



# Statement of Licensing Policy

## 2023 - 2028

Version: Draft 0.1

Policy Date: 27 April 2023

Strategy/Plan Date: TBC

## Document Version Control

Organisation	Cumberland Council
Document Title	Statement of Licensing Policy 2023-2028
Filename	Cumberland Licensing Policy 2023-2028 Draft 0.1
Document Status	Draft
Author	Nicola Edwards, Licensing Manager
Document held by (name/section)	Licensing
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Date of publication	27 April 2023
Next review date	
Version Number	0.1
Approval date and by who (delegated/ committee)	Licensing Committee to approve consultation 27 <sup>th</sup> April 2023
For internal publication only or external also?	Both
Document stored on Council website or Intranet?	Website (following adoption by Council)

## Change History

Version	Date reviewed	Reviewed by	Description of revision
0.1	27/04/22	Licensing Committee	Draft policy based on existing Sovereign Councils LA03 policies

## Document Approval

This document requires approval by the council's Senior Information Risk Owner (SIRO):

Version	Approval Date
1.0	

This Policy will be reviewed by the Licensing Manager on an annual basis from the date of formal approval by the Authorised Signatory (below).

## Authorised Signatory

Officer Name	Position	Versio	Signature	Date

NB: Draft versions 0.1 - final published versions 1.0

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# Section 1.

## 1 Purpose Statement

- 1.1 Cumberland Council is the Licensing Authority for the Cumberland area under the Licensing Act 2003 and is responsible for Premises Licences, Club Premises Certificates, Temporary Event Notices and Personal Licences in its administrative area in respect of the sale and/or supply of alcohol and the provision of regulated entertainment and late night refreshment.
- 1.2 This policy is prepared under Section 5 of the Licensing Act 2003 and was approved by Cumberland Council as Licensing Authority on **date to be inserted**. It will be kept under review and as a minimum will be reviewed no later than 2028, with a new policy in place before the April 2028 unless statute changes.
- 1.3 Unless otherwise stated any references to the Council are to the Cumberland Council Licensing Authority.
- 1.4 This Policy covers the licensable activities as defined by the Licensing Act 2003. These are:
- The sale of alcohol by retail
  - Supply of alcohol by on or behalf of a club, or to the order of a member of the club
  - The provision of regulated entertainment
  - The provision of late-night refreshment
- 1.5 This Policy also has regard to the guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.
- 1.6 The Council will carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely:
- The prevention of crime and disorder
  - Public safety;
  - The prevention of public nuisance; and
  - The protection of children from harm.
- Each objective is of equal importance.
- 1.7 This policy is concerned with the regulation of licensable activities on licensed premises, by qualifying clubs and at temporary events. The conditions that the Council attaches to the various licences will focus on matters that are relevant to the four licensing objectives and will centre upon the premises that are being used for licensable activities.
- 1.8 With regards to this Policy the Council adopts the overall approach of encouraging the responsible promotion of licensed activities, in the interests of its residents and visitors, it will not tolerate irresponsible licensed activity.

## **2 Who the Policy Applies to**

- 2.1 This Statement of Licensing Policy will assist applicants, officers of the Licensing Authority, Responsible Authorities, Members of the Licensing Committee, and persons making representations in the consideration of the relevant issues regarding applications, and ensuring they are dealt with fairly in line with the law.
- 2.2 This Policy also affords members of the Licensing Committee and officers alike, to consider the concerns of the public and other recognised bodies, and to take appropriate measures where the objectives of the Licensing Act 2003 are put in jeopardy after licences have been issued.

## **3 The Policy Replaces**

- 3.1 This Policy replaces the three previous Licensing Act 2003 Statement of Licensing Policies that covered Allerdale Borough Council, Carlisle City Council and Copeland Borough Council.

## **4 Approval Process**

- 4.1 During the five year period, the Policy must be kept under review and the Licensing Authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community whether the statutory objectives are being met.
- 4.2 Where revisions are made to the Section 182 Statutory Guidance by the Secretary of State, it will be for the Licensing Authority to determine whether revisions to its own Statement of Licensing Policy are appropriate.
- 4.3 Cumberland Council as the Licensing Authority has delegated the Licensing Committee to oversee the development and review of its Statement of Licensing Policy. Once finalised the Policy is presented to the Full Council for ratification.

## **5 Links to Council Strategies – to be added**

## **6 Background Information – to be added**

## **7 Policy Consultation**

- 7.1 Section 5 of the Licensing Act 2003 requires a Licensing Authority to prepare and publish a statement of its licensing policy every five years. Such a policy must be published before the Authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act.

- 7.2 During the five year period, the policy must be kept under review and the Licensing Authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objective are being met. If the Licensing Authority determines and publishes its Policy in this way, a new five year period commences on the date it is published. Where revisions are made to the Section 182 Statutory Guidance by the Secretary of State, it will be for the Licensing Authority to determine whether revisions or its own Statement of Licensing Policy are appropriate.
- 7.3 This policy will commence on XXX 2023 and remain in force for five years but will be kept under review subject to further consultation as referred to above.
- 7.4 Subject to the statutory requirements, it is for each Licensing Authority to determine the extent of the consultation it should undertake, and whether any particular person or body is representative of the groups described in the 2003 Act. A full list of consultees can be found in Appendix ?? (to follow).
- 7.5 Fees are set by Regulation and are intended to provide full cost recovery of all licensing functions including the preparation and publication of a Statement of Licensing policy.

## **8 Licensable Activities**

- 8.1 This Policy covers licensable activities within the Cumberland district as defined by the Licensing Act 2003. These are:
- The sale of alcohol
  - The supply of alcohol by or on behalf of a club, or to the order of a member of the club
  - The provision of regulated entertainment
  - The provision of late night refreshment
- 8.2 The descriptions of entertainment activities licensable under the 2003 Act are:
- 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; and
  - Entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance\*

\*see Live Music Act 2012 and Legislative Reform Order made the following changes to

the Licensing Act 2003

## **9 Live Music Act 2012**

- 9.1 The Live Music Act came into force on the 1 October 2012 and has made a number of changes to the Licensing Act 2003. This is designed to encourage more performances of 'live' music.
- 9.2 Live and recorded music is generally licensable under the Licensing Act but there are now many exemptions.

### **Live Music**

- 9.3 No licence permission is required for:
- a performance of unamplified live music between 8.00am and 11.00pm on any day on any premises;
  - a performance of amplified live music between 8.00am and 11.00pm on any day on premises authorised to sell alcohol for consumption on those premises provided that the audience does not exceed 500;
  - a performance of amplified live music between 8.00am and 11.00pm on any day in a workplace that is not licensed to sell alcohol on those premises provided that the audience does not exceed 500;
  - a performance of amplified live music between 8.00am and 11.00pm on any day in a church hall, village hall, community hall or other similar community premises that is not licensed by a premises licence to sell alcohol provided that the audience does not exceed 500 and the organiser obtains consent for the performance from a person who is responsible for the premises;
  - a performance of amplified live music between 8.00am and 11.00pm on any day at the non-residential premises of a local authority, school or hospital provided that the audience does not exceed 500 and the organiser obtains consent

### **Recorded music**

- 9.4 No licence permission is required for:
- any playing of recorded music between 8.00am and 11.00pm on any day on premises authorised to sell alcohol for consumption on those premises provided that the audience does not exceed 500;
  - any playing of recorded music between 8.00am and 11.00pm on any day in a church hall, village hall, community hall or other similar community premises that is not licensed by a premises licence to sell alcohol provided that the audience does not exceed 500 and the organiser obtains consent for the performance from a person who is responsible for the premises;



- Any playing of recorded music between 8.00am and 11.00pm on any day at the non-residential premises of a local authority, school or hospital provided that the audience does not exceed 500 and the organiser obtains consent.
- Any existing conditions on a premises licence which relate to live or recorded music are suspended between 8.00am and 11.00pm provided the premises are open for the supply of alcohol for consumption on the premises at the time that the entertainment is taking place and that, if the music is amplified, the audience does not exceed 500 people. Such conditions may be reinstated, or new conditions added, as a result of a review of a premises licence or club premises certificate.

