and minimise the burden on all involved to ensure that as far as possible the licensing arrangements work satisfactorily and successfully.

# STATEMENT OF LICENSING POLICY (2<sup>nd</sup> edition)

This policy was adopted by the Council on 30 October 2007 and is effective during the period 07 January 2008 until 06 January 2011 inclusive.

## 1. Licensing Objectives

- 1.1 This policy must be read in conjunction with the Licensing Act 2003 (the Act), secondary legislation and the Guidance issued under s.182 of the Licensing Act 2003 (the Guidance).
- 1.2 Where revisions are made to the Guidance issued by the Secretary of State, there may be a period of time when the local Statement of Licensing Policy is inconsistent with the Guidance. In these circumstances, the Licensing Authority will have regard, and give appropriate weight, to the Guidance and its own Statement of Licensing Policy.
- 1.3 In preparing this Statement of Licensing Policy the Licensing Authority has consulted in accordance with the requirements of the Act, and has had due regard to the Guidance. For details of the consultation see the Minutes of the Licensing & Appeals Committee meeting held on 11 October 2007.
- 1.4 The Licensing Authority recognises that balancing the interests of owners, employees, customers and neighbours of licensable premises will not always be straightforward, but it will always be guided by the four licensing objectives of the Act, which are:
- a) the prevention of crime and disorder;
  - b) the prevention of public nuisance;
  - c) public safety; and
  - d) the protection of children from harm

The Licensing Authority's general approach to addressing these four licensing objectives is set out in section 14 of this Statement of Licensing Policy.

- 1.5 In exercising its licensing functions, once its discretion is engaged, the Licensing Authority will primarily focus on the direct impact of the licensable activities taking place at the licensed premises on members of the public living, working or engaged in normal activity 'in the vicinity' of licensed premises.
- 1.6 'In the vicinity' of licensed premises is a question of fact and will depend on the particular circumstances of each case.
- 1.7 The aims of this Statement of Licensing Policy include:
- a) Helping to build a fair and prosperous society that balances the rights of individuals and their communities; and
  - b) Integrating the Licensing Authority's aims and objectives with other initiatives and strategies that will help to:
    - reduce crime and disorder, and the fear of crime;
    - encourage tourism and cultural diversity;
    - reduce alcohol misuse;
    - encourage the self sufficiency of local communities; and
    - reduce the burden of unnecessary regulation on business.

1.8 This Statement of Licensing Policy does not seek to undermine the right of any individual to apply under the terms of the Act for a variety of permissions and to have such an application considered on its individual merits, where the Licensing Authority's discretion has been engaged. It does not seek to override the right of any person to make representations on or about an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.

1.9 The licensing process can only seek to control those measures within the control of the licensee, and in the vicinity of the premises involved in licensable activities. Licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are away from such premises and beyond the direct control of the licence holder.

## **2. Purpose of the Statement of Licensing Policy**

2.1 The purpose of this Statement of Licensing Policy is to:

- inform the elected Members serving on the Licensing Committee of the parameters within which licensing decisions can be made;
- inform applicants, residents and businesses of the parameters within which the Licensing Authority will make licensing decisions;
- inform residents and businesses about how the Licensing Authority will make licensing decisions; and
- provide a basis for decisions made by the Licensing Authority if these decisions are challenged in a court of law.

2.2 This policy relates to the following licensable activities as defined by the Act:

- Retail sale of alcohol;
- Supply of alcohol by or on behalf of a club, or to the order of a member of the club
- Provision of regulated entertainment, which includes:
  - a performance of a play
  - an exhibition of a film
  - an indoor sporting event
  - a boxing or wrestling entertainment
  - a performance of live music
  - any playing of recorded music
  - a performance of dance
  - entertainment of a similar description to the performance of live music, the playing of recorded music or the performance of dance
- Provision of entertainment facilities - for making music, dancing or entertainment of a similar description
- Provision of late night refreshment

## **3. Other legislation, strategies and guidance**

3.1 When carrying out its functions the Local Authority has duties, responsibilities and considerations under other legislation and strategies, for example:

- Crime and Disorder Act 1998 (in particular obligations under section 17 relating to the prevention of crime and disorder);
- The European Convention on Human Rights, given effect by the Human Rights Act 1998;
- Criminal Justice and Police Act 2001 (in particular the powers available under section 13 to make 'designated public place orders' or DPPO's to control the consumption of alcohol in a public place outside licensed premises);

- Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000);
  - Anti-Social Behaviour Act 2003 (in particular powers available under sections 40 and 41 relating to the closure of premises on the grounds of public nuisance caused by noise);
  - Violent Crime Reduction Act 2006 (including powers for Local Authorities and the Police to designate Alcohol Disorder Zones (ADZ's) to tackle alcohol related crime and disorder problems);
  - Environmental Protection Act 1990 (as amended);
  - Health Act 2006; and
  - Clean Neighbourhoods and Environment Act 2005 (including powers for the Local Authority to issued fixed penalty notices to licensed premises emitting noise that exceeds the permitted level between 11pm and 7am).
- 3.2 The premises management are normally responsible for compliance with any other statutory requirements which may apply.
- 3.3 The Licensing Authority will as far as possible seek to avoid duplication with other regulatory regimes when dealing with the licensing function. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. Once the discretion of the Licensing Authority is engaged, it is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary and proportionate conditions will be attached to a licence.
- 3.4 Other Local Authority and Government policies, strategies, responsibilities, and guidance documents may also refer to the licensing function, and the Licensing Authority may liaise with the relevant authorities or its directorates with regard to these. Whilst some of these may not be directly related to the promotion of the four licensing objectives, they can indirectly impact upon them.
- 3.5 For example, the Licensing Authority will liaise closely with the local Crime and Disorder Reduction Partnership (CDRP) to ensure that the Local Authority can develop effective strategies that take full account of local crime and disorder issues.
- 3.6 It is the Local Authority's intention that it will, through its Licensing Committee monitor how these matters, set out in 3.4 above, impact on the Authority's licensing and other functions, in order that it may seek to co-ordinate and integrate its licensing function with other relevant strategies.
- 3.7 The Local Authority may, in appropriate circumstances, consider seeking from the Licensing Authority premises licences in its own name for its own public spaces within the community. This may assist with the promotion of broader cultural activities and entertainments.
- 3.8 In respect of cultural strategies the Licensing Authority will, for example through periodic consultation with local Leisure and Cultural Services officers, consider whether the provision of live music and cultural activities and entertainments are being deterred by local licensing requirements. Where there is any indication that this is the case, the Licensing Authority may consider investigating how the situation might be reversed, and may if necessary in the light of such investigations consider a revision to the Statement of Licensing Policy.
- 3.9 Where it considers it appropriate to do so, and in order to seek proper integration of the licensing function, the Licensing Authority may directly or indirectly provide periodic reports to the Planning Committee on the general situation regarding licensed premises in the area, which may include reference to the impact of alcohol related crime and disorder.

