



# **LICENSING ACT 2003**

**STATEMENT OF LICENSING POLICY  
OF BURNLEY BOROUGH COUNCIL  
MADE UNDER SECTION 5 LICENSING ACT 2003**

**7<sup>TH</sup> JANUARY 2016 TO 6<sup>TH</sup> JANUARY 2021**

## THE LICENSING OBJECTIVES

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

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## 1. INTRODUCTION

- 1.1 The Licensing Act 2003 (the Act) and statutory guidance provide the legal framework under which licensing will be regulated in England and Wales. This document is produced to explain the criteria under which Burnley Borough Council, a Licensing Authority within the meaning of the Act, will discharge our functions under the law.
- 1.2 In executing our functions, we will consider the Licensing Act against a backcloth of other legislation, which may impact on the promotion of the licensing objectives. This will include the,
- Crime and Disorder Act 1998 as amended by the Police Reform Act 2002
  - Human Rights Act 1998
  - Health & Safety at Work Act 1974
  - Environmental Protection Act 1990
  - Anti-Social Behaviour Act 2003
  - Race Relations Act 1976
  - Race Relations (Amendment) Act 2000
  - Criminal Justice & Police Act 2001
  - Policing & Crime Act 2009
  - The Equality Act 2010
  - The Police Reform and Social Responsibility Act 2011
  - Anti-Social Behaviour Crime and Policing Act 2014
- 1.3 We desire to create an environment where local people and visitors to our areas will have better opportunities to enjoy their leisure time in safety without fear of violence, intimidation or disorder whilst on or in the vicinity of licensed premises.
- 1.4 We recognise that the leisure industry is a significant contributor to:
- the economy
  - cultural development
  - jobs
  - tourism
- within the licensing authority area. We seek to create a licensing policy, which does not drive a wedge between the industry and enforcement authorities. We intend that co-operation and partnership remain the best method of promoting the licensing objectives.
- 1.5 Subject to the promotion of the licensing objectives, we will encourage facilities to allow people to lawfully enjoy their leisure time in the manner and at the time they wish to. We wish to encourage licensees to provide a wide range of entertainment activities, promote live music, dance, theatrical activity etc.
- 1.6 The Licensing Authority will actively encourage and promote a broad range of entertainment, recognising the wider cultural benefits for local communities.
- 1.7 This Council holds premises licences for public spaces in the community, such as parks, town centre areas, community halls and other appropriate public spaces.

- 1.8 Entertainers wishing to perform in any of the areas licensed by the Council may seek permission from the relevant Council Department, details of which can be obtained from the Licensing Unit.  
Such persons may then be given consent to use such places by the relevant department of the Council, as opposed to obtaining individual premises licenses or temporary event notices in respect of events they may wish to hold.
- 1.9 The Guidance requires that a Licensing Authority considers such applications from a neutral standpoint. We will however balance the potential for limited disturbance in neighbourhoods against the wider benefits to the community and cultural development of the area.
- 1.10 We will endeavor to carry out our licensing functions in a way that:
- ensures public safety
  - supports well managed premises where licence holders who seek to actively promote the licensing objectives and display sensitivity to the potential impact of licensable activities on local residents and other businesses
  - protects residents' quality of life.
- 1.11 The Equality Act 2010 also includes a duty on the Council as the Licensing Authority to have due regard to the need to eliminate discrimination, harassment and victimisation; advance equality of opportunity; and foster good relations, between people with different protected characteristics.
- 1.11 We will have regard to how littering and fouling, noise, street crime and the capacity of the Council's infrastructure, resources and police resources impact on the licensing objectives.
- 1.12 We will discharge our functions with integrity and objectivity. We will work in partnership with the leisure industry, police, fire and rescue services, residents and local businesses to promote the licensing objectives.
- 1.13 We will take account of the statement of policy of neighboring licensing authorities where common boundaries exist.
- 1.14 We will seek to give protection to local residents, whose lives can be blighted by disturbance and antisocial activity associated with the behaviour of some people visiting places of entertainment.
- 1.15 We desire to strike a balance between allowing people to enjoy their leisure, at the times and in the manner they wish to, and ensuring the licensing objectives are met.
- 1.16 Licensing is about regulating licensable activities on licensed premises, in qualifying clubs and at temporary events within the definitions of the Act, and the conditions attached to the various authorisations will be focused on matters which are in the control of applicants and licence holders. Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises. Licensing law will however be a key aspect of a holistic approach to the management of the evening and nighttime economy in town centres.

- 1.17 We will therefore focus upon the direct impact of the activities taking place at or in the vicinity of licensed premises on members of the public living, working or engaged in normal activities in the vicinity of those places.

## 2. LICENSABLE ACTIVITY

- 2.1 This policy relates to licensable activities. They are:
- The sale of alcohol
  - The supply of alcohol by or on behalf of a club to members of the club
  - The provision of regulated entertainment
  - The provision of late night refreshment
- 2.2 The provision of hot food or hot drink may take place at any time, but we will only be able to regulate such activity between 11pm and 5am. The provision outside these times is not licensable activity under the Act.
- 2.3 Advice on whether a licence is required for premises or an event can be obtained from the Licensing Unit, Burnley Borough Council.