9.5 When considering whether an activity constitutes ‘the provisions of regulated entertainment’ each case will be treated on its own merits. There will inevitably be a degree of judgement as to whether a performance is live music or not, so organisers of events are encouraged to check with the Licensing Authority if in doubt

***None of the exemptions affect the need to apply for copyright licensing or the requirement not to cause a noise nuisance. Regulated Entertainment is a complex area and there are other minor exemptions – the Council recommends seeking legal advice if in any doubt.***

9.6 Advice on whether a licence is required for premises or an event can be obtained from Licensing, Cumberland Council.

## **Section 2.**

### **10 Promotion of the licensing objectives**

- 10.1 The Council will carry out its functions under the Licensing Act 2003 with a view to promoting four licensing objectives as detailed in paragraph 1.6.
- 10.2 Each objective is of equal importance, and the four objectives will be paramount considerations for the Council at all times.
- 10.3 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.
- 10.4 The Council recommends that applicants risk assess their operation against the four licensing objectives to identify potential areas of concern.
- 10.5 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.
- 10.6 The Council recommends early consultation with Responsible Authorities. Some 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. Contact details for the Responsible Authorities are available from Licensing. Guidance issued by the Responsible Authorities can be found on the Council's website or by contacting Licensing.

### **11 Crime and Disorder**

- 11.1 Under the Crime and Disorder Act 1998, the Council 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.
- 11.2 Where its discretion is engaged, the Council will seek to promote the licensing objective of preventing crime and disorder in a manner which supports its community safety strategy and any local crime reduction strategy.
- 11.3 There are many steps an applicant may take to prevent crime and disorder. The Council will look to the Police for the main source of advice on these matters. In accordance with the Secretary of State's Guidance, police views on matters relating to crime and disorder will be given considerable weight.

- 11.4 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.
- 11.5 Conditions will be targeted on deterrence and the prevention of crime and disorder. The Council 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
- 11.6 Crime and disorder conditions will not seek to control adult entertainment involving striptease and lap dancing, which will be governed by laws in relation to indecency and obscenity and will be licensed under the Local Government (Miscellaneous Provisions) Act 1982. However, conditions for such adult entertainment may be imposed for reasons of public safety, or the protection of children from harm if they relate to occasional use of the premises for adult entertainment.

## **12 Public Safety**

- 12.1 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.
- 12.2 On 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation. The Council will not seek to impose fire safety conditions as conditions on licences where the Order applies. However, applicants are expected to show that they have undertaken a full risk assessment. All new applications and variations for a premises licence or club premises certificate should be accompanied by a fire safety risk assessment as required under the Regulatory Reform (Fire Safety) Order 2005. This will reduce the likelihood of the Fire Authority making a representation against the application.
- 12.3 Capacity limits will only be imposed where appropriate for the promotion of public safety or for reasons of crime and disorder. Capacity limits will not be imposed as a condition of the licence on fire safety grounds.

- 12.4 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.
- 12.5 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.
- 12.6 Special considerations will apply to night clubs and similar venues. Applicants are encouraged to consider the Safer Nightlife Guide published by the Home Office, which gives advice on these issues.
- 12.7 Special events in the open air or temporary structures raise particular issues. Applicants are referred to other sections of this document where guidance on holding these types of event is given.
- 12.8 Applicants are reminded that some customers may find accessing premises difficult due to disability and if they do struggle accessing premises may find it even more difficult to leave premises in the event of an emergency on the premises. Applicants should therefore be cognisant of the Equality Act 2010 and endeavour to make their premises available to all regardless of disability and make appropriate reasonable adjustments to ensure such availability.

### **13 Public Nuisance**

- 13.1 In considering the promotion of this licensing objective, applicants need to focus on the effect of licensable activities on persons living and working in the area around the premises which may be disproportionate and unreasonable.
- 13.2 Public nuisance in this context is not narrowly defined and can include low level nuisance affecting a few people living locally, as well as a major disturbance affecting the whole community.
- 13.3 Issues will mainly concern noise nuisance, light pollution, noxious smells and litter. These include issues arising from the implementation of the smoking ban where customers may now be more inclined to use external areas of premises.
- 13.4 Where applicants are completing operating schedules, the Council 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.
- 13.5 Applicants are recommended to consult Environmental Health Services for advice on measures that may need to be incorporated into an operating schedule.

- 13.6 If relevant representations are made, 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 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.
- 13.7 The Council 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.
- 13.8 When considering such matters, the Council will have regard to representations made by Environmental Health Services and by local residents.
- 13.9 The Council may consider the following matters, however this is not an exhaustive list:
- 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 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; and
  - Display of contact details or a direct telephone link to a private hire/taxi firm.
- 13.10 The Council recognises that it is necessary to balance the rights of local residents businesses and others with those wishing to provide licensable activities, and those who wish to use such facilities.
- 13.11 Ultimately if it is necessary for the prevention of public nuisance where conditions do not adequately address the issues an application can be refused.

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

- 14.1 The Council recognises the Cumberland Safeguarding Children Partnership as a responsible authority for the protection of children from harm.
- 14.2 The protection of children from harm includes protection from physical and psychological harm.
- 14.3 The Council 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.
- 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.
- 14.4 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.
- 14.5 On receipt of relevant representations, the Council will consider whether conditions are necessary. If conditions are necessary, these may include:
- limitations on the hours when children will be present;
  - limitations 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; and
  - full exclusion of people under the age of 18 when any licensable activities are taking place.
- 14.6 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.

- 14.7 It is mandatory for premises which sell or supply alcohol to have an age verification policy in place. However, the Council 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 Council determines the licence application.
- 14.8 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.

## Section 3.

### 15 General principles

- 15.1 In determining a licensing application, the overriding principle will be that each application will be determined on its own merit, having regard to the need to promote the four licensing objectives and taking into account this licensing policy and the guidance issued under Section 182 by the Secretary of State.
- 15.2 Where it is necessary to depart from the guidance or this policy the Council will give clear and cogent reasons for doing so.
- 15.3 Nothing in this policy will undermine any person's right to apply for a variety of permissions under the Act.
- 15.4 Applicants are reminded of the Government's Alcohol Strategy. Matters set out in the strategy may be relevant to general licensing principles and to one or more of the licensing objectives.