## **4. Relationship with Planning Process**

- 4.1 Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the Local Planning Authority.
- 4.2 It is strongly recommended that prospective licence applicants contact the Local Planning Authority in advance of making a licence application in order to check, or seek advice on, any planning consents or any conditions relevant to the use of the premises.
- 4.3 The Licensing Authority wishes to emphasise that the granting by the Licensing Committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control where appropriate.
- 4.4 The Local Authority will aim to properly separate planning, building control and licensing regimes in order to avoid duplication and inefficiency. The Licensing and Planning regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance whereas planning considers amenity.
- 4.5 The Licensing Authority will avoid treating licensing applications as a re-run of planning applications, and will not normally:
- cut-across decisions taken by the Local Authority Planning Committee or following appeals decisions taken by that Committee; or
  - impose licensing conditions where the same or similar conditions have been imposed on a planning consent.
- 4.6 The Licensing Authority is not bound by decisions made by the Planning Committee and vice versa.
- 4.7 Where as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes that is different to the licensing hours, the licensee must observe the earlier closing time in order to avoid any breach of their planning permission - for which they would be liable to prosecution under planning law.

## **5. Cumulative Impact**

- 5.1 The Licensing Authority recognise that the cumulative effect of licensed premises may have negative consequences which could include:
- An increase in crime against both property and persons;
  - An increase in noise causing disturbance to residents;
  - Traffic congestion and/or parking difficulties; and
  - An increase in littering and fouling,
- and that enforcement action taken to ensure that conditions are complied with may not always resolve any problems experienced in the vicinity of licensed premises.
- 5.2 Licensing is only one means of addressing the problems identified above, and cannot in isolation provide a solution to many of the problems that may be experienced. Other mechanisms to address problems could include:
- Planning controls;
  - Powers of Local Authorities to designate parts of the Local Authority area as places where alcohol may not be consumed publicly and confiscation of alcohol in these areas;

- Police powers to close down premises or temporary events for up to 24 hours on the grounds of disorder, the likelihood of disorder or excessive noise;
- Powers of the Local Authority and Police to designate Alcohol Disorder Zones (ADZ's);
- Prosecution of personal licence holders who sell alcohol to people who are drunk or underage;
- Powers of the Police, responsible authorities or interested parties to seek a review of a premises licence or certificate; and
- Local Authority powers under Part 5 of the Anti-Social Behaviour Act 2003.

5.3 Where the Licensing Authority is satisfied that there is evidence of a disproportionate detrimental effect on neighbouring businesses and residents and the operation of a number of premises in a defined area has the effect of undermining the licensing objectives, a special policy may be developed. Such a policy would usually address the impact of a concentration of licensed premises selling alcohol for consumption on the premises, as it would not ordinarily be justifiable to adopt such a policy on the basis of a concentration of shops, stores and supermarkets selling alcohol for consumption off the premises.

5.4 When setting such a policy, the Licensing Authority will have due regard to the Guidance, and will follow the consultation, adoption and review procedures applicable to the Statement of Licensing Policy.

5.5 No special policy adopted for a specific area will be absolute, each application will be considered individually on its own merits.

## **6. Licensing Hours**

6.1 The Licensing Authority, through the exercise of its licensing functions once its discretion is engaged, will not seek to restrict the trading hours of any particular premises unless it is considered necessary and proportionate to promote one or more of the licensing objectives. Each application will be considered individually on its own merits.

6.2 In the absence of any specific reasons linked to the licensing objectives, the Licensing Authority will not seek to restrict licensed retail outlets ability to sell alcohol for consumption off the premises throughout their general trading hours. A possible example of an occasion when a limitation could be considered would be following Police representations that a shop was known to be a focal point for crime and disorder due to youths congregating there.

6.3 The Licensing Authority recognise that providing consumers with greater choice and flexibility is an important consideration and that in some circumstances flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided, which in turn can reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which can lead to crime, disorder and disturbance.

6.4 The Licensing Authority also acknowledges that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists.

6.5 The Licensing Authority will however, where its discretion is engaged, always carefully balance the considerations in 6.3 and 6.4 above against its duty to promote the licensing objectives and protect the rights of local residents and businesses.

- 6.6 The Licensing Authority will consider each application individually on its merits, once its discretion is engaged, and notes the Government's guidance that there is no general presumption in favour of lengthening licensing hours. Where there are relevant representations against an application and the Licensing Committee believes that changing the licensing hours would undermine the licensing objectives then it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 6.7 Irrespective of the hours of operation granted for a premises under any licence under the Act, the premises should ensure that they comply with any limitation on hours imposed under any other legislation - for example Planning law, Sunday Trading Act 1994 or Christmas Day (Trading) Act 2004.

## **7. Relevant Representations**

- 7.1 A relevant representation is one that is made in writing and:
- is about the likely effect of the licence on the promotion of the licensing objectives;
  - has been made by a responsible authority or interested party, as defined by the Act, within the relevant time period as prescribed by regulation;
  - has not been withdrawn; and
  - has not been determined by the Licensing Authority as frivolous or vexatious (or repetitious in respect of a review).
- 7.2 In 'borderline' cases, the Licensing Authority will normally give the benefit of the doubt to the interested party or responsible authority making the representation, and any subsequent hearing would provide an opportunity for the person or body making the representation to amplify and clarify it. However, the Licensing Authority could decide not to take any action in respect of the application if, for example, the representation could not be supported.
- 7.3 Representations can be made in opposition to, or in support of, an application. In cases where only 'positive' representations are made, without qualifications, the Licensing Authority will consider whether a hearing is necessary, and may contact the interested parties concerned to give them an opportunity to withdraw their representations.
- 7.4 The Licensing Authority will determine whether:
- the representation has been made by an interested party as defined under the Act; and
  - any ordinary and reasonable person would consider the issue(s) raised in a representation as frivolous or vexatious (or repetitious in respect of a review).

An interested party aggrieved by a rejection of his representation on these grounds may challenge the Licensing Authority's decision by way of judicial review.

- 7.5 In addressing whether or not interested parties, or incidents, are 'in the vicinity' of licensed premises, the Licensing Authority will primarily focus on the direct impact of the activities taking place, or proposed to take place, at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- 7.6 Where a relevant representation is made in respect of:
- an application; or
  - an existing licensed premises

a hearing will be held, unless an agreement is reached between the Licensing Authority, the applicant and all of the parties who have made relevant representations, that a hearing is not required.

## **8. Administration, Exercise and Delegations of Functions**

- 8.1 The Council's published delegation scheme of functions under the Licensing Act 2003 is available on the Council website at [www.babergh.gov.uk](http://www.babergh.gov.uk) or by contacting the Licensing Team.
- 8.2 Where an application has been lawfully made under the Act, and no relevant representations are outstanding, the Licensing Authority will grant the application in accordance with the requirements of the Act under the authority delegated to an officer.

## **9. Hearings**

*(Subject to Regulations issued under s.183 of the Act):*

- 9.1 Where a hearing is required, the relevant representations made will be put before the Licensing Sub-Committee. The representations, including the name and address of the person making them, will normally be part of a public document. The address of the person making the representation is relevant to the 'in the vicinity' consideration of their representation. If any interested party is deterred from making a representation due to these requirements, for example if they have a genuine and well-founded fear of intimidation or violence, then they should promptly contact the Licensing Team for advice.
- 9.2 The hearing will be conducted in accordance with the Licensing Authority's published procedure, which is available on the Council website at [www.babergh.gov.uk](http://www.babergh.gov.uk) or directly from the Licensing Team upon request. The hearing will take the form of an informal discussion led by the Licensing Authority.
- 9.3 Where an application is determined at a hearing, the Licensing Sub-Committee will give appropriate weight to the:
- relevant representations made;
  - submissions and any evidence presented by all parties;
  - Guidance issued under section 182 of the Act (as may be amended from time to time);
  - Licensing Authority's Statement of Licensing Policy; and
  - steps necessary to promote the licensing objectives.
- 9.4 The Licensing Authority may use the power given within the hearings regulations to extend time limits where it considers this to be in the public interest. This may for example, include occasions where discussions between the applicant and those making representations are taking place and it is likely that all parties are reaching the point of agreement. Extending time limits in the public interest will be assessed individually on a case by case basis.
- 9.5 The Licensing Act 2003 provides for a mediation process between parties. Where it is appropriate for the Licensing Authority to do so, following a relevant representation being made, the Authority shall make all reasonable efforts to facilitate mediation. In doing so the Licensing Authority will be mindful of the legislative framework and any relevant government guidance.

## **10. Conditions**

- 10.1 The Act makes provision for certain mandatory conditions (sections 19-21) which are summarised below:
- (a) Where a premises licence authorises the sale or supply of alcohol, no supply may be made at any time when there is:
- No designated premises supervisor in respect of the licence; or
  - At a time when the designated premises supervisor does not hold a personal licence or it is suspended.

- (b) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring that the admission of children is restricted in accordance with the recommendation of the film classification body, or where varied, the film classification awarded by the Licensing Authority. (Note: The Licensing Authority may either award a classification to an unclassified film or vary the classification of a film upon application in accordance with its policy).

The Licensing Authority recognise the British Board of Film Classification (BBFC), or any successor person or persons designated as the authority under section 4 of the Video Recordings Act 1984, as the relevant film classification body for these purposes.

- (c) Where a licence includes a condition requiring that one or more individuals are present at the premises to carry out security activities, the licence must include a condition requiring such individuals to be licensed by the Security Industry Authority. This requirement will not apply to employees who benefit from any relevant exemption under the Private Security Industry Authority Act 2001 (the 2001 Act) or by virtue of any other legislation (for example the Violent Crime Reduction Act 2006).

(Note: A premises licence need not impose such a requirement in relation to those licensed premises which the 2001 Act treats as ‘unlicensed premises’ – being premises staging plays or exhibiting films, licensed gaming premises such as casinos and bingo halls, and premises where a club certificate is on force when activities are being carried on under the authority of that certificate).

10.2 The Licensing Authority may not attach to a licence authorising the performance of plays any condition which restricts the nature or manner of performing those plays (other than on the grounds of public safety).

10.3 With the exception of the above mandatory conditions, once its discretion is engaged the Licensing Authority will only attach necessary and proportionate conditions to a premises licence or club premises certificate where these:

- are consistent with the issues addressed in the operating schedule which the applicant submits as part of their application; and
- are necessary for the promotion of the licensing objectives.

10.4 It is the intention of the Licensing Authority to express any such conditions in unequivocal and unambiguous terms and such conditions will be tailored to the specific premises concerned.

10.5 The Licensing Authority will avoid attaching standard conditions to premises licences or club premises certificates, but would draw applicants attention to the pools of possible conditions within Annex D of the Guidance that applicants, and others, may draw upon as appropriate.

10.6 The Licensing Authority will avoid, as far as possible, attaching conditions on licences that duplicate the same or similar duties that are already placed on an employer or operator of a premises under other existing laws. However, where these general duties do not adequately address specific issues additional and supplementary measures may be necessary to promote the licensing objectives.

## **11. Appeals**

11.1 Entitlement to appeal against any decision of the Licensing Authority is set out in Schedule 5 of the Act.

## **12. Enforcement**

- 12.1 Where necessary, enforcement action will be taken in accordance with the National Enforcement Concordat (or its successor The Compliance Code), and the Council's General Enforcement Policy. These are available direct from Babergh District Council and may be subject to periodic amendment.
- 12.2 The emphasis will be upon a risk assessed and targeted approach to inspections, concentrating on those premises which either:
- present a greater risk;
  - have a history of non-compliance with conditions; or
  - demonstrate poor management practice which undermines the licensing objectives.
- 12.3 The Licensing Authority will not normally undertake inspections routinely but may do so when and if they are considered by the Authority as necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with an enforcement role.
- 12.4 The Licensing Authority has adopted a joint enforcement protocol with partner authorities – please see Appendices A and B to this Statement of Licensing Policy.
- 12.5 The Licensing Authority will normally act as the enforcing authority in respect of offences under the Act, and for breaches of licence conditions, unless the circumstances of the particular case are such that it is appropriate for another responsible authority to act, in accordance with the agreed enforcement concordat, instead.
- 12.6 Suffolk Constabulary will retain responsibility as the enforcing authority in respect of the following offences under the Act:
- Section 97 Powers to enter and search
  - Section 143 Failure to leave licensed premises
  - Section 144 Keeping of smuggled goods
  - Section 155 Confiscation of alcohol;
  - Section 157 Power to prohibit sale of alcohol on a train; and
  - Part 8 offences with respect to closure of premises.
- 12.7 Suffolk County Council Trading Standards will retain responsibility as the enforcing authority in respect of the following offences under the Act, and may work in partnership where appropriate with Suffolk Constabulary in relation to the investigation and enforcement of underage sales:
- Section 146 Sale of alcohol to children
  - Section 147 Allowing the sale of alcohol to children
  - Section 154 Weights and measures offences  
(which enable Trading Standards Officers to conduct test purchases and authorise other persons to do so).
- 12.8 Where expedient for the promotion or protection of the interests of the inhabitants of their area, the Council may also take action under Section 222 of the Local Government Act 1972, and other relevant provisions including Section 40 of the Anti-Social Behaviour Act 2003. The Council will also have due regard to section 17 of the Crime and Disorder Act 1998 whilst carrying out its functions.

## **13. Closure Orders**

- 13.1 Where a Magistrates' Court has determined to exercise its powers in respect of a closure order, the Licensing Authority must conduct a review of the relevant premises licence in accordance with the procedures prescribed by regulation. This will involve:

- serving notice on the premises licence holder and responsible authorities and advertising the review in accordance with the regulations;
- holding a hearing in accordance with the procedures outlined in section 9 of this Statement of Licensing Policy to review the premises licence; and
- determining the review no later than 28 days after the day on which it receives the notice of the closure order from the Magistrates' Court.

13.2 When determining a review following the notice of a closure order, the Licensing Authority will consider:

- the closure order and any extension to it;
- any order under section 165(2); and
- any relevant representations; and will

take such steps as it considers necessary to promote the licensing objectives as outlined in section 22.4 of this Statement of Licensing Policy.

13.3 The Licensing Authority will notify the licence holder, the Chief Officer of Police and any person who made relevant representations of the outcome of the review hearing, including reasons for the decision. The Licensing Authority may suspend the operation of its decision until the end of the period given to appeal, or until the appeal is disposed of (if not already suspended by the Magistrates' Court).

## **14.1 Addressing the Licensing Objectives**

14.1.1 In respect of addressing each of the four licensing objectives in their Operating Schedule, applicants should carefully consider what steps they believe are necessary to promote the licensing objectives, relevant to the individual style and characteristics of their premises and activities. Reference could be made as to 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.

14.1.2 Whilst applicants are not required to seek the views of responsible authorities before formally submitting applications, the Licensing Authority encourage applicants to do so when drafting their Operating Schedule as applicants may find this a source of useful advice when addressing the licensing objectives. This may in some instances reduce the possibility of responsible authorities raising representations against an application.

14.1.3 As steps volunteered by applicants within their Operating Schedule will very often directly translate to conditions on the licence, the Licensing Authority encourages applicants to state their proposed steps to promote the licensing objectives in unequivocal and unambiguous terms.

## **14.2 Prevention of Crime and Disorder**

14.2.1 The Council is committed to further improving the quality of life in its area by continuing to reduce crime and disorder and the fear of crime. To this end, the Licensing Authority strongly encourages applicants and licensees to ensure that relevant factors within their control which impact on crime and disorder have been considered, for example:

- underage drinking;
- drunkenness on the premises;
- drunkenness in public;
- drugs;
- violent behaviour; and
- anti-social behaviour.

- 14.2.2 Section 17 of the Crime and Disorder Act 1998 imposes a duty on each Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
- 14.2.3 In order to promote the prevention of crime and disorder objective, the Licensing Authority encourages licence holders to become active partners with the Authority. Applicants are encouraged to demonstrate in their operating schedule that relevant, suitable and sufficient measures within their control have been considered and identified and will be implemented and maintained in order to reduce or prevent crime and disorder on, and in the vicinity of, their premises.
- 14.2.4 When addressing the issue of crime and disorder in their operating schedule, applicants may consider, but are not limited to, factors identified at paragraph 14.2.1 above.
- 14.2.5 Applicants may find it helpful to contact the local Crime and Disorder Reduction Partnership (CDRP) in advance of making their application, as the CDRP may be able to offer expert advice and guidance on local crime and disorder issues and promotion of this licensing objective.
- 14.2.6 The following examples of control measures are given purely to assist applicants with development their Operating Schedule, having regard to their particular type of premises and/or activities. These are not in any way to be regarded as standard conditions or mandatory requirements:
- Effective and responsible management of premises
  - Prevention of overcrowding
  - Training and supervision of staff
  - Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions such as The Point of Sale Promotions published by BBPA, and the Portman Group)
  - Use of accredited 'proof of age' schemes (for example Challenge 21) and/or bona fide photo identity documents (for example driving licences with photographs or passports)
  - Signing up to a Pubwatch or Nightsafe scheme where it is in operation
  - Provision of effective CCTV in and around premises
  - Employment of Security Industry Authority licensed door staff
  - Provision of toughened or plastic glasses
  - Provision of secure deposit boxes for confiscated items ('sin bins')
  - Provision of litter bins and other security measures, such as lighting, outside premises
- 14.2.7 Within the operating schedule for a premises from which alcohol will be sold, a Premises Supervisor must be designated ('Designated Premises Supervisor' or DPS). The DPS will normally have been given the day to day responsibility for running the premises by the premises licence holder, and, as such, will usually be the first point of contact for authorised officers. In exceptional circumstances, the police may object to the designation of a new DPS where they believe that such an appointment would undermine the crime prevention objective.
- 14.2.8 Where the police object to an individual being appointed as a Designated Premises Supervisor, the Licensing Authority will arrange for a hearing at which the issue can be considered in accordance with the procedure outlined in section 9 of this Statement of Licensing Policy.
- 14.2.9 The Licensing Sub-Committee considering the matter will confine their consideration to the prevention of crime and disorder objective.

14.2.10 Certain temporary events (see section 18 of this Statement of Licensing Policy) should be notified to the Licensing Authority using the Temporary Event Notice procedure. Depending on the nature and location of such temporary events these may, on occasion, have crime and disorder implications. Organisers of such events are encouraged to submit their notification as soon as reasonably practicable in advance of the event (and no later than 10 working days before the event) to enable the Police and the Local Authority to work with them to identify and reduce the risk of crime and disorder.

### **14.3 Public Safety**

14.3.1 The Council is committed to ensuring that the physical safety of any person visiting or working in licensed premises is not compromised. To this end, the Licensing Authority encourages applicants and licensees to conduct a risk assessment prior to completion of their operating schedule to ensure that relevant factors within their control which impact on public safety have been considered and identified. These factors may include, but are not limited to:

- the occupancy capacity of the premises (including staff and performers). Note: If a capacity has been imposed through other legislation it would be unnecessary to reproduce it in a premises licence.
- the age, design and layout of the premises, including means of escape in the event of fire or other emergency
- the nature of the licensable activities to be provided and whether those activities are of a temporary or permanent nature
- the hours of operation (differentiating the hours of opening from the hours when licensable activities are provided, if different)
- customer profile (such as age, disability or non-English first language)
- the use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

14.3.2 The Licensing Authority shall not seek to impose fire safety conditions where the Regulatory Reform (Fire Safety) Order 2005 applies.

14.3.3 The following examples of possible control measures are given purely to assist applicants when preparing their operating schedules, having regard to their particular type of premises and/or activities. These are not in any way to be regarded as standard conditions or mandatory requirements:

- Suitable and sufficient risk assessments. Some applicants may wish to consider a commitment in their operating schedule to providing the relevant authorities with a full risk assessment prior to the commencement of licensable activities.
- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons/staff
- Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
- Adoption of best practice guidance and other voluntary codes of practice (Note: Applicants may wish to contact the local Health & Safety officers or HSE for advice)
- Provision of effective CCTV in and around premises
- Provision of toughened or plastic glasses
- Implementation of crowd management measures
- Monitoring arrangements such as door staff, attendance clickers or maintenance of attendance records
- Regular testing (and certification where appropriate) of procedures, appliances, systems etc pertinent to safety

## 14.4 Prevention of Public Nuisance

14.4.1 Licensed premises can have significant potential to impact adversely on persons in the vicinity through public nuisances that arise from their operation.

14.4.2 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, working or otherwise engaged in normal activity in the vicinity of a licensed premises.

14.4.3 The Licensing Authority encourages applicants and licensees to conduct a risk assessment prior to completion of their operating schedule to ensure that relevant factors within their control which impact on public nuisance have been considered and identified.

14.4.4 The Licensing Authority recommends that licensees apply a high standard of control to mitigate the effects of any public nuisance that may arise from their operation of the premises, particularly where:

- they are situated in a residential area; or
- extended opening hours are proposed.

14.4.5 When addressing the issue of prevention of public nuisance in their operating schedule, the applicant may identify steps that show that those factors that impact on the likelihood of public nuisance have been considered. These may include, but are not limited to:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
- the hours of operation, particularly between 23.00hrs and 07.00hrs
- 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 design and layout of premises and in particular the presence of noise limiting features
- the occupancy capacity of the premises
- the availability of public transport
- 'wind down period' between the end of the licensable activities and closure of the premises
- last admission time

14.4.6 The following examples of control measures are given purely to assist applicants when preparing their operating schedules, having regard to their particular type of premises and/or activities. These are not exhaustive, and are not to be regarded in any way as standard conditions or mandatory requirements, but include:

- Effective and responsible management of premises
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance
- Control of operating hours for all or parts (such as garden, patio and terraced areas) of premises, including such matters as deliveries
- Adoption of best practice guidance (such as the Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by the Institute of Acoustics, Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice). The local Environmental Protection officer may be able to offer some helpful advice in this respect.
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
- Liaison with public transport providers

- Siting of external lighting, including security lighting. The local Environmental Protection Officer may assist in ensuring any external lighting minimises the potential for light pollution nuisance.
- Management arrangements for collection and disposal of litter
- Effective ventilation systems to prevent nuisance from odour

14.4.7 Please note that applicants should consider contacting the local Planning Authority for advice on whether any proposed installation of lighting, ventilation, soundproofing or other works require planning consent from the Planning Authority. This may be particularly relevant if the premises is a listed building.

## **14.5 Protection of Children from Harm**

14.5.1 The Licensing Authority, once its discretion is engaged concerning an application, shall not seek to limit the access of children to any premises unless it is necessary for the prevention of their physical, moral or psychological harm. Consideration shall be given to the individual merits of each application.

14.5.2 Whilst the Licensing Authority cannot anticipate every issue of concern that could arise in respect of children in relation to individual premises, areas that will give rise to particular concern in respect of children would include premises:

- Where entertainment or services of an adult or sexual nature are commonly provided;
- Where there have been convictions of members of the current staff at the premises for selling alcohol to minors or with a reputation for underage drinking;
- With a known association with drug taking or dealing;
- Where there is a strong element of gambling on the premises (but not for example the simple presence of a small number of cash prize gaming machines); and
- Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

14.5.3 Whilst it is not possible for the Licensing Authority to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature, examples would generally include topless bar staff, striptease, lap-dancing, table-dancing, pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.

14.5.4 The 2003 Act made it an offence to permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or where that activity is carried on under the authority of a Temporary Event Notice (TEN). “Exclusively or primarily” in relation to the consumption of alcohol will bear their ordinary and natural meaning in the context of the particular circumstances.

14.5.5 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 other premises supplying alcohol for consumption on the premises under the authority of a premises licence, club premises certificate or where that activity is carried on under the authority of a Temporary Event Notice (TEN).

14.5.6 The Licensing Authority considers that, subject only to the provisions of the 2003 Act and unless restriction of access is necessary to protect children from harm, this is a matter for the discretion of the licensee.

14.5.7 The Licensing Authority shall not seek to impose any condition on any licence or certificate requiring the admission of children.

- 14.5.8 Applicants are strongly encouraged to demonstrate in their operating schedule that they have considered and identified any suitable and sufficient measures relevant to the style, character and activities of their individual premises to protect children from harm.
- 14.5.9 Where it is necessary for promotion of the protection of children from harm licensing objective, there are a range of alternatives which may be considered for limiting the access of children. These could include:
- (a) Limitations on the hours when children may be present;
  - (b) Limitations excluding the presence of children under certain ages when particular activities are taking place;
  - (c) Limitations on the parts of premises to which children might be given access;
  - (d) Age limitations (below 18);
  - (e) Requirements for accompanying adults; and
  - (f) Full exclusion from those under 18 from the premises when any licensable activities are taking place.
- 14.5.10 The following examples of possible control measures are given purely to assist applicants with preparing their operating schedules, having regard to their particular type of premises and activities. These examples are not exhaustive, and are not in any way to be treated as standard conditions or mandatory requirements, but include:
- Provision of a sufficient number of people employed or engaged to secure the protection of children from harm
  - Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm
  - Adoption of best practice guidance (for example Public Places Charter)
  - Limitations on the hours when children may be present in all or parts of the premises
  - The presence of an adequate number of adult staff to control the access and egress of children and to protect them from harm whilst on the premises
  - An adequate number of adult staff to be responsible for the child performers. Criminal Records Bureau checks on such adult staff may be appropriate.
  - Use of accredited 'proof of age' schemes (for example Challenge 21) and/or bona fide photo identity documents (for example driving licences with photographs or passports)
- 14.5.11 Where film exhibitions are authorised at a premises, the licence shall include a mandatory condition (section 20 of the Act) requiring that children are restricted from viewing age-restricted films in accordance with the British Board of Film Classification, or in accordance with any recommendation made by the Licensing Authority.
- 14.5.12 The Licensing Authority recognise the British Board of Film Classification (BBFC), or any successor person or persons designated as the authority under section 4 of the Video Recordings Act 1984, as the relevant film classification body for these purposes.
- 14.5.13 Where an application is being made for a films activity, it is recommended that the applicant consider in their operating schedule how they will protect children from harm - for example a commitment to prohibiting or restricting the access of children to any film showing, or part thereof, that could give rise to concerns in protecting them from moral, psychological or physical harm.

For a non-BBFC rated film showing (for example the showing of a recorded television broadcast) the Licensing Authority may set an age restriction on the admission of children to that viewing.

The Licensing Authority seeks to work in partnership with licence holders in promotion of the licensing objectives, and Premises Licence/Club Premises Certificate holders may contact the Licensing Authority for guidance if they are planning to show a film that is not

BBFC rated and may not be suitable for the presence of children. Where the Licensing Authority is minded to make any recommendation on a non-BBFC rated film showing it will do so in writing to the licence or certificate holder.

- 14.5.14 The Licensing Authority recognises the Suffolk Safeguarding Children's Board (SSCB), who have nominated their duties to the Suffolk Constabulary Child Protection Teams, as being competent to advise on matters relating to the protection of children from harm. The contact details are available from the Licensing Section or [www.babergh.gov.uk](http://www.babergh.gov.uk)
- 14.5.15 Suffolk County Council Trading Standards and Suffolk Constabulary may, in conjunction with other appropriate agencies, conduct test purchases to check the compliance of retailers with the prohibition on underage sales.

## **15. Personal Licences**

*(Subject to Regulations issued under s.117 and s.133 of the Act):*

- 15.1 The Licensing Authority will grant a personal licence if the applicant has met the requirements set out in the Act and no objections are received.
- 15.2 Where an applicant is found to have an unspent conviction for a relevant offence or a foreign offence, and the police object to the application on crime prevention grounds, the application will normally be referred to a Sub-Committee of the Licensing Committee.
- 15.3 Any hearing will be held in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy.
- 15.4 All personal licence holders should ensure they are aware of the offences relating to personal licences, for example the duty of the holder to advise the Court of the existence of their personal licence and to advise the Licensing Authority of changes to name or address.
- 15.5 In accordance with the Guidance issued under section 182 of the Licensing Act 2003, the Licensing Authority recommends that personal licence holders (and DPS's) overtly authorise individuals in writing to sell alcohol under the authority of their personal licence where the personal licence holder or DPS is unable to authorise the transaction(s) in person.

## **16. Applications for Premises Licences**

*(Subject to Regulations issued under s.17, s.54 and s.55 of the Act):*

- 16.1 The Department for Culture Media & Sport (DCMS) provides a written guide to making an application, and this is available free of charge by contacting the Licensing Section or visiting the government website at [www.culture.gov.uk](http://www.culture.gov.uk). Local guidance information, such as contact details for responsible authorities and other guidance documents, are available on the Council website at [www.babergh.gov.uk](http://www.babergh.gov.uk) or by contacting the Licensing Section.
- 16.2 Pre-application discussions with responsible authorities are encouraged to assist applicants with development of their operating schedule in a way which is likely to promote the licensing objectives.
- 16.3 The Licensing Act 2003 provides for a mediation process between parties. Where it is appropriate for the Licensing Authority to do so, following a relevant representation being made, the Authority shall make all reasonable efforts to facilitate mediation. In doing so the Licensing Authority will be mindful of the legislative framework and any relevant government guidance.

- 16.4 An application can be made to the Licensing Authority for any place within its area to be used for licensable activities or recognised club activities. The application requirements are prescribed by regulation and will normally include:
- a) The required fee;
  - b) An Operating Schedule;
  - c) plan of the premises, in accordance with regulatory requirements; and
  - d) If it is intended that the premises be authorised to sell alcohol, a form of consent given by the person the applicant wishes to have specified in the Premises Licence as the Designated Premises Supervisor (DPS).
- 16.5 The Operating Schedule will include a statement of:
- a) The relevant licensable activities, including a description of the style and character of the business and activities to be conducted on the premises;
  - b) The times during which the applicant proposes that the relevant licensable activities are to take place;
  - c) Any other times during which the applicant proposes that the premises are to be open to the public;
  - d) Where the applicant wishes the licence to have effect for a limited period, that period;
  - e) Where the relevant licensable activities include the sale by retail of alcohol, the name and address of the individual whom the applicant wishes to have specified as the Designated Premises Supervisor and a consent form signed by that person including details of their personal licence;
  - f) Where the relevant licensable activities include the sale by retail of alcohol, whether such sales are proposed to be for consumption on the premises or off the premises, or both;
  - g) The steps which the applicant proposes to take to promote the licensing objectives; and
  - h) Any other prescribed matters.
- 16.6 Where relevant representations are received about an application, the application will normally be referred to a Sub-Committee of the Licensing Committee, which will be held in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy.
- 16.7 Where a premises licence application is being applied for to authorise a large scale outdoor event of a temporary nature (for example a music concert, street fair or carnival) the Licensing Authority strongly recommend that applicants contact the responsible authorities as soon as possible in advance of making their application in order to seek expert advice and guidance on formulation of their operating schedule to ensure that the event runs safely and with a view to promoting the four licensing objectives.

## **17. Club Premises Certificates**

*(Subject to Regulations issued under s.71, s.91 and s.92 of the Act):*

- 17.1 Paragraphs 16.1 to 16.3 above apply
- 17.2. The application requirements for a Club Premises Certificate are set by regulation and will normally include provision of:
- a) The relevant fee;
  - b) The Club Operating Schedule;
  - c) A plan of the premises in accordance with regulatory requirements;
  - d) A copy of the rules of the Club;
  - e) Details to verify that the Club is a qualifying Club

- 17.3 The Club Operating Schedule will contain the following information:
- a) Details of the recognised Club activities to which the application relates;
  - b) The times during which it is proposed the recognised Club activities take place;
  - c) Any other times during which it is proposed the premises are open to members and their guests;
  - d) The steps which it is proposed to take to promote the licensing objectives; and
  - e) Any other prescribed matters.
- 17.4. Where relevant representations are received in respect of an application, the application will be referred to a Sub-Committee of the Licensing Committee, and the hearing will be held in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy.

## **18. Temporary Events Notices (TENS)**

- 18.1 The Act sets out the terms and conditions under which an application for a TEN may be made. TEN's must be applied for a minimum of 10 working days prior to the first day of the event, and the Licensing Authority recommend that wherever possible notice-givers submit their TEN a minimum of 28 days prior to the commencement of the event.
- 18.2 Where a TEN is given and one or more of the relevant statutory limits are exceeded, the Licensing Authority will serve a Counter-Notice on the notice giver in accordance with section 107 of the Licensing Act 2003 to prevent the licensable activities from going ahead. There is no provision under the Act to appeal against the issue of a Counter-Notice.
- 18.3 Where a TEN complies with the statutory requirements, and Suffolk Constabulary has not submitted an objection notice to the Licensing Authority within the prescribed time, the Licensing Authority will record the notice in its licensing register and send an authorised copy of the Notice to the premises user. The event may then proceed in accordance with the submission within the Temporary Event Notice.
- 18.4 Where Suffolk Constabulary issue an objection notice, the Licensing Authority will normally consider this at a hearing (unless the objection notice is withdrawn before the hearing date). The hearing will be confined to consideration of the crime and disorder objective and will be held in accordance with the procedure outlined in section 9 above
- 18.5 The Licensing Authority will notify the applicant of its decision at least 24 hours before the beginning of the event period specified in the temporary event notice.

## **19. Provisional Statements**

*(Subject to Regulations issued under s.29 and s.30 of the Act):*

- 19.1. The Act sets out the terms and conditions under which an application for a provisional statement may be made.
- 19.2 Where a Provisional Statement has been issued and a person subsequently applies for a Premises Licence in respect of the premises in accordance with the provisions of the Licensing Act, and:
- (a) Given the information in the application for a Provisional Statement the person objecting could have made the same, or substantially the same, representations about the application but failed to do so without reasonable excuse; and,
  - (b) There has been no material change in circumstances relating either to the relevant premises or to the area in the vicinity of those premises.

representations made by that person to the Licensing Authority cannot be taken into account.

## **20. Variations of Licences**

*(Subject to Regulations issued under s.34, s.37 and s.84 of the Act):*

- 20.1 Where a premises licence holder wishes to amend the licence the Act allows, in most cases, for an application to be made to vary the licence rather than requiring an application to be made for a new licence. It should be noted that 'substantial variations' may not be applied for using the variation procedures prescribed by section 34 of the Act, instead substantial changes, for example an amendment to the duration of the licence or transfer of the licence from one premises to another, will require a new application under section 17 of the Act. In the case of a change of name or address of someone named in the licence (section 33) or application to vary the individual specified in the licence as DPS (section 37) there are simplified processes for making such applications.
- 20.2 In cases where a minor amendment is required to the plan in relation to features which are not required to be shown under section 17, for example altering the position of tables and chairs or installation of a smoking shelter, that is unlikely to impact on the licensing objectives the Licensing Authority will assess whether there is a need for an application to vary. The Licensing Authority will assess any such proposals individually and on merit, and may reasonably recommend that the licence holder seek advice from responsible authorities as to whether the licensing objectives are likely to be affected by the proposals.
- 20.3 If relevant representations are made and not withdrawn the Licensing Authority will normally hold a hearing which will be held in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy, and at that hearing the Licensing Authority may:
- a) Grant the application as applied for, subject only to any conditions consistent with the operating schedule and any relevant mandatory conditions;
  - b) Modify the conditions (either by means of omission, inclusion or amendment) of the licence; or
  - c) Reject the application in whole or in part.
- 20.4 The Licensing Authority may determine a licence so that different conditions may apply to:
- a) different parts of the premises concerned; and
  - b) different licensable activities,
- where to do so would be considered necessary and proportionate for promotion of the licensing objectives.
- 20.5 Where the police submit an objection to an application to vary a Designated Premises Supervisor (DPS) because they consider that the circumstances are such that granting it would undermine the crime and disorder objective then a hearing will normally be held in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy.

## **21. Transfer of Premises Licences**

*(Subject to Regulations issued under s.42 of the Act):*

- 21.1. Where an application is lawfully made under the Act for the transfer of a licence and the Police submit an objection to the application, the Licensing Authority will normally hold a hearing in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy. This hearing will be confined to consideration of the crime and disorder objective and the application may be rejected where the Licensing Authority considers it necessary for the promotion of the crime prevention objective to do so.

## **22. Reviews**

*(Subject to Regulations issued under s.51, s.87 and s.167 of the Act):*

- 22.1 The review of a premises licence or club premises certificate is a key protection for local communities where problems associated with one or more of the licensing objectives are occurring and these are linked to the operation of licensed premises.
- 22.2 Where relevant representations are made about an existing licence the Licensing Authority will normally hold a hearing which will be held in accordance with the procedure referred to in section 9 of this Statement of Licensing Policy to consider them unless:
- a) the representation is considered frivolous, vexatious or to be repetitious (that is, identical or substantially similar to a ground specified in an earlier application for a licence, provisional statement or review); or
  - b) All parties to the hearing, including those persons making representations, agree that the hearing is not necessary.
- 22.3 A review of the premises licence will normally also follow:
- a) any action by the Police to close down the premises for up to 24 hours on grounds of disorder or public nuisance; or
  - b) any exercise of the closure order powers available to the magistrate's court.
- 22.4 In determining a review application at a hearing, the Licensing Authority may take such steps as it considers necessary to promote the licensing objectives, which include:
- a) modifying the conditions of the licence (by inclusion, amendment or omission);
  - b) excluding a licensable activity from the scope of a licence;
  - c) removing a designated premises supervisor;
  - d) suspending the licence for a period not exceeding three months; or
  - e) revoking the licence.
- 22.5 The outcome of the review hearing will not have effect until such time as the period given for appealing (21 days) expires or an appeal is disposed of.

**LICENSING ACT 2003  
ENFORCEMENT PROTOCOL DATED 15 SEPTEMBER 2004**

**SIGNED BETWEEN:**

1. Babergh District Council
2. Forest Heath District Council
3. Ipswich Borough Council
4. Mid Suffolk District Council
5. Suffolk Coastal District Council
6. St Edmundsbury Borough Council
7. Waveney District Council
8. Crown Prosecution Service
9. HM Customs and Excise (now HM Revenues & Customs)
10. Suffolk Constabulary
11. Suffolk Fire and Rescue Service
12. Suffolk County Council Trading Standards
13. Marine and Coastal Authority

**1. Introduction:**

- 1.1 The principal aim of this document is to set out the framework for enforcement of the Licensing Act 2003 and to promote the licensing objectives:
- a) the prevention of public nuisance
  - b) the prevention of crime and disorder
  - c) public safety
  - d) the protection of children from harm
- 1.2 The parties identified above agree to work in partnership to achieve this aim. This joint agreement seeks to provide a framework to guide future working. This Protocol sits alongside and will be carried out in conjunction with the provisions contained in the Licensing Act 2003 (the Act), the Guidance issued under Section 182 of the Licensing Act 2003 and each authority's enforcement policy, which has been adopted in accordance with the Central/Local Government Concordat on Good Enforcement.
- 1.3 Each Party has enforcement responsibilities in relation to licensed premises and recognises the importance of effective co-operation and liaison to ensure premises licence holders; designated premises supervisors; personal licence holders; club premises certificate holders and premises users understand and comply with the law.
- 1.4 This Protocol sets out the steps that have been agreed to achieve that aim.

**2. Areas covered by this Protocol:**

- 2.1 The Act lists four areas, which are to be regulated and constitute licensable activities. These are:
- The sale by retail of alcohol;
  - The supply of alcohol by clubs;
  - The provision of regulated entertainment; and
  - The provision of late night refreshment.
- 2.2 A licensable activity may be carried out under and in accordance with:
- a premises licence;
  - club premises certificate; or
  - a temporary event notice

### **3. Information Sharing:**

- 3.1 Section 29 of the Data Protection Act 1998 allows for the exchange of information for the purposes of the prevention of crime or the apprehension of offenders.
- 3.2 Section 115 of the Crime and Disorder Act 1998 allows for information to be specifically exchanged between the police and the licensing authorities.
- 3.3 Parties to this Protocol may disclose information to other Parties for these purposes providing that the local Protocols applicable to each organisation for data protection are observed. Every request for information under the Act must be made in writing giving reasons why disclosure is necessary.
- 3.4 Information supplied may only be used for the purpose for which it is obtained, will be securely retained whilst in the possession of the responsible authority that has requested it, and will be securely disposed of when no longer required. It may not be further transmitted to a third party without the consent of the original authority that supplied the information.
- 3.5 This part of the Protocol may be supplemented by any Memorandum of Understanding on data exchange agreed either at a local or national level.
- 3.6 One or more parties to the agreement may provide information and evidence to another party to the agreement, to enable them to take appropriate enforcement action, up to and including prosecution under the Licensing Act 2003 or other relevant legislation.

### **4. Inspections:**

- 4.1 From time to time, joint inspections may be carried out by the licensing authority's licensing enforcement officers and officers from the relevant responsible authority.
- 4.2 Inspections may be conducted by one or more of the parties to this agreement on the basis of a risk assessment applied to all licensed premises, or in response to a specific complaint.
- 4.3 Where practicable, inspecting officers will:
  - (a) inform each other of their inspection schedules; and
  - (b) adopt risk appropriate standards which support and supplement specific guidance in Codes of Practice, Government guidelines, approved industry guides and other approved sources.

### **5. Offences:**

- 5.1 The Parties agree that prime responsibility for enforcing the offences under the Act is as set out at Appendix B. In all other cases, the relevant licensing authority will be the prosecuting authority.

### **6. Investigation of offences:**

- 6.1 When a responsible authority has become aware of any offence under this Act or other legislation, and would like the enforcing authority to take formal action, whether under the Licensing Act 2003 or other legislation, they will take the following steps:
  - (a) early discussions with the appropriate responsible authority;
  - (b) supply to the relevant responsible authority in a timely manner all of the relevant evidence (whether subsequently used or unused); and
  - (c) set out in writing details of the offence and request that the relevant responsible authority take action.
- 6.2 Once in receipt of a written request to take action the appropriate responsible authority will:
  - (a) assess the facts and take appropriate action in accordance with the relevant enforcement policy for that authority;
  - (b) inform the responsible authority that initiated the complaint and the Licensing Authority of the action taken.

**7. Register of cautions:**

- 7.1 Each licensing authority will maintain a register of formal cautions issued to holders of licences, certificates or permissions.

Signed by: Karen Trickey LL.B (Hons) Dip LG. (Head of Legal & Administrative Services)
For Authority: <b>BABERGH DISTRICT COUNCIL</b>
Dated: 15 September 2004

**LICENSING ACT 2003**  
**Enforcement Concordat: Offences to address**

Section	Heading	Offence	Fine Level	Lead Authority
	<b>Part 3: Premises Licences</b>			
<b>33(6)</b>	Notification of Change of Address	Failure to comply	2	Licensing Authority
<b>40(1)</b>	Duty of applicant following determination under s.39	Failure to notify premises supervisor outcome of application	3	Licensing Authority
<b>41(4)(b)</b>	Request to be removed as a premises supervisor	Failure to comply with direction given under this section	3	Licensing Authority
<b>46(4)</b>	Duty to notify designated premises supervisor of transfer	Failure to notify	3	Licensing Authority
<b>49(5)</b>	Supplementary provisions about interim authority notices	Failure to notify designated premises supervisor of new holder	3	Licensing Authority
<b>56(3)</b>	Licensing Authority's duty to update licence document	Failure by holder to comply with requirement to produce notice	2	Licensing Authority
<b>57(4)</b>	Duty to keep and produce licence	Failure to control and display notice(s) etc	2	Licensing Authority
<b>57(7)</b>		Failure to produce licence or copy on request of officer	2	<b>Police/Licensing Authority</b>
<b>59(5)</b>	Inspection of premises before grant of licence etc.	Intentional obstruction of authorised officer	2	<b>Police/Licensing Authority</b>
	<b>Part 4: Club Premises Certificates</b>			
<b>82(6)</b>	Notification of Change of name or alteration of club rules	Failure to notify within 28 days	2	Licensing Authority
<b>83(6)</b>	Change of relevant registered address of club	Failure to notify change as soon as reasonably practicable	2	Licensing Authority
<b>93(3)</b>	Licensing Authority's duty to update club premises certificate	Failure to produce certificate within 14 days upon request	2	Licensing Authority
<b>94 (5,6 &amp; 9)</b>	Duty to keep and produce certificate	Failure to secure/produce certificate Failure to display/produce certificate	2 2	<b>Police/Licensing Authority</b>
<b>96(5)</b>	Inspection of premises before grant of certificate etc.	Intentional obstruction of authorised person	2	<b>Police/Licensing Authority</b>

Section	Heading	Offence	Fine Level	Lead Authority
97	Other powers of entry & search	Where misuse of drugs or breach of peace suspected		Police
	<b>Part 5: Permitted Temporary Activities</b>			
108(3)	Right of entry where temporary event notice given	Intentional obstruction of an authorised officer	2	Police/Licensing Authority
109(4)	Duty to keep and produce temporary event notice	Failure to display notice	2	Licensing Authority
109(8)		Failure to produce notices on request	2	Police/Licensing Authority
	<b>Part 6: Personal Licences</b>			
123(2)	Duty to notify licensing authority of convictions during application period	Failure to notify Licensing Authority of relevant offences during application period.	4	Licensing Authority
127(4)	Duty to notify change of name or address	Failure to notify licensing authority of name or address	2	Licensing Authority
128(6)	Duty to notify court of personal licence	Failure to notify court of personal licence or notifiable event	2	Licensing Authority
132(4)	Licence holder's duty to notify licensing authority of convictions	Failure to notify LA of convictions	2	Police/Licensing Authority
134(5)	Licensing Authority's duty to update licence document	Failure of licence holder to produce licence on request	2	Licensing Authority
135(4)	Licence holder's duty to produce licence	Failure to produce licence for examination	2	Licensing Authority
	<b>Part 7: Offences</b>			
136	Unauthorised licensable activities	Carries on, attempts to carry on or knowingly permits a licensable activity otherwise than in accordance with an authorisation. (Note: This will refer to breaches of license terms and conditions)	£20k fine and/or six months	Licensing Authority
137	Exposing alcohol for unauthorised sale	Exposing alcohol for sale by retail in any circumstances where sale by retail would be unauthorised activity	£20k fine and/or six months	Police/Licensing Authority
138	Keeping alcohol on premises for unauthorised sale		2	Police/Licensing Authority
140	Allowing disorderly conduct on licensed premises etc		3	Police/Licensing Authority
141	Sale of alcohol to a person who is drunk		3	Police/Licensing Authority

Section	Heading	Offence	Fine Level	Lead Authority
142	Obtaining alcohol for a person who is drunk		3	Police/Licensing Authority
143	Failure to leave licensed premises	Failure to leave premises or attempt to re-enter premises when drunk and disorderly	1	Police
144	Keeping of smuggled goods	Knowingly keeps or allows to be kept on relevant premises smuggled goods	3	Police
145	Unaccompanied children prohibited from certain premises	Allowing an unaccompanied child to be on the premises at a time they are open for the purposes of the supply of alcohol	3	Police/Licensing Authority
146	Sale of alcohol to children		5	Trading Standards
147	Allowing the sale of alcohol to children		5	Trading Standards
148	Sale of liqueur confectionary to children under 16		2	Police/Licensing Authority
149(1) 149(3&4)	Purchase of alcohol by or on behalf of children	By a child (note, except test purchasing) On behalf of a child	3 5	Police/Licensing Authority
150	Consumption of alcohol by children	Knowingly consuming alcohol on relevant premises Offence committed by individual who failed to prevent consumption	3 5	Police/Licensing Authority
151	Delivering alcohol to children		5	Police/Licensing Authority
152	Sending a child to obtain alcohol	(except test purchasing)	5	Police/Licensing Authority
153	Prohibition of unsupervised sales by children		1	Police/Licensing Authority/Trading Standards
154	Enforcement role for weights and measures authorities			Trading Standards
155	Confiscation of sealed containers of alcohol			Police
156	Prohibition of sale of alcohol on moving vehicles	At a time when the vehicle is not permanently or temporarily parked	£20k or 3 months	Police/Local Authority
157	Power to prohibit sale of alcohol on trains			Police
158	False statements made for the purposes of this act	Where a person produces, furnishes, signs or otherwise makes use of a document that contains a false statement	5	Licensing Authority

Section	Heading	Offence	Fine Level	Lead Authority
<b>160</b>	<b>Part 8: Closure of Premises</b>		3	<b>Police</b>
	Orders to close premises in an area experiencing disorder	Where a person knowingly keeps any premises to which an order relates open during the period of the order		
<b>161(6)</b>	Closure orders for identified premises	Where a person permits relevant premises to be open in contravention of a closure order	£20k or 3 months	<b>Police</b>
<b>165(7)</b>	Consideration of closure order by magistrate's court	Where a person permits relevant premises to be open in contravention of continuation or extension of closure order	£20k or 3 months	<b>Police/Licensing Authority</b>
<b>168(8)</b>	Provision about decisions under section 167	Where a person permits relevant premises to be open in contravention of decision of LA following review	£20k or 3 months	Licensing Authority
<b>169</b>	Enforcement of closure order	Constable may use such force as is necessary for the purposes of closing premises in compliance with closure order		<b>Police</b>

### **Fine levels:**

The current maxima as at October 2007 are (as prescribed by section 37(2) of the Criminal Justice Act 1982):

- Level 1      £200
- Level 2      £500
- Level 3      £1,000
- Level 4      £2,500
- Level 5      £5,000