## 3. PROMOTION OF THE LICENSING OBJECTIVES

- 3.1 We will promote the 4 licensing objectives, namely
- the prevention of **crime and disorder**
  - **public safety**
  - the prevention of **public nuisance**; and
  - the **protection of children** from harm, and all our decisions will reflect these objectives.
- 3.2 We consider each licensing objective to be of equal importance. They will be considered in relation to matters centered on the premises or within the control of the licensee. We will objectively consider the direct effect that the carrying on of the licensable activities has in the vicinity of the premises. Licensing law is not a mechanism for the general control of anti-social behavior by individuals once they are beyond the direct control of the licensee or vicinity of licensed premises.
- 3.3 We will not deter an individual making an application and having that application judged on its individual merits. It is for the applicant to decide what, if any, measures to suggest in its operating schedule in order to address any potential concerns that might arise in the promotion of the licensing objectives. Applicants are reminded that measures proposed in the operating schedules will be converted into conditions on their licence
- 3.4 Applicants are reminded that responsible authorities or other persons may make representations if they feel that the applicant's proposals do not adequately promote the licensing objectives. An applicant who proposes no measures to promote the licensing objectives may therefore face more representations than an applicant who risk assesses their operation and proposes necessary and proportionate measures.

- 3.5 We will not deter any person from making representations in respect of any application or seeking a review of a license. Where a representation is received which is not from a responsible authority the licensing authority will in the first instance make a judgement on whether it is relevant, i.e. based upon one or more of the four licensing objectives.

Relevant representations' are representations:

- about the likely effect of the premises licence on the promotion of the licensing objectives;
- which have not been withdrawn and are not, in the opinion of the council, frivolous or vexatious.

- 3.6 This authority recommends early consultation with responsible authorities. Many responsible authorities have produced guidance which applicants can take into account when assessing whether they need to include any measures in their application to promote the licensing objectives. In addition, many responsible authorities would be prepared to discuss matters on site with an applicant with a view to reaching agreement on measures to be proposed.

### **Crime and Disorder**

- 3.7 Under the Crime and Disorder Act 1998, the authority must exercise its functions, having regard to the likely effect on crime and disorder in its area, and must do all it can to prevent crime and disorder. Where its discretion is engaged, the authority will seek to promote the licensing objective of preventing crime and disorder in a manner which supports the Lancashire County Council Community Safety Action Plan and any local community safety priorities or emerging threats identified Burnley Community Safety Delivery Group (MATAC)
- 3.8 If relevant representations are made in relation to a premises licence or club premises certificate, the council will consider whether it is necessary to impose conditions to regulate behaviour on the premises and access to them where this relates to licensable activities, and the licensing objectives. Any conditions attached will not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder, their staff or agents, but may seek to impact on the behaviour of customers on or in the immediate vicinity of premises as they seek to enter or leave.
- 3.9 Conditions will be targeted on deterrence and the prevention of crime and disorder. The authority may consider:
- The need for and location of CCTV cameras
  - The need for door supervision
  - The need for a text or radio pager system allowing communication between premises and with the Police
  - Conditions setting capacity limits where this is necessary to prevent overcrowding likely to lead to disorder and violence
  - Membership of a recognised pub watch or similar scheme

## **Public Safety**

- 3.10 The public safety objective is concerned with the physical state of people using the premises. Public safety includes safety of performers appearing at any premises.
- 3.11 On 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation. This authority will not seek to impose fire safety conditions as conditions on licences where the Order applies.
- 3.12 Applicants are advised to consult with the Environmental Health, Health and Safety Team, who can offer advice as to appropriate measures to be included in risk assessments, and potentially in operating schedules. On receipt of relevant representations the council will have regard to the views of the Health and Safety Team. The team can also offer advice in relation to workplace health and safety matters, including compliance with the Health Act 2006 (smoke free).
- 3.13 Conditions requiring possession of certificates on the safety or satisfactory nature of equipment or fixtures on premises will not normally be imposed as those are dealt with by other legislation. However, if it is considered necessary in light of the evidence on each individual case, conditions may be imposed requiring checks on the equipment to be conducted at specified intervals, and evidence of the checks to be retained. Conditions may also seek to require equipment of particular standards to be maintained on premises.
- 3.14 Special considerations will apply to night clubs and similar venues. Applicants are encouraged to consider the Safer Clubbing Guide published by the Home Office and DCMS, which gives advice on these issues.

## **Public Nuisance**

- 3.15 If relevant representations are made, the authority will consider whether it is necessary to impose conditions to regulate behaviour on the premises and access to them where this relates to licensable activities, and the licensing objectives. Any conditions attached will not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder, their staff or agents, but may seek to reduce the impact of the behaviour of customers entering or leaving the premises on people living or working near to the premises. The council considers that patrons who are using external smoking areas or shelters are there as a direct result of the licensed premises and are within the control of the licensee.
- 3.16 The authority will consider whether issues relating to public nuisance can be effectively dealt with by necessary and appropriate conditions. These conditions will normally focus on the more sensitive periods, for example, noise from premises in the late evening or early morning when residents may be attempting to sleep.
- 3.17 Where applicants are completing operating schedules the authority encourages them to have regard to the location of the proposed or actual premises, and in particular whether proposals may have a disproportionate impact in dense residential areas or near to sensitive premises such as nursing homes, old people's accommodation, hospitals, hospices or places of worship. Applicants

are recommended to consult Environmental Health Services for advice on measures that may need to be incorporated into an operating schedule.

- 3.18 When considering such matters, the authority will have regard to representations made by Environmental Health Services, and by local residents.
- 3.19 The council may consider the following matters:
- Whether doors and windows will or can be kept closed after a particular time.
  - Whether other noise control measures such as acoustic curtains or other speaker mounts are required.
  - The fact that lighting outside the premises may help to prevent crime and disorder, but may give rise to light pollution for neighbours.
  - Signs placed at the exit to buildings can encourage patrons to be quiet until they leave the area, and to respect the rights of residents.
  - The size and location of smoking areas and any facilities provided which may encourage patrons to use the external areas more extensively than for just smoking and returning to the inside of the premises
  - Provision of litter bins in the vicinity of premises serving hot food after 11pm.
  - Display of contact details or a direct telephone link to a private hire/taxi firm.

### **Protection of children from harm**

- 3.20 This authority recognises the Lancashire Safeguarding Children Board as the responsible authority for the protection of children from harm.
- 3.21 The protection of children from harm includes protection from physical and psychological harm.
- 3.22 This authority notes that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed unless there is good reason to restrict entry or exclude children completely.
- 3.23 Issues about access of children to premises may give rise to concern:
- where adult entertainment is provided on an occasional basis and is not already licensed under other legislation;
  - where there have been convictions of the current management for serving alcohol to minors;
  - where the premises have a reputation for allowing under-age drinking;
  - where requirements of proof of age is not the norm;
  - where premises have a known association with drug taking or dealing;
  - where there is a strong element of gambling on the premises; and
  - where the supply of alcohol consumption on the premises is the exclusive or primary purpose of the services provided.
- 3.24 Such situations can be identified through a risk assessment of the operation. In these circumstances, applicants are advised to consider offering appropriate conditions through their operating schedule. In addition, licensees may identify that the access of children to particular parts of the premises poses more risk than others, and seek only to exclude children from areas of highest risk.
- 3.25 On receipt of relevant representations, the authority will consider whether conditions are necessary. If conditions are necessary these may include:
- limitations on the hours when children will be present
  - limitation upon the presence of children of certain ages when specified activities

- are taking place
  - limits on the parts of the premises to which children may have access
  - age limitations
  - limitations or exclusions only when certain activities are taking place
  - requirements for an accompanying adult
  - full exclusion of people under the age of 18 when any licensable activities are taking place
- 3.26 In such cases, representations by the Safeguarding Children Board and the Police will be given considerable weight where they address issues regarding the admission of children.
- 3.27 It is mandatory for premises which sell or supply alcohol to have an age verification policy in place. However, this authority favours the Challenge 25/Check 25 type schemes and such a scheme volunteered as part of an operating schedule will be given the appropriate weight when the authority determines the licence application.
- 3.28 This Licensing Authority is committed to protecting children from harm and supports the programme of underage test purchases arranged by the Lancashire Trading Standards Service, the Licensing Team and Police. Where underage sales are found, the Licensing Authority supports the appropriate and proportionate use of warnings, responsible retail training, fixed penalty notices, reviews and prosecution as a means of promoting the licensing objectives and enforcing the Licensing Act proportionately.
- 3.29 In keeping with the Secretary of State's Guidance the Licensing Sub-Committee will treat underage sales as serious criminal activity and will give consideration to the suspension or revocation of a licence if a review is brought in respect of underage sales.
- 3.40 No condition will be imposed by the council requiring the admission of children to any licensed premises except in the case of exhibition of film where a mandatory condition is applied to all licences with this activity. In the case of a film that has not been subject to classification under Video Recordings Act 2010, we will require the film to be submitted to the Licensing Officers at least 14 days before the proposed exhibition. A certificate will then be given to the film by the Authority and any age restriction imposed must be adhered to.

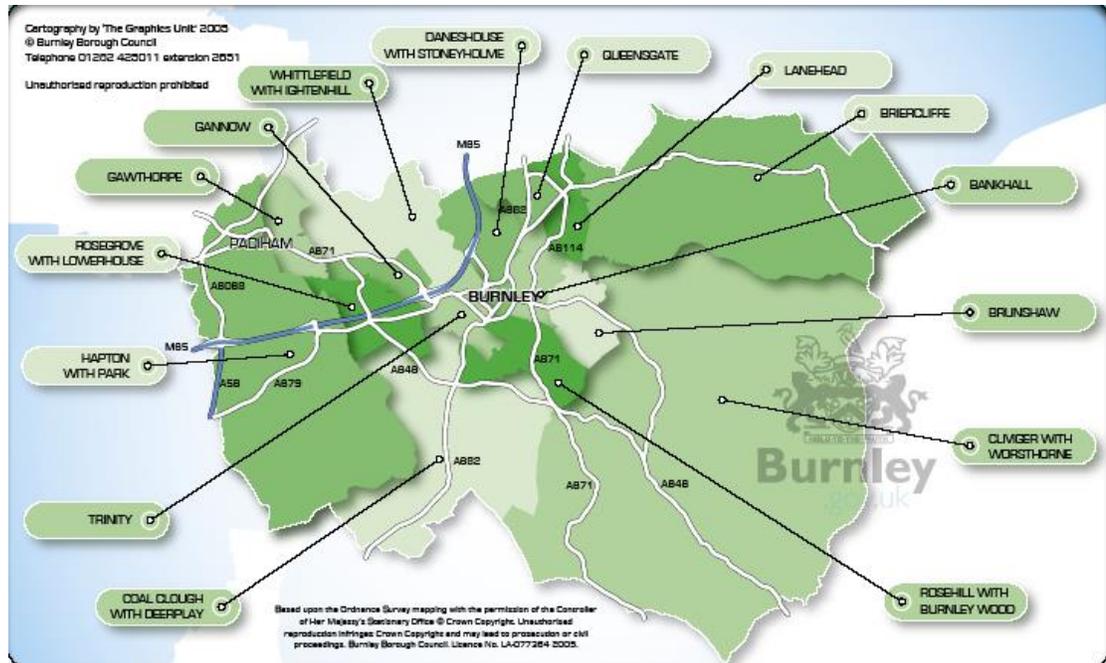
#### **4. LICENSING AUTHORITY PROFILE**

- 4.1 Burnley Borough Council is a Licensing Authority under the Act. Authority is delegated to full committee, sub-committees and officers.
- 4.2 The Policy takes into account the guidance issued under section 182 of the Act. The latest guidance was published by the Home Office in March 2015.

##### **The Borough of Burnley**

- 4.2 Burnley Borough Council is situated in the County of Lancashire and is one of 14

Councils within the County. Burnley has an estimated population of 91,000 contained within an area of 43 square miles. (Information from Census 2011)  
 The lifeblood of the area is its industry, which is concentrated in the urban cores of Burnley and Padiham. In post-war years there has been diversification away from textiles to engineering and the newer, technological industries. Much of the Borough is rural in character, and there are 7 parish councils.



4.4 The population profile is illustrated below;

Years of Age	0-14	15-24	25-44	45-64	65+
Percentage of Population	18.4%	12.9%	26.1%	26.3%	16.3%

4.7 The current licensed trade on 1<sup>st</sup> July 2015 consists of the following premises:

Premises Licences with alcohol	281
Premises licences no alcohol	65
Club Premises with alcohol	25
<b>Total</b>	<b>371</b>

4.8 Between 24<sup>th</sup> November 2005 and 1<sup>st</sup> July 2015 a total of 835 Personal Licenses have been issued.

## 5. CUMULATIVE IMPACT

- 5.1 We will not seek to limit the number of licensed premises simply because any interested party or responsible authority consider that there are enough licensed premises to satisfy demand. Need is a commercial decision for the applicant.
- 5.2 We will take note of representations from a responsible authority or interested party on the cumulative impact of a saturation of premises in a particular area undermining one or more of the licensing objectives by creating an area of exceptional problems of disorder or nuisance.
- 5.3 If such representations are made, we will consider adopting a special saturation policy after consultation. We do not at this time envisage a special saturation policy being imposed.
- 5.4 We will not otherwise impose quotas of licensed premises or artificially restrict trading hours in particular areas.
- 5.5 The onus will always be on the individual or organisation making the representation to provide sufficient evidence for the assertion that the addition of the premises in question would produce the cumulative impact on the licensing objectives. Once a special saturation policy is in existence, statutory guidance creates a rebuttable presumption against the grant of a licence or a variation of a licence in that area.
- 5.6 We recognise that a potential cumulative effect of a proliferation of late night entertainment premises (including night cafes) may result in an increase in numbers of people either walking through or congregating in streets during the night and this in turn may have a number of undesirable consequences, namely:
- An increase in crime against both property and persons in particular in takeaway premises and taxi queues in the vicinity of licensed premises.
  - An increase in noise causing disturbance to residents
  - Traffic congestion and / or parking difficulties
  - Littering and fouling
- 5.7 We recognise that only a minority of consumers will behave badly and that not all the anti-social conduct will be in the vicinity of premises or within direct control of the licensee. Licensing Policy is only one means of addressing these problems. Other mechanisms include:
- Planning controls
  - CCTV
  - Provision of transport facilities including taxi ranks
  - Designated Public Places Orders
  - Police powers
  - Closure powers
  - Positive measures to create safer, cleaner and greener spaces.
  - Voluntary or best practice schemes such as Street Wardens, Street Pastors or Taxi Marshals
- 5.8 We will take into account:

- The character of the surrounding areas
- The impact of the licence on the surrounding area, both individually and cumulatively with existing licences; and
- The nature and character of the proposed operation
- The size of the premises subject to consideration

## **6. PLANNING, DEVELOPMENT CONTROL, RESPONSIBLE AUTHORITIES, TOURISM, PUBLIC TRANSPORT, CULTURE, CRIME PREVENTION AND EMPLOYMENT**

- 6.1 The council is mindful of the duplication, inefficiency and potential for conflict of interests between the Planning, Environmental Health and Licensing activities and will ensure that the operational functions remain distinct. We will not allow licensing applications to be a re-run of planning applications.
- 6.2 Each relevant committee will provide situation reports relative to licensed premises, to each other, thereby achieving integration between licensing, planning and building control functions, measuring the effect of Licensing Act 2003 policy.
- 6.3 We will not restrict objective consideration of licensing hours applications as a consequence of any hours of premises use restrictions placed upon premises under planning legislation.
- 6.4 Where such planning restrictions exist an objection or application for licence review can be made specifying the appropriate licensing objective(s), which may be undermined by the licensable activities.
- 6.5 In general we will expect that prior to the submission of a licensing application, the appropriate planning permission will have been granted for the use of the premises. We acknowledge the ability of an applicant for a premises licence to seek a provisional statement defined in Section 5.83 – 5.91 of the Section 182 Guidance. Reference is made to Section 11 of this policy.
- 6.7 We will secure proper integration of our licensing policy by openly receiving reports from those organisations and Council departments responsible for crime prevention, tourism, transport, race equality schemes, cultural strategy, town centre management and night time economy. We will reflect upon such submissions and amend this policy where appropriate to do so.
- 6.8 We will monitor the impact of our policy on entertainment, in particular theatrical activity, live music and dancing.
- 6.9 We will, where necessary receive reports from and provide reports to, Lancashire County Council addressing the need to disperse people from town centres swiftly and safely to avoid concentrations which produce disorder and disturbance. We will have regard to the Transport Plan.
- 6.10 We will, when required, review the location of Hackney Carriage stands within the Borough to achieve the balance between licensing principles and the principles outlined in Section 6.9 above.

## 7. LICENSING HOURS

- 7.1 We will consider each application upon its individual merits and the basis of any application will be the draft-operating schedule. We welcome risk assessment documents being submitted in which the licence applicant will specify how they will support the four licensing objectives.
- 7.2 Flexible licensing hours will be important to ensure that the concentration of customers leaving premises simultaneously are avoided, minimising the possible sources of friction at fast food outlets and taxi ranks, thereby reducing the potential for violence and disorder and fear of such.
- 7.3 We will avoid fixed or artificial early closing times, which produce peaks of disorder and disturbance by customers merging into the streets simultaneously. We will balance this with stricter conditions being expected in relation to noise control in areas of dense residential accommodation.
- 7.4 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives will be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 7.5 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.
- 7.6 The hours requested by the applicant will normally be approved where the applicant can show in their risk assessment and operating schedule that the proposal would not adversely affect the environmental quality, residential amenity and character of any particular area or undermine one or more of the licensing objectives.
- 7.7 Where there is evidence that one or more licensing objectives would be undermined, a responsible authority, authorised person or interested party (Since the introduction of the Policing and Crime Act 2009 the definition of “interested Parties” has been extended to include – “a member of the relevant Licensing Authority”) has the ability to object to the issue or variation of a licence or request a review of an existing licence.
- 7.8 The onus to provide the evidence will always be on the person or organisation making the objection or review application. This burden of proof will not however apply should there be a special saturation policy in being in relation to the area where the premises are situated.
- 7.9 Where individual premises are a focus for disorder and disturbance then, subject to representations, limitations may be appropriate. Where late hours are requested, particularly involving entertainment, the imposition of further conditions may be appropriate.

- 7.10 We will not impose any obligation under the 2003 Act requiring the holder of a premises licence or club premises certificate to remain open for the entire period permitted by his licence or certificate. If, for example, a public house has no trade on a particular evening, the licence holder is entitled to close the premises.
- 7.11 We will however encourage applicants to be realistic in the potential opening hours that they apply for.
- 7.12 We acknowledge that the times when an applicant wishes the premises to be open to the public may not be identical to the hours during which licensable activities may take place.
- 7.13 We ask applicants to note that in the case of the sale by retail of alcohol (or supply of alcohol by or on behalf of a club to, or to the order of, a member of a club) for consumption on the premises, 'consumption' of alcohol is not a licensable activity.
- 7.14 Therefore, the authorised period specified in the premises licence, club premises certificate or temporary event notice relates to the period during which alcohol may be sold or supplied.
- 7.15 It is therefore permissible for premises to allow the consumption of previously purchased alcohol, within the period between the end of the licensable activity of sale or supply of alcohol and the end of time when the premises will be open.

## **8. EARLY MORNING ALCOHOL RESTRICTION ORDERS (EMROS)**

- 8.1 Under Section 172 A to E of the Act, the Licensing Authority has the power to make an EMRO prohibiting the sale of alcohol for a specified period between the hours of 24:00 and 06:00. They are designed to address recurring problems with licensed premises, serious public nuisance and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.
- 8.2 The Licensing Authority will consider evidence that such a decision is appropriate for the promotion of the Licensing Objectives. Consideration will be given to evidence provided by partners, Responsible Authorities and the Local Community Safety Partnership as well as evidence the Licensing Authority has gathered to determine whether an EMRO would be appropriate for the promotion of the licensing objectives. The Licensing Authority will consider the problems that have been identified. A range of evidence may be considered, including local crime and disorder statistics, statistics on anti-social behaviour offences, health related statistics (e.g. alcohol related emergency attendances and hospital admissions, environmental health complaints, complaints recorded by the Council, residents' questionnaires, evidence from local councillors and evidence obtained through local consultation).
- 8.3 It is acknowledged by the Licensing Authority that an EMRO is restrictive, whilst also being a powerful tool to address recurring problems of alcohol-related crime and disorder, serious public nuisance and alcohol-related anti-social behaviour. Prior to making an EMRO the Licensing Authority will consider whether any other measures (implemented by themselves or with partners) may

address the problems that have been identified in particular other measures might include:

- Development of a Cumulative Impact Policy
- Reviewing the licenses of specific problem premises
- Encouraging the creation of business-led practice schemes
- Use of powers of the Council to designate an area where alcohol may not be consumed publicly (Designated Public Places Order)
- The confiscation of alcohol in designated areas
- Police enforcement of the general law concerning disorder and anti-social behaviour
- Prosecution for the offence of selling (or allowing such a sale) alcohol to a person who is drunk

8.4 In taking any decision to make an EMRO, the Licensing Authority will follow the statutory process and will invite representations.

### **LATE NIGHT LEVIES**

8.5 Under Section 125 of the Police Reform and Social Responsibility Act 2011 the Council can adopt a Late Night Levy, following a consultation process, outlined by the Home Office. It allows the Council to charge an additional fee to any licensed premises that has a licence for the sale of alcohol (on and off sales) after 12 midnight and up to 06:00 in order to cover the additional costs associated with late night alcohol trading. Legislation allows this to start from midnight but it is up to the Council to decide when they wish to apply it.

8.6 Any income raised by the Levy must be split with the local Police force; the Police would receive a minimum of 70% of funds raised and the Council's 30% must be used to fund services which make the late night economy a more welcoming place.

The Council will consider implementing a Late Night Levy if appropriate.

## **9. CONDITIONS**

9.1 The authority may only impose conditions where relevant representations are made following an application to grant or vary a licence or where a review request is being considered.

9.2 The council recognises that the only conditions that should be imposed on a licence are those which are appropriate and proportionate to the promotion of the licensing objectives. There may be circumstances where existing legislation and regulations already effectively promote the licensing objectives and no additional conditions are required.

9.2 Where conditions are imposed they will be tailored to the individual style and characteristics of the premises and events concerned.

9.4 Applicants are strongly encouraged to make early contact with the appropriate responsible authorities to discuss proposed conditions in advance of the submission of their application to the council.

## **Dispersal Policies**

- 9.5 We will take note of any voluntary dispersal policy at premises and reserve the right to impose dispersal policy conditions upon a licence following relevant representations.
- 9.6 This policy will set out the steps that are to be implemented to disperse customers over an extended period of time specified in the operating schedule. It is intended that customers leave the premises in an orderly fashion without bottles or glasses etc, thereby reducing the potential for conflict within or in the vicinity of the premises.

## **Excessive consumption of alcohol & Irresponsible drinks promotions**

- 9.7 The council is acutely aware of the link between the supply of alcohol that is subject to certain promotions and the possibility of resultant incidents of alcohol related crime and disorder and implications for public safety, public nuisance and the risk of harm to children.
- 9.8 In April 2010 new mandatory conditions came into effect which:
- Ban irresponsible promotions;
  - Ban the dispensing of alcohol directly into the mouth; and
  - Ensure that customers have access to free tap water so that they can space out their drinks and not get too intoxicated too quickly.
- 9.9 The legislation makes it clear that an irresponsible promotion is one that is “carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children”.
- 9.10 The mandatory conditions made under sections 19A and 73B of the 2003 Act (the conditions governing irresponsible promotions, dispensing alcohol directly into the mouth, provision of free tap water, age verification, small measures and the prohibition on sales of alcohol below the permitted price) do not have to be physically included in the licence or certificate but nonetheless will apply to every licence and certificate authorising the sale and supply of alcohol for consumption on the premises.
- 9.11 As a consequence any on-trade premises which fails to comply with these mandatory conditions will be breaching licence conditions and will be dealt with in accordance with this authority’s enforcement policy and protocols and may be subject to a review of their licence.

## **10. ENFORCEMENT**

- 10.1 Enforcement action will be undertaken by properly trained officers of the Licensing Authority outlined in Section 13(2)(a) of the Act and authorised persons defined by Section 13(2)(b to f) of the Act. In carrying out enforcement action we will adhere to the terms of the joint enforcement policy that exists between the Council and Lancashire Constabulary. The authority has adopted the principles of the Hampton Report in its enforcement concordat. Formal enforcement will be

a last resort and proportionate to the degree of risk. To this end the key principles of consistency, transparency and proportionality will be maintained

- 10.2 We expect that Designated Premises Supervisors and Personal Licence Holders will ensure that all their staff, including door supervision staff, will be fully trained in the law relating to the rights of entry of authorised persons. We will view obstruction of authorised persons by staff or employed agents of the licensee as a serious matter.
- 10.4 The Licensing Authority has power to institute criminal proceedings in respect of any offence under the Act. We will delegate the authority to institute proceedings in accordance with the Council's Constitution - scheme of delegation. The sufficiency of evidence and public interest criteria will be applied to any decision on prosecution in accordance with the Prosecution of Offences Act. Elected members will be precluded from this decision making process to enable them to retain independence, should conviction result in a subsequent licence review.

## **11. VARIATIONS (Minor & Full) & PROVISIONAL STATEMENTS**

- 11.1 Both Premises Licences and Club Premises Certificates may be varied under the Licensing Act 2003.
- 11.2 A minor variation is a simplified process with a set statutory fee applicable to all premises and clubs. There is a requirement to advertise the application by displaying a notice on the premises. Decisions on a minor variation are delegated to officers and there is no right to a hearing. The Licensing Authority may consult with any relevant responsible authority on an application for a minor variation and take their views into account.
- 11.3 Minor variations are those which cannot adversely impact on the licensing objectives and generally fall into four categories which are:-
- Minor changes to the structural layout which does not;
    - Increase the capacity for drinking (increasing floor area for patrons drinking etc.)
    - Affecting access or egress (blocking fire exits or escape routes)
    - Impede or remove noise reduction measures at the premises (removing acoustic lobbies etc.)
  - Small adjustments to licensing hours
  - Removal of out of date, irrelevant or unenforceable conditions or the addition of volunteered conditions
  - Addition of a licensable activity where similar activities already exist.
- 11.4 Full variations follow the same procedure as that for a new Premises Licence with the need for advertisement on the premises and in the newspaper in addition to the statutory consultation.
- 11.5 The areas in which a premises licence may be varied include;
- Varying the hours during which a licensable activity is permitted
  - Adding or removing licensable activities
  - Amending, adding or removing conditions within a licence
  - Altering any aspect of the layout of the premises which is shown on the plan.

- 11.6 Where the changes proposed are substantial or involve completely changing the nature of the business, it may be more appropriate to apply for a new premises licence.
- 11.7 In the context of variations, which may involve structural alteration to or change of use of the building, it should be noted that the decision of the licensing authority will not exempt an applicant from the need to apply for planning permission where appropriate.
- 11.8 Where existing premises are being extended or otherwise altered, we will require the licence holder to notify the Licensing Authority, and to apply for a provisional statement, new licence application or variation as appropriate.

### **Provisional Statements**

- 11.3 We recognise that in certain situations businesses and developers need to have security that a premises licence is likely to be granted following construction or alteration of premises. We will issue provisional statements in accordance with Sections 29-32 the Act and Section 182 Guidance.
- 11.5 We will not be responsible for any costs or consequential losses incurred by an applicant who constructs or alters premises without taking advantage of seeking a provisional statement.
- 11.6 When a person applies for a premises licence in respect of premises (or part of the premises or premises which are substantially the same) for which a provisional statement has been made, representations by responsible authorities and interested parties will be excluded in certain circumstances.
- 11.7 These are where:
- the application for a licence is in the same form as the licence described in the provisional statement; and
  - the work in the schedule of works has been satisfactorily completed;
  - given the information provided in the application for a provisional statement, the responsible authority or interested party could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and
  - there has been no material change in the circumstances relating either to the premises or to the area in the vicinity of those premises since the provisional statement was made.
- 11.8 In the context of variations, which may involve structural alteration to or change of use of the building, it should be noted that the decision of the licensing authority will not exempt an applicant from the need to apply for planning permission where appropriate.

## **12. SPECIAL OCCASIONS**

- 12.1 We will not seek to restrict any National orders made by the Secretary of State as regards any special occasion.

### **13. DESIGNATED PREMISES SUPERVISORS AND PERSONAL LICENCE HOLDERS.**

- 13.1 A person fulfilling the qualifying conditions who is ordinarily resident within the Council's geographic area will be entitled to apply for a personal licence. The Act prohibits us from accepting applications from persons who ordinarily live outside the area. From the 1<sup>st</sup> April 2015 existing licence holders and new licences granted are valid indefinitely, this had previously been 10years.
- 13.2 The Chief Officer of Police has the right to object to a personal licence application where the applicant has been convicted of a relevant offence before or during the application period. During the validity of the licence the Chief officer of Police may not object to a personal licence already granted, but may ask for a review of any relevant premises licence.
- 13.3 Where, during a period of validity, we receive notice that a personal licence holder has been convicted of a relevant offence, we will notify the Chief Constable thereby allowing that officer to consider an objection to the subject being a designated premises supervisor.
- 13.4 The holder of a premises licence which includes the sale and supply of alcohol must nominate a Designated Premises Supervisor (DPS). That person will normally have been given day to day responsibility for running the premises. The DPS will also be in possession of a personal licence. The Act does not require the presence of the DPS at all material times.
- 13.5 The DPS will be readily identifiable on the premises as a person in a position of authority. No sale or supply of alcohol may be made at a time when no DPS has been specified on the licence or at a time when the DPS does not hold a Personal Licence.
- 13.6 The law requires a responsible person as defined in Section 153 of the Act to be on duty to specifically approve the sale or supply of alcohol by a person under the age of 18 years.
- 13.7 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc) Order 2009 amends the Licensing Act 2003 to allow management committees of community premises to make an application for a premises licence or to vary an existing premises licence which includes an application to remove the requirement of a designated premises supervisor and the authorisation of the sale of alcohol by a personal licence holder.
- 13.8 The Order defines "community premises" as a church hall, chapel hall or other similar building, or a village hall, parish hall, community hall or other similar building. It applies also to premises that form part of such buildings.
- 13.9 In most cases it should be clear whether premises meet the "community premises" definition under this part of the Act. However, if there is any doubt, the Licensing Authority will consider each case on its merits, with primary consideration being given as to how the premises are predominantly used.

## **14. PREMISES LICENCE REVIEWS**

- 14.1 Where an application for a review of a premises licence is made, we will inform the public of the application for review in accordance with the regulations made under the Act thereby allowing any other responsible authority, authorised person or interested party to also make application at that time.
- 14.2 We are obliged by law to disregard any complaints made by any person other than a responsible authority, which are vexatious, frivolous, or substantially the same as a previous application made within 1 year.
- 14.3 Following an application for review of a premises licence or objection, we will encourage the parties to a review to mediate via the Licensing Officers in order that appropriate conditions on a licence may be volunteered in a revised operating schedule prior to a hearing by the Licensing Committee or sub committee wherever possible. Representations can be withdrawn in accordance with the Regulations.
- 14.4 The Violent Crime Reduction Act 2006 has amended parts of the Licensing Act 2003 and now expands police and council powers to deal with problem premises in a more expedient manner.
- 14.5 A new power to carry out summary reviews in serious cases of crime and disorder is brought in at section 53A of the Licensing Act 2003. Where a review application is accompanied by a certificate issued by a senior police officer, the Licensing Authority is required within 48 hours to consider whether it is necessary to take any interim steps pending the completion of the review process. This may include the immediate suspension of the premises licence.

## **15. CLUB PREMISES CERTIFICATES**

- 15.1 The law requires us to be satisfied that a club applying for a club premises certificate are a bone-fide members club. The law requires a number of conditions to be met. These are:
- That, under the rules of the club, persons may not be admitted to membership, or be admitted as candidates for membership, or to any of the privileges of membership without an interval of at least two days between their nomination for membership and their admission;
  - That, under the rules of the club, those becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission;
  - That the club is established and conducted in good faith as a club;
  - That the club has at least 25 members;
  - That alcohol is not supplied to members on the premises otherwise than by or on behalf of the club.
- 15.2 To qualify as a club authorised to supply alcohol to its members and guests, the law requires additional conditions to be met. These are:

- The purchase and supply of alcohol by and for the club is managed by a committee made up of elected members of the club all aged over 18 years;
- No arrangements may be made for any person to receive any commission, percentage or similar payment at the expense of the club with reference to purchases of alcohol by the club;
- No arrangements may be made for any person to derive directly or indirectly any monetary benefit from the supply of alcohol to members or guests apart from to benefit the club as a whole or any indirect benefit a person derives by reason of the supply contributing to a general gain for the club as a whole.

15.3 In determining whether a club is established and conducted in good faith, the Licensing Authority, subject to the Council's scheme of delegation, will consider the following matters:

- Any arrangements restricting the freedom of the club to purchase alcohol;
- Any arrangements where the money or property of the club or any gain arising from the running of the club can be used for purposes otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes;
- The arrangements for giving members information about the finances of the club;
- The books of account or any other records kept to ensure accuracy of that information;
- The nature of the premises occupied by the club.

15.4 We wish to see local culture flourish, and in cases where genuine members clubs wish to allow the public to use the premises, we will objectively consider applications for the same premises to hold both a premises licence and club premises certificate for different parts of the same premises or the same part of the same premises at different times.

## **16. PUBLIC INFORMATION**

16.1 The Licensing Register will be available for inspection at the Licensing Office during normal office opening hours.

16.2 The Licensing Register and all current applications will be available on the website of the Council. All minutes of Committee and Sub-Committee will be similarly available together with agendas of future meetings.

16.3 We will require the owner of any premises licence to prominently display in the premises a copy of the licence and schedules in order that the public will be made aware that the premises are licensed, the licensable activities allowed and the name of the designated premises supervisor.

## 17. TEMPORARY EVENTS

- 17.1 The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead a person wishing to hold an event at which such activities are proposed to be carried on (the “premises user”) gives notice to the licensing authority of the event (a “temporary event notice” or TEN).
- 17.2 Temporary event notices are subject to various limitations. These are concerned with:
- the number of times a premises user may give a TEN – 50 times in a calendar year for a personal licence holder and five times in a calendar year for other people);
  - the number of times a TEN may be given for any particular premises (12 times in a calendar year);
  - the maximum duration of an event authorised by a TEN is 168 hours (seven days);
  - the maximum total duration of the events authorised by TENs in relation to individual premises (21 days in a calendar year);
  - the maximum number of people attending at any one time (fewer than 500); and
  - the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user (24 hours).
- 17.3 The most important aspect of the system of temporary event notices is that no permission is required for these events from the council. Only the police or Environmental Health may intervene to prevent such an event or modify the arrangements for such an event.
- 17.4 The police or Environmental Health may issue an objection notice because they believe the event would undermine the one or more of the four licensing objectives set out in the Act. The police or Environmental Health must issue an objection notice within three working days of being notified, but they can subsequently withdraw the notice. The issuing of such an objection notice requires the consideration of the objection by the council at a hearing in the case of a standard TEN. If an objection notice is issued in relation to a late TEN then the TEN is cancelled and licensable activities are not authorised.
- 17.5 Many premises users giving temporary event notices will not have a commercial background or ready access to legal advice. They will include, for example, people acting on behalf of charities, community and voluntary groups, all of which may stage public events to raise funds, at which licensable activities will take place. The council will ensure that local guidance about the temporary permitted activities is clear and understandable and will strive to keep the arrangements manageable and user-friendly for such groups.
- 17.6 There are two types of TEN; a standard TEN and a late TEN. These have different notice periods. A standard TEN is given no later than ten working days before the event to which it relates; a late TEN is given not before nine and not later than five working days before the event..
- 17.7 The authority encourages notice providers to give the earliest possible notice of

events likely to take place. This is particularly relevant to events which are to take place in the open air or in a temporary structure. Assistance with the planning of events can be provided through the council's Event Safety Advisory Group.

- 17.8 The council will provide local advice about proper respect for the concerns of local residents; of other legislative requirements regarding health and safety, noise pollution, the building of temporary structures, or other necessary permissions, and of the powers to close down events with no notice on grounds of disorder, the likelihood of disorder or noise emanating from the premises.

**18. PROHIBITION OF SALE OF ALCOHOL AT GARAGES OR SERVICE AREAS**

- 18.1 In considering whether premises are prohibited from being granted a premises licence under Section 76 of the Act, we will objectively consider the Guidance issued under Section 182 of the Act, and judge each case on the individual circumstances of the application. We reserve the right to require information from the applicant to prove the primary use of the premises.

**19. GAMING MACHINES**

- 19.1 The issue of gaming machine permits in respect of club premises and alcohol licensed premises is dealt with by the Gambling Act 2005 and any policies and/or guidance issued in relation to that Act.

## **CONSULTEES**

In formulating this policy the following were consulted.

Lancashire Constabulary  
Lancashire Fire Service  
Lancashire Trading Standards  
Lancashire Safeguarding Children's Board  
Padiham Town Council  
Existing premises licence holders  
Local Residents Associations  
All local authorities that border the Borough of Burnley Borough Council  
British Beer and Pub Association  
Solicitors who represent Pub Companies  
All Parish Councils within the Borough  
Association of Multiple Retailers  
British Institute of Innkeeping  
Campaign for Real Ale  
Drugline Lancashire  
Federation of Small Businesses  
Health and Safety Executive  
Pub companies with premises in Burnley  
Social Services

**EXERCISE AND DELEGATION OF FUNCTIONS**

The Authority will exercise and delegate functions in accordance with the following table.

<b>Issue</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Licensing Officer</b>
Application for personal licence		If a police objection	If no objection made
Application for personal Licence with unspent Convictions		All cases	
Application for premises Licence /club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional Statement		If a relevant representation made	If no relevant representation made
Application to vary premises Licence / club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary Designated premises supervisor		If a police objection	All other cases
Request to be removed As Designated Premises Supervisor			All cases
Application for transfer of a premises licence		If a police objection	All other cases
Application for interim Authority		If a police objection	All other cases
Ensuring an application For Premises licence review is Irrelevant, Repetitious, vexatious or frivolous			All cases
Application to review Premises licence / club Premises Certificate unless All parties agree unnecessary		All cases	

Decision to object when a local authority is a consultee and not the relevant licensing authority

All cases

Determination of a police  
Objection to a temporary  
Event notice

All cases