### 16 Protection of Privacy and Data

- 16.1 In line with the General Data Protection Regulation and Data Protection Act 2018 the Council and the Cumbria Police are Joint Data Controllers of the information provided as part of an application. The Council and Cumbria Police have a statutory duty to process and maintain licences and permissions and conduct enforcement activities in accordance with the Licensing Act 2003 as Part of a legal obligation to meet the statutory requirements for the licensing of the sale of alcohol, regulated entertainment and late night refreshments.
- 16.2 We may share the following information with the third parties listed below: details of the licenced premises, license status, the name, addresses and company numbers of persons and companies named on a licence. This information may be shared with services within the Council, for example Environmental Health.
- 16.3 In addition, the Licensing Authority will share with external third-party organisations including Government Departments, Information Commissioners Office (for National Fraud Initiative), the Health and Safety Executive, Cumbria Fire Service to make further enquiries regarding your application under the Licensing Act 2003 or where required by law for the detection and prevention of crime.
- 16.4 The personal information provided as part of an application for a premises licence, club premises certificate or personal licence will be held for a period **(to be confirmed)** following the termination of the licence/permit. The personal information held for Temporary Event Notices will be held for a period of 2 calendar years following the event. Details of all transactions are recorded permanently as an entry on the licensing register.
- 16.5 The Council's corporate privacy notice, which includes an applicants information rights is available at: **(need link)**



## **17 Immigration Act 2016**

- 17.1 The Immigration Act 2016 made a number of amendments to the Licensing Act 2003 to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention of these changes is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.
- 17.2 The statutory prevention of crime and disorder licensing objective in the Licensing Act 2003 includes the prevention of immigration crime and the prevention of illegal working in licensed premises. The Council will work with the Home Office (Immigration Enforcement) as well as the police, in respect of these matters.
- Section 36 of and Schedule 4 to the Immigration Act 2016 (the 2016 Act) amended the 2003 Act to provide that in England and Wales: Premises licences to sell alcohol or provide late night refreshment and personal licences cannot be issued to an individual who does not have permission to be in the UK, or is not entitled to undertake work relating to the carrying on of a licensable activity;
  - Licences issued to those with limited permission to be in the UK will lapse when their permission to be in the UK and work in a licensable activity comes to an end;
  - Immigration offences, including civil penalties, are 'relevant offences' as defined by the 2003 Act;
- 17.3 The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences) and applications to transfer premises licences, and in some limited circumstances personal licence applications. The Home Office (Immigration Enforcement) is permitted to make appropriate representations and objections to the grant of a licence.
- 17.4 The Licensing Authority will have regard to any guidance issued by the Home Office in relation to the immigration related provisions now contained in the Licensing Act 2003.
- 17.5 The Licensing Authority will also work in partnership with the Home Office (Immigration Enforcement) and Cumbria Police with a view to preventing illegal working in premises licensed for the sale of alcohol or late night refreshment.

## **18 Equality Act 2010**

- 18.1 The Council is committed to eliminating unlawful discrimination, harassment and victimisation, advancing equality of opportunity and fostering good relations within and between our communities.

- 18.2 It is recommended that licensees make themselves familiar with the requirements of this Act for the access and provision of services for persons within the protected groups identified by the legislation.
- 18.3 In order to promote equality, and to fulfil its statutory duties under the Equality Act 2010, the Council asks that applicants aim to achieve inclusive access to their venues and events.
- 18.4 The Council cannot enforce the Act but those who experience discrimination may take legal action following a complaints procedure. Where complaints are received by the Council we advise the complainant of their rights under the Equality Act.
- 18.5 Further guidance on how the Equality Act affects pubs is available from the British Beer and Pub Association at <http://beerandpub.com/wp-content/uploads/2017/Briefings/BBPA-guidance-accessibility-in-pubs.pdf>

## **19 Human Rights**

- 19.1 The European Convention on Human Rights makes it unlawful for a public authority to act in a way that is incompatible with a Convention right. The Council will have particular regard to the following relevant provisions of the European Convention on Human Rights:
- Article 6 that in determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
  - Article 8 that everyone has the right to respect for his home and private life; and
  - Article 1 of the first protocol that every person is entitled to the peaceful enjoyment of his or her possessions.

## **20 Impact of Licensed Activity**

- 20.1 Where no representations are made the Council will grant a licence subject to conditions consistent with the operating schedule.
- 20.2 When determining any application where relevant representations are made, the Council will consider it in the light of the four licensing objectives and in order to support a number of other key aims and purposes as set out in this policy. The requirement to promote the licensing objectives will be the paramount consideration. The Council will focus upon the impact of the activities taking place on members of the public living, working or engaged in normal activity near the premises.

- 20.3 Where relevant representations are made in relation to a premises licence, club premises certificate or temporary event notice the following factors will normally be taken into account when the Council is looking at the impact of the activities concerned:
- the style of operation, the numbers of customers and customer profile likely to attend the premises;
  - the location of the premises and the proximity of noise sensitive properties;
  - the proposed hours of operation;
  - the transport arrangements for customers attending or leaving the premises and any possible impact on local residents or businesses;
  - any proposed methods for the dispersal of customers;
  - the scope for mitigating any impact; and
  - the extent to which the applicant has offered conditions to mitigate the impact how often the activity occurs.
- 20.4 In considering any application for a variation to a premises licence or club premises certificate where a relevant representation has been received, the Council may take into account, in addition to the above matters, any evidence:
- of past demonstrable adverse impact from the activity especially on local residents or businesses; and
  - that, if adverse impact has been caused, appropriate measures have been agreed and put into effect by the applicant to mitigate that adverse impact.
- 20.5 Other relevant matters may be considered as the individual case dictates.

## **21 Special Events in the Open Air or in Temporary Structures**

- 21.1 The promotion and the organisation of live musical and similar entertainment in the open air or in temporary structures like marquees etc. can provide opportunities for community involvement, civic pride and can attract visitors to the district.
- 21.2 However, the success of such events by way of contribution to the Council's cultural and tourist strategies depends upon the quality, levels of safety and consideration for the rights of people who live or work in the vicinity and the standard of provision of facilities for those coming to enjoy the event.

- 21.3 In recognition of the special factors that are relevant, particularly with respect to major open air events such as a pop festival or events, the Council has established a multi-agency forum to assist organisers in co-ordinating such events. This includes Council departments who have an interest in or legislative role relevant to such events, together with representatives of the various emergency services. Members of the forum are notified about all proposals to hold such events and where necessary special meetings will be organised in order to consider any issues that will require to be addressed and to open up lines of communication with organisers.
- 21.4 The Health and Safety Executive provide specialist guidance on event safety through their website at [www.hse.gov.uk](http://www.hse.gov.uk)
- 21.5 Guidance on the planning of such events is available to organisers but it is important that substantial notice is given so that proper preparations and precautions can be put in place for the event. This also applies if the event is proposed under a Temporary Event Notice.

## **22 Community Applicants**

- 22.1 Whilst this Policy is aimed at all licensable activities under the Licensing Act 2003 it should be noted that the Council sees a distinction between large or permanent activities, such as those proposed by commercial operators and small or temporary activities such as those which might be proposed by cultural or community groups.
- 22.2 Where events are proposed by cultural or community groups, it is recognised that those groups may not have the same skill or expertise or access to professional advice. Such groups may seek assistance and guidance from the Council by contacting Licensing.
- 22.3 Whatever the nature of the applicant and activity proposed, the overriding matter is that the Council will consider the individual merits of the application and act so as to promote the licensing objectives.

## **23 Other Regulatory Regimes**

- 23.1 The Licensing Policy is not intended to be the primary mechanism for the general control of nuisance, anti-social behaviour and environmental crime but nonetheless is a key aspect of such control and the Licensing Policy and licensing decisions are intended to be part of a holistic approach to the delivery of the Council plan and the management of the evening and night-time economy of the Cumberland district.

- 23.2 In preparing this Policy the Council has sought to avoid unnecessary duplication of existing legislation and regulatory regimes. However on occasions it has been necessary to set out some of the detail in this policy for ease of understanding. Nothing in this Policy is intended to revoke or replace the need for applicants to act in accordance with legal requirements. All applicants are advised to seek proper advice to ensure that the activities they propose are within the boundaries set by existing legislation and regulations.

## **24 Application Process**

- 24.1 Applications must be made to the Council in the form prescribed by Regulations. Guidance is available to applicants setting out the detail of the process.
- 24.2 Applications must be served on Responsible Authorities as required by the Licensing Act 2003. Where appropriate, a notice on site and a notice in a newspaper must also be made in accordance with the Act. Additionally, the Council recognises that parish and town Councils can and do play a key role in representing local persons who live in the vicinity of application premises. As a matter of policy, the Council normally requires applicants to notify the parish or town Council for the area in which the application premises are located of any application being made. The Council will take into account any representations made by such Councils, as interested parties under the Act, when it determines the application.

## **25 Licensing Committee**

- 25.1 The Council has appointed a licensing committee of 10 Councillors. Licensing functions will often be delegated to a licensing sub-committee of 3 Councillors or, in appropriate cases to officers of the Council.
- 25.2 Councillors will have regard to the Cumberland Council Code of Conduct for Members. Where a Councillor who is a member of the Licensing Committee or subcommittee has a disclosable pecuniary interest in the application before them, in the interests of good governance they will disqualify themselves from any involvement in the decision-making process in respect of that application.
- 25.3 A sub-committee may refer an application to another sub-committee or to the Licensing Committee where it is unable to deal with the application because of the number of members unable to vote on the matter in question.
- 25.4 The Licensing Committee will refer an application to the Council where it is unable to deal with the application because of the number of members unable to vote on the matter in question.

## **26 Representations**

- 26.1 Depending on the type of application representations may be made by a responsible authority or other persons (as defined by the Licensing Act 2003).

- 26.2 Members of the public who wish to submit a representation in regard to a premises licence or club premises certificate application need to be aware that their personal details will be made available to the applicant. If this is an issue, they may contact a local representative such as a ward, parish or town Councillor or any other locally recognised body such as a residents association about submitting the representation on their behalf. The Council is not able to accept anonymous representations. In addition, the Council cannot accept petitions which do not follow the guidance on the Council's website.
- 26.3 Where a representation is received which is not from a responsible authority the Council 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; and
  - which have not been withdrawn and are not, in the opinion of the Council, frivolous or vexatious.
- 26.4 Where relevant representations are received about an application the Council will hold a hearing to consider them unless the Council, the applicant and everyone who has made representations agree that the hearing is not necessary. Applicants and those making representations should seek, in advance of any hearing, to try to reach agreement or to narrow the areas in dispute, particularly where both are professionally represented.
- 26.5 Where hearings are required as a result of relevant representations, the Council may extend the time limits involved in calling hearings in order to allow the parties to negotiate suitable conditions to be added to the operating schedule and avoid the need for a hearing. Such an extension of time is considered to be in the public interest.

## **27 Reasons for Decisions**

- 27.1 Every decision made by the Licensing Committee, sub-committee or officers shall be accompanied by clear reasons for the decision.

## **28 Decision making**

- 28.1 Decisions by the licensing authority will be made in accordance with Cumberland Council's Constitution. In summary, applications where no representations are received will be determined by officers; applications where representations are received will be determined by members; and applications where representations are received only from Responsible Authorities which result in conditions being agreed to address the issues raised will be determined by officers.

## **Section 4.**

### **29 Premises licences and club premises certificates**

A premises licence and club premises certificates authorise the sale or supply of alcohol, regulated entertainment and late-night refreshment (sale of hot food and drink after 11pm). Businesses wishing to apply for a licence or certificate must use the prescribed form which includes details of the hours of operation, any hours for licensable activities and an operating schedule.

### **30 Planning**

- 30.1 The use of premises for the sale or provision of alcohol, regulated entertainment or late-night refreshment is subject to planning control. Such use will require planning permission or must otherwise be lawful under planning legislation. Planning permission is generally required for the establishment of new premises or the change of use of premises.
- 30.2 In line with the section 182 Guidance the planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.
- 30.3 Where businesses have indicated, when applying for a licence under the Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers will consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 30.4 Where relevant representations are received, any decision on a licence application will not consider whether any decision to grant or refuse planning permission or building consent was lawful and correct. It will take into account what the impact of granting the application will be on the four licensing objectives.
- 30.5 In general, all premises which are the subject of an application, should have the benefit of planning permission, or be deemed permitted development. The onus will be on the applicant to demonstrate that planning permission has been granted or that the premises have the benefit of permitted development rights. Failure to do so may result in representations and the licence being refused or granted subject to conditions which take account of the planning permissions in existence.
- 30.6 In addition, all new developments and premises which have been subject to structural alterations since 1994 will have building control approval in the form of a Building Regulations Completion Certificate. The onus will be on the applicant to demonstrate that any structural alterations have been approved by building control. Failure to do so may result in representations and the licence being refused or granted subject to conditions.

### **31 Licensing Hours**

- 31.1 The government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The Act gives the Council the power to make decisions regarding licensed opening hours based on local knowledge and in consultation with other Responsible Authorities.
- 31.2 In some circumstances, staggered licensing hours with regards to the sale of alcohol are important to ensure that the concentration of customers leaving premises simultaneously is reduced. The intention behind this is to reduce the friction at late-night fast-food outlets, taxi ranks and other sources of transport which currently lead to disorder and disturbance.
- 31.3 Providing the customers with greater choice is an important consideration in the development of a thriving and safe evening and night-time economy in the Council's area. However, any licensable activity has the potential to impact adversely on the surrounding area due to disturbance or crime and disorder. Customers may be noisy when leaving, leave litter or use on-street car parking. The impact of these activities can be particularly intrusive at night when ambient noise levels are much lower.
- 31.4 The Council supports the development of a wide ranging and culturally diverse night-time economy where this can be achieved whilst promoting the four licensing objectives and without compromising the ability to resource local services associated with the night-time economy such as street cleansing.
- 31.5 Under the Act there are no permitted hours for the sale of alcohol. Applicants are able to suggest in their operating schedule the hours they wish to open and to apply to vary their existing licences if they wish to open beyond their current permitted hours. However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives will be the paramount consideration at all times.
- 31.6 If relevant representations are made the Council will only grant the hours of use proposed where the operating schedule and any risk assessment adequately demonstrates that:
- the applicant has properly considered what is appropriate for the local area when considering what hours and activities to apply for;
  - the potential effect on the licensing objectives is not significant; and
  - the agreed operating schedule demonstrates that the applicant is taking appropriate steps to minimise any adverse impact on local residents and businesses.



- 31.7 Restrictions may be made to the proposed hours of use where, after receiving relevant representations, the Council considers it appropriate for the promotion of the licensing objectives to do so. The Council will take into account the existing pattern of licensed premises in an area when considering what is appropriate to promote the objectives. Applications which are significantly out of character for a locality will need to demonstrate that granting the hours sought will not impact on the licensing objectives, given the potential for neighbouring premises to seek the same additional hours to prevent rivals gaining a commercial advantage.
- 31.8 As a general rule 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.

## **32 Mandatory Conditions**

- 32.1 The 2003 Act provides for certain mandatory conditions to be applied to premises licences or club premises certificates. The full list of mandatory conditions that apply to the publication date of this statement of licensing policy can be found at <https://www.legislation.gov.uk/ukdsi/2014/9780111116906>  
<https://www.gov.uk/government/publications/guidance-on-mandatory-licensing-conditions>
- 32.2 The Licensing Authority expects that applicants, licence and certificate holders will familiarise themselves and ensure all staff are familiar with the mandatory conditions and any additional conditions such as those associated with the operating schedule or that may be attached by Committee.

## **33 Local, National and International Occasions**

- 33.1 It should be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year, for example bank holidays, and to incorporate appropriate opening hours for these occasions in their operating schedules.
- 33.2 Additional occasions for which extensions may be required may be covered by a Temporary Event Notice.

## **34 Drinking up Time**

- 34.1 The traditional 'drinking up time' was not carried over into the Licensing Act 2003. However, the hours during which applicants are licensed to sell or supply alcohol and the opening hours need not be identical and therefore applicants of premises licensed for the on-sale of alcohol are recommended to consider a drinking up/cooling down period during which music volume may be reduced, customers may consume their drinks and make arrangements for transport from the premises. The Council considers that a 30-minute drinking up time will assist in the gradual dispersal of customers and consequently reduce impact on the area.

34.2 Where relevant representations are made, the Council will consider imposing a condition on drinking up time where such a condition is appropriate in order to promote the licensing objectives in any individual case.

## **35 Operating Schedules**

35.1 Under the Licensing Act 2003 applicants are required to complete an 'operating schedule'. Applicants are expected to have regard to the Council's Statement of Licensing Policy. They must also be aware of the expectations of the licensing authority and the Responsible Authorities as to the steps that are appropriate for the promotion of the licensing objectives and to demonstrate knowledge of their local area when describing the steps, they propose to take to promote the licensing objectives.

35.2 Operating schedules are the key to ensuring that the four licensing objectives are promoted. An operating schedule should include enough information to enable any responsible authority or other person to assess whether the steps to be taken to promote the licensing objectives are satisfactory.

35.3 Whilst applicants are not required to seek the views of Responsible Authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. The Council encourages co-operation between applicants, Responsible Authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise. Other publicly available sources which may be of use to applicants include:

- the Crime Mapping website and crime statistics;
- Neighbourhood Statistics websites;
- websites or publications by local Responsible Authorities;
- websites or publications by local voluntary schemes and initiatives; and
- on-line mapping tools.

35.4 Applicants should make their own enquiries and demonstrate how they have considered the following in their operating schedule:

- The layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children and young persons may congregate;
- Any risk posed to the local area by the applicants' proposed licensable activities; and
- Any local initiatives (for example, local crime reduction initiatives or

- voluntary schemes such as local taxi-marshalling schemes, street pastors and other schemes), which may help mitigate potential risks.
- 35.5 The Council expects individual applicants to complete the operating schedule in a manner that is specific to the application being made in respect of those premises and the licensable activity to be carried on rather than in general or standard terms. Information should be given to demonstrate how the individual application proposes to address and promote the licensing objectives. Applicants are referred to paragraphs 5.27 to 5.31 below which contain information on carrying out a risk assessment.
- 35.6 Any application or operating schedule not completed in accordance with the Act and the regulations may be returned to the applicant unprocessed with a request to complete the forms correctly before the application is accepted by Council.

## **36 Risk assessments**

- 36.1 The Council recommends that applicants complete a risk assessment of their business in order to understand what steps are required to complete the operating schedule in a manner which enables the Council and Responsible Authorities to assess how they will seek to promote the licensing objectives.
- 36.2 The Council is aware that any risk assessment will vary according to the nature of the business. It is for applicants to decide what is appropriate in each case. A special risk assessment proforma designed for outdoor events and broadly based on the 'Purple Guide' is also available.
- 36.3 The risk assessment contains many of the key factors which the Responsible Authorities will be expecting applicants to meet in order to fulfil the licensing objectives. The contents are not exhaustive but the risk assessment approach will reduce the possibilities of adverse representations.
- 36.4 It is recognised that some areas of the risk assessment may duplicate issues which applicants have previously addressed in order to satisfy other legislation. Where this does occur the operating schedule may cross reference to alternative documents.
- 36.5 The Council recognises that it cannot insist on a risk assessment. However an applicant who decides not to complete or provide a risk assessment may face additional representations and the expense of hearings as a result. If a risk assessment is not completed then applicants will need to demonstrate how these matters have been addressed through the operating schedule provided.

## **37 Consumption of Alcohol**

- 37.1 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.

37.2 The Council also recognises the impact that excessive or binge drinking can have on public health and that positive action on promoting the licensing objectives is equally likely to have an indirect impact on public health.

37.3 The British Beer and Pub Association states that a promotion is irresponsible where it encourages or incites individuals to drink to excess, behave in an anti-social manner or fuels drunkenness. The Council as the licensing authority will use the powers contained within the Licensing Act to ensure operators' promotional activities do not undermine the licensing objectives.

37.4 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.

37.5 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 carried a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children".

37.6 As a consequence, any on-trade premises that participates in irresponsible drinks promotions will be breaching licence conditions and will be dealt with in accordance with the Council's relevant enforcement protocol which is available from the Council's website and may be subject to a review of their licence.

## **38 Conditions**

38.1 The Council 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.

38.2 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.

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

38.4 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.

## **39 Designated Premises Supervisor**

- 39.1 The main purpose of the 'designated premises supervisor' is to ensure that there is always one specified individual who can be readily identified for the premises where a premises licence is in force. The Licensing Authority will normally expect the DPS to have an active role in the day-to-day operation of the licensed premises, in particular the sale and supply of alcohol. A DPS does not have to be on site all the time but should authorise individuals to supervise the day-to-day management of the premises in his absence.
- 39.2 A DPS should have sufficient experience and knowledge appropriate for the operation under their control. A DPS should be able to control the activities on site and respond quickly and efficiently to problems.
- 39.3 A DPS should be able to demonstrate that they:
- Have sufficient knowledge and experience appropriate to the premises that they intend to control
  - Are able to respond to problems quickly and to meet with Responsible Authorities, local residents and ensure adequate direct management of individual premises in a timely manner.
- 39.4 Following a Police representation, the Licensing Authority may refuse an application or remove a DPS where:
- A problem premises exists and the DPS is not capable of fulfilling the duties and expectations of a DPS
  - A proposed DPS cannot demonstrate their suitability for the licenced premises

## **40 Staff Training**

- 40.1 The Council recommends that all persons employed on licensed premises who are engaged in the sale and supply of alcohol be encouraged to attend training programmes to raise awareness of their responsibility and particularly of the offences contained within the Act. Similarly, persons employed at on licensed premises should be encouraged to attend training programmes which will raise their awareness of the issues relating to drugs and violence in licensed premises, and that suitable training be extended to all staff involved in managing or supervising the premises.
- 40.2 It is also recommended that persons employed on premises providing entertainment for children and youths attend training programmes in basic child protection and safety, and if appropriate have the necessary DBS checks.
- 40.3 All persons employed on licensed premises should be provided with in-house training on basic public safety and the housekeeping arrangements relative to those premises.

## **41 Club Premises Certificate**

- 41.1 The Act recognises that premises to which public access is restricted and where alcohol is supplied other than for profit, give rise to different issues for licensing law than those presented by commercial enterprises selling direct to the public. For this reason, qualifying clubs may apply for a Club Premises Certificate as an alternative to a premises licence.
- 41.2 A Designated Premises Supervisor and Personal Licence Holders are not required where a Club Premises Certificate is in force. However, an applicant for a Club Premises Certificate is still required to act in a manner which promotes the licensing objectives. An application for a Club Premises Certificate must be in the form prescribed by regulations.
- 41.3 Any qualifying club may choose to obtain a Premises Licence if it decides that it wishes to offer its facilities commercially for use by the public, including the sale of alcohol. Any individual on behalf of the club may also provide Temporary Events Notices.

## **42 Community Halls**

- 42.1 The 2003 Act was amended in 2009 to allow certain community premises which have, or are applying for, a premises licence that authorises alcohol sales to also apply to include the alternative licence condition in section 25A(2) and 41D(3) of the Act in the licence instead of the usual mandatory conditions.
- 42.2 Such an application may only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of the premises. If such an application is successful, the effect of the alternative licence condition will be that all sales, will have to be made or authorised by the management committee. There will be no requirement for a DPS or for alcohol sales to be authorised by a personal licence holder.
- 42.3 Community premises are defined as premises that are or form part of a church hall, chapel hall or other similar building, or a village hall, parish hall or community hall or other similar building.
- 42.4 As the premises licence holder, the management committee will collectively be responsible for ensuring compliance with licence conditions and the law although there would not necessarily be any individual member always present at the premises. Where hirers are provided with a written summary of their responsibility under the 2003 Act in relation to the sale of alcohol, the management committee is likely to be treated as having taken adequate steps.
- 42.5 The Licensing Authority will expect that the Community premises will have an effective hiring agreement to ensure that the hirer is aware of the licensing objectives and offences in the 2003 Act and will ensure that it will take all appropriate steps to ensure that no offences are committed during the period of the hire.

## **43 Minor Variations**

- 43.1 A minor variation application can be made to make small changes to premises licences or club premises certificates which is cheaper, easier and quicker than the full variation process. The test for whether a proposed variation is “minor” is whether it could impact adversely on any of the four licensing objectives.
- 43.2 Minor variations **can be** used to:
- Make minor changes to the structure or layout of a premises
  - Make small adjustments to the licensing hours
  - Remove out of date, or unenforceable conditions
  - Add or remove certain licensable activities
  - Add volunteered conditions to a premises licence or club premises certificate
- 43.3 Examples of where the new minor variation process **cannot be** used to:
- Extend the period for which the licence or certificate has effect
  - Specify, in a premises licence, an individual as the premises supervisor
  - Add the sale by retail or supply of alcohol as an activity authorised by a licence or certificate
  - Authorise the sale by retail or supply of alcohol at any time between 23:00 hours and 07:00 hours
  - Authorise an increase in the amount of time on any day during which alcohol may be sold by retail or supplied
  - Substantially vary the premises to which the licence or club premises certificate relates
- 43.4 On receipt of a minor variation application, the Licensing Authority will consider the application and consult the relevant Responsible Authorities as it considers appropriate. In deciding on the application, the Licensing Authority will consider any relevant representations received within the statutory time limit (ten working days from the day after the application was received by the Licensing Authority). The Licensing Authority will either grant the application or refuse it where it considers that the proposed application could impact adversely on any of the four licensing objectives.
- 43.5 If the Licensing Authority fails to determine the application within 15 working days, the application will be treated as being refused and the fee returned. However, in such cases the Licensing Authority and applicant may agree instead that the undetermined application should be treated as a new minor variation application and that the fee originally submitted may be treated as a fee for the new application thus avoiding the need for a new application to be submitted.

43.6 Where an application is refused and is then re-submitted through the full variation process, the full 28-day notification period will apply from the date the new application is received and applicants should advertise the application and copy it to all Responsible Authorities (in accordance with the regulations applicable to full variations).

#### **44 Alcohol Deliveries**

44.1 Premises such as takeaways should make clear on their application if they intend to sell alcohol via a delivery service.

44.2 An applicant seeking a licence that will enable them to provide alcohol as part of an alcohol delivery service should include in their operating schedule the procedures, they intend to operate to ensure that:

- The person they are selling alcohol to is over the age of 18;
- That alcohol is only delivered to a person over the age of 18;
- That a clear document trail of the order process from order, despatch from the licensed premises and delivery to the customer is maintained (with times and signatures) and available for inspection by an authorised officer; and
- The time that alcohol is sold on the website/over the phone and the time the alcohol is delivered is within the hours stated on the licence for the sale of alcohol.



## **Section 5.**

### **45 Personal licences**

- 45.1 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a Personal Licence. The Act does not require the presence of a Personal Licence holder at all material times but if any sales are made when a Personal Licence Holder is not present, then they must have been authorised by somebody who holds a Personal Licence. Regardless of whether a Personal Licence holder is present or not he will not be able to escape responsibility for the actions of those he authorises to make such sales.
- 45.2 The Council recommends that authorisations for the sale of alcohol be made in writing to ensure that those authorised are clear what their legal responsibilities are. Any premises at which alcohol is sold or supplied may employ one or more Personal Licence holders. This paragraph should be read in conjunction with paragraphs 5.45 and 5.46 above on the role of the 'Designated Premises Supervisor'.
- 45.3 The Council recognises it has no discretion regarding the granting of personal licences where:
- the applicant is 18 or over;
  - possesses a licensing qualification,
  - has the entitlement to work in the UK
  - has not had a licence forfeited in the last five years and
  - has not been convicted of a relevant offence.
- 45.4 An application for a personal licence to sell alcohol must be made in the form specified in government guidance or regulations. The application form must be accompanied by the requisite fee. The applicant should also be able to produce evidence of the relevant qualifications.
- 45.5 Applicants should produce a Disclosure and Barring Service certificate along with the application form. The certificate must be current and comply with the regulations on personal licence applications. Applicants are also expected to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or a similar offence.
- 45.6 Individuals must be entitled to work in the UK and therefore an application made by someone who is not entitled to work in the UK will be rejected. Applicants are required to submit relevant documentation to show that they have permission to be in the UK and are permitted to undertake the work in a licensable activity.

- 45.7 As an alternative applicants may demonstrate their right to work by allowing the licensing authority to carry out a check with the Home Office online right to work checking service.
- 45.8 Where the application discloses relevant unspent convictions, the Council will notify the police of that application and the convictions. The police may make objection on the grounds of crime and disorder. If an objection is lodged a hearing must be held.
- 45.9 The Council will, at such a hearing, consider carefully whether the grant of the licence will compromise the promotion of the crime prevention objective. It will consider the seriousness and relevance of the conviction(s), the period that has elapsed since the offence(s) were committed and any mitigating circumstances. The Council will normally refuse the application unless there are exceptional and compelling circumstances which justify granting it.

## **46 Suspension and revocation of a Personal Licence**

- 46.1 Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003 and gave the power to a Licensing Authority to suspend or revoke personal licences that it has issued with effect from 6 April 2017.
- 46.2 When a Licensing Authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months. This applies to convictions received and civil immigration penalties which a person has been required to pay at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017, or the requirement to pay the civil penalty arose after 6 April 2017. Prior to 6 April 2017 only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions.
- 46.3 The process which must be undertaken by the Licensing Authority to suspend or revoke a personal licence is set out at section 132A of the 2003 Act. The decision to revoke or suspend a personal licence must be made by the licensing committee or sub-committee.
- 46.4 The Licensing Authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the offence, until the appeal is disposed of. Where an appeal is not lodged, the Licensing Authority may not take action until the time limit for making an appeal has expired.
- 46.5 If a Licensing Authority is considering revoking or suspending a personal licence, the authority must give notice to the licence holder. This notice must invite the holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision

- 46.6 The licence holder must be given 28 days to make their representation, beginning on the day the notice was issued. Before deciding whether to revoke or suspend the licence the licensing authority must consider any representations made by the licence holder, any decisions made by the court or appellate court in respect of the personal licence of which the licensing authority is aware, and any other information which the licensing authority considers relevant.
- 46.7 The Licensing Authority may not be aware of whether the court considered whether to revoke or suspend the licence, and there is no obligation on the Licensing Authority to find this out before making a decision themselves. Where the court has considered the personal licence and decided not to take action, this does not prevent the Licensing Authority from deciding to take action itself. Licensing Authorities have different aims to courts in that they must fulfil their statutory duty to promote the licensing objectives, and therefore it is appropriate for the licensing authority to come to its own decision regarding the licence.
- 46.8 If the Licensing Authority, having considered a suspension and revocation and subsequently considered all the information made available to it, proposes not to revoke the licence it must give notice to the chief officer of police in the Licensing Authority's area, and invite the chief officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime. The chief officer may make representations within the period of 14 days from the day they receive the notice from the licensing authority.
- 46.9 Any representations made by the chief officer of police must be taken into account by the Licensing Authority in deciding whether to suspend or revoke the licence.
- 46.10 Convictions may come to light via police in another area, for example if the personal licence holder no longer lives in the area of the Licensing Authority which issued the licence, or if the offence took place in another police force area. In this instance it would be good practice for the police providing the information to notify the police force in the Licensing Authority area, because it is the local chief officer who must provide representations if the Licensing Authority proposes not to revoke the licence.
- 46.11 Where the licence holder is convicted of immigration offences or has been required to pay a civil penalty for immigration matters, the Licensing Authority will notify Home Office Immigration Enforcement to enable them to liaise with the Police.
- 46.12 In deciding whether to suspend or revoke a personal licence, the Licensing Authority will have regard to all of the circumstances including the following:
- The need to assess each case on its merits
  - The duty to promote the licensing objectives
  - The guidance issued by the Secretary of State under section 182 of the Licensing Act 2003

- The seriousness of the relevant offence
  - The sentence or penalty imposed on the licence holder for the relevant offence
  - Any representations made by the Police or Home Office Immigration Enforcement
  - Any representations made by the holder of the licence
  - Any evidence as to the previous character of the holder of the licence.
- 46.13 The Licensing Authority must notify the licence holder and the chief officer of police of the decision made (even if the police did not make representations). The licence holder may appeal the Licensing Authority's decision to revoke or suspend their personal licence. A decision to revoke or suspend the licence does not take effect until the end of the period allowed for appealing the decision (21 days); or if the decision is appealed against, until the appeal is disposed of.
- 46.14 If the personal licence holder is a DPS, the licensing authority may notify the premises licence holder once the decision to revoke or suspend the licence has been made if it becomes necessary to do so in order for the Licensing Authority to be able to carry out their functions.
- 46.15 The Licensing Authority may also notify any person who has declared an interest in the premises under section 178 of the 2003 Act if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions.

## **47 Temporary event notices**

- 47.1 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”).
- 47.2 Temporary event notices are subject to various limitations. These are concerned with:
- The number of times a premise user may give TEN – 50 times in a calendar year for a personal licence holder and five times in a calendar year for other people. This is inclusive of any Late TENs (a maximum of 10 for personal licence holders and 2 for other people.)
  - the number of times a TEN may be given for any particular premises (15 times in a calendar year); (for the 2023 to 2024 calendar years this is increased to 20 times)
  - 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); (for the 2023 to 2024 calendar years this is increased to 26 days)
  - the maximum number of people attending at any one time (maximum of 499 including any staff and any other persons); 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).
- 47.3 The most important aspect of the system of temporary event notices is that no permission is required for these events from the Council. In general, only Cumbria Police or Environmental Health may intervene to prevent such an event or modify the arrangements for such an event. The Council will only intervene itself if the limits on the number of notices that may be given in various circumstances would be exceeded.
- 47.4 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.

- 47.5 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 clear working days before the event to which it relates; a late TEN is given not before nine and not later than five clear working days before the event. In both instances this does not include the date of the event or the date the Council receives the notice.
- 47.6 The Council 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 multi agency forum meetings.
- 47.7 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.

## **48 Police or Environmental Services intervention**

- 48.1 The Act provides that in exceptional circumstances, the police or Environmental Services 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 Services 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.
- 48.2 The ability of police and Environmental Services to serve such a notice is a further reason why event organisers are strongly encouraged by the Council not to rely on giving the minimum amount of notice and to contact the local police and Environmental Services at the earliest possible opportunity about their proposals.

## **49 Additional limitations**

- 49.1 The Council, on receiving temporary event notices, will also check that the requirements of the Act as to duration and numbers of notices are met. For these purposes, a notice is treated as being from the same premises user if an associate gives it.
- 49.2 The Act defines an associate as being:
- the spouse or civil partner of that person;
  - a child, parent, grandchild, grandparent, brother or sister of that person; or
  - an agent or employee of that person;

- the spouse or civil partner of a person listed in either of the two preceding bullet points
- A person living with another person as his or her husband or wife is treated for these purposes as his or her spouse.

## **50 The Cumulative Impact of a concentration of licensed premises**

- 50.1 In some areas where the number, type or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems of nuisance and disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large number of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.
- 50.2 Queuing in itself may lead to conflict, disorder and anti-social behaviour. Moreover, large concentrations of people may also attract criminal activities such as drug dealing, pick pocketing and street robbery. Local services such as public transport, public lavatory provision and street cleaning may not be able to meet the demand posed by such concentrations of people who cannot be effectively dispersed quickly.
- 50.3 In order to address the issue of high concentration of licensed premises in an area Cumberland Council may produce a Cumulative Impact Assessment Policy in accordance with the Licensing Act 2003. If such a policy is produced the Licensing Authority will take this into consideration when determining any applications within the Cumberland Council area.
- 50.4 Other mechanisms for controlling cumulative impact include:
- Planning controls
  - Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority
  - The provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late night, street cleaning and litter patrols
  - Powers of local authorities to designate parts of the local authority areas where alcohol may not be consumed publicly, namely the issuing of Public Protection Orders to these areas
  - Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices
  - The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk

- The confiscation of alcohol from adults and children in areas with Public Protection Orders
- Police powers to close down instantly for up to 24 hours any licenced premises to temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance
- The power of police, other Responsible Authorities or local resident or business to seek a review of the licence or certificate in question.

## **51 Late Night Levy**

51.1 The Licensing Authority acknowledges that the Police Reform and Social Responsibility Act 2011 enables a Licensing Authority to charge a levy on premises who are licensed to sell alcohol late at night in the conurbation (between midnight and 6am), as a means of raising a contribution towards the costs of policing the late-night economy. There are currently no EMROs in place for this area and Cumberland Council has not introduced such a levy but the option of introducing such a levy may be kept under review by the Licensing Committee.

## **52 Early Morning Restrictions Orders (EMROs)**

52.1 In addition to the provisions contained with the Police Reform and Social Responsibility Act 2011 for the Late Night Levy, there is an additional power for the Licensing Authority to restrict sales of alcohol in the whole or part of their areas for any specified period between midnight and 6am if it considers it appropriate for the promotion of the licensing objectives. The option of introducing an EMRO may be reviewed by the Licensing Committee.



## **Section 6.**

### **53 Enforcement and Reviews**

- 53.1 The Licensing Act contains measures to ensure that the Council, and Responsible Authorities, are able to deal with premises that wilfully and persistently undermine the licensing objectives. The Council and Responsible Authorities are committed to encouraging a thriving day time and evening licensed economy but will not tolerate those premises whose activities infringe upon the quality of life for local residents and businesses.
- 53.2 The licensing authority attends regular meetings with Responsible Authorities via the Multi Agency Hub arrangements. The purpose of these meetings will be to discuss problem premises, problem areas and to share information about any new initiatives or schemes.
- 53.3 In the event of the licensing authority receiving evidence of an offence under the Licensing Act 2003 it will consider what action should be taken. This might involve informal action (advice and warnings), the issue of a caution or, if permitted, a fixed penalty notice, or prosecution. What action is taken will depend on the circumstances of each case and take into account the seriousness of the matter and past history. The purpose of enforcement is to protect the public, interested parties and the environment from harm caused as a result of activities made licensable by virtue of the Licensing Act 2003. Formal action by way of prosecution 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.

### **54 Closure Notices**

- 54.1 Section 19 of the Criminal Justice and Police Act 2001, gives licensing authorities, police and local authorities the power to serve a closure notice where any premises are being used (or have been used within the last 24 hours), for the sale of alcohol for consumption on or in the vicinity of the premises; and the activity was not authorised or not in accordance with the conditions of authorisation.
- 54.2 The notice informs the person with control of, or responsibility for, the activities carried on at the premises (normally the licence holder or DPS) that if unauthorised alcohol sales continue, an application may be made to a court under Section 20 for an order to close the premises under section 21 of the Act. Such an application cannot be made less than seven days or more than six months after the service of the closure notice under section 19.
- 54.3 The person will be warned that it is an offence under Section 136 of the Licensing Act 2003 to carry on the sale of alcohol without, or in breach of, an authorisation.

### **55 Reviews of Licences**

- 55.1 The Council recognises that the ability of the police, other Responsible Authorities and other persons to apply for a review of a premises licence, is an incentive to effective self-regulation.
- 55.2 On receipt of a relevant request to carry out a review the Council has a range of options available to it under the Act. These include:
- To modify the conditions of the licence including imposing new conditions, altering existing conditions or removing conditions (permanently or temporarily);
  - To exclude a licensable activity from the scope of the licence (permanently or temporarily);
  - To remove the Designated Premises Supervisor;
  - To suspend the licence for a period not exceeding three months; or
  - To revoke the licence.
- 55.3 The Council will seek to establish the cause or causes of the concern and remedial action will be targeted at such causes. Any action will be proportionate to the problems involved.
- 55.4 Where a Magistrates Court makes a Closure Order under part 8 of the Licensing Act 2003 (on grounds of disorder) the Council must carry out a review of the licence.
- 55.5 Where a Magistrates Court makes a Closure Order under part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 (on grounds of criminal behaviour, serious nuisance or disorder) the police will usually ask the Council to carry out a review of the licence.
- 55.6 Where a closure order has been made under part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 (on grounds of nuisance) the Council's Environmental Health section will normally request a review of the licence.
- 55.7 When considering a review request or the possibility of enforcement action the Council will take into account all relevant circumstances but will view the following matters particularly seriously:
- use of the premises for criminal activities such as the supply of drugs or money laundering;
  - failure to promptly respond to a warning properly given by a responsible authority;
  - failure to engage with the Responsible Authorities in an effective manner;
  - previous convictions for licensing offences;
  - previous failure to comply with licence conditions; and offences relating to breaches of health and safety, food or fire legislation.

## **56 The Violent Crime Reduction Act 2006**

- 56.1 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.
- 56.2 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.

## **Section 7.**

### **57 Administration, Exercise and Delegation of functions**

- 57.1 The Licensing Authority will be involved in a wide range of licensing decisions and functions and has established a Licensing Committee to administer them.
- 57.2 Appreciating the need to provide a speedy, efficient and cost-effective service to all parties involved in the licensing process, the Committee has delegated certain decisions and functions and has established a number of Sub-Committees to deal with them.
- 57.3 Further, with many of the decisions and functions being purely administrative in nature, the grant of non-contentious applications, including for example, those licence and certificates where no representations have been made, has been delegated to Licensing Authority officers.
- 57.4 The Licensing Committee will consist of 10 Councillors. Licensing Sub-Committees of three Councillors are expected to consider the bulk of applications where a hearing is necessary. Ward Councillors will not sit on Sub-Committee involving an application within their ward.
- 57.5 Every determination of a licensing application by the Licensing Committee or Licensing Sub-Committee shall be accompanied with clear, cogent reasons for the decision.
- 57.6 It is expected that the authority's licensing officers will deal with the majority of licence applications and will decide whether representations are irrelevant, frivolous or vexatious. The person making a representation, which is considered to be frivolous or vexatious, will be given written reasons for that decision.
- 57.7 The authority will ensure that members and officers are appropriately trained to carry out their duties under the Act.
- 57.8 The table at Appendix 2 sets out the agreed delegation of decisions and functions to Licensing Committee, Sub-Committee and Officers.
- 57.9 Officers, a Licensing Sub-Committee and even the full Licensing Committee may decline to exercise their delegated powers in any particular case. On such occasions, officers may refer a matter to a Sub-Committee, the Sub-Committee to full Committee and the full Committee to the full Council.

## 58 Table of Delegated functions

Matters to be dealt with	Licensing Committee	Sub-Committee	Officers
Application for personal licence		If objection made	If no objection made
Application for personal licence with unspent convictions		All cases	
Decision to suspend or revoke a personal licence due to the holder being convicted of a relevant conviction		All cases	
Application for Premises Licence/Club Premises Certificate		If representation made	If no representation made
Application for Provisional statement		If representation made	If no representation made
Application to vary Premises Licence/Club Premises Certificate		If representation made	If no representation made
Application to vary Premises Licence/Club Premises Certificate by way of minor variation			All cases
Application to vary Designated Premises Supervisor (DPS)		If Police object	All other cases
Request to be removed as DPS			All cases
Application to transfer of Premises Licence		If a Police or Home Office representation	All other cases
Application for Interim Authorities		If a Police representation	All other cases
Application to review Premises Licence/Club Premises Certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of Police objection to a TEN		All cases	
Determination of film classification		All cases	

