

<b>REPORT TO:</b>	<b>FULL COUNCIL</b>	<b>AGENDA ITEM:</b>	<b>18</b>
<b>DATE OF MEETING:</b>	<b>8<sup>th</sup> NOVEMBER 2007</b>	<b>CATEGORY:</b>	<b>DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF ENVIRONMENTAL SERVICES</b>	<b>OPENPARAGRAPH NO:</b>	
<b>MEMBERS' CONTACT POINT:</b>	<b>Carl Jacobs 595717</b>	<b>DOC:</b>	
<b>SUBJECT:</b>	<b>3 Year review of Licensing Policy</b>	<b>REF:</b>	<b>c:\myfiles\com\ES\Lic/Auth</b>
<b>WARD(S) AFFECTED:</b>	<b>All</b>	<b>TERMS OF REFERENCE:</b>	

## **1.0 Recommendations**

- 1.1 That Committee approves the South Derbyshire District Council reviewed Statement of Licensing Policy.
- 1.2 Minor amendments to the Policy are undertaken with the delegated approval of the Director of Community Services, without reference back to full Committee.
- 1.3 The Full Committee discharges its function in relation to the Licensing Activities to the Licensing Committee with the exception of review of the Licensing statement which is required by the Licensing Act 2003 (2003 Act) every 3 years or prior to that date if required by this Authority.
- 1.4 Approval is sought for the continued delegated authority for the Authorisation of all licensable applications that are not subject to a substantiated appeal against the licence as per the Committee Report Approved 4<sup>th</sup> November 2004.

## **2.0 Purpose of Report**

- 2.1 To adopt the statement of licensing policy and approve minor changes to Policy.

## **3.1 Detail**

- 3.1 The Licensing Act 2003 requires that a Licensing Authority produces and consults upon their Statement of Licensing Policy which must be approved by the Councils Full Committee every 3 years. The cycle of consultation period ended on the 5<sup>th</sup> November 2007. All responsible authorities, the trade and trade associations have received copies of the proposed policy and the Policy has been placed on SDDC website. A few comments have been received and considered and where appropriate incorporated in to the policy statement. However if at any time within the next 3-year cycle of the policy, a major amendment is needed to the Policy due to a legal decision or other reason then it would be brought back to Full Committee for consideration and amendment.

- 3.2 The changes made to the Policy also have to be in line with the regulations and guidance issued by the Secretary of State for the Department Culture Media and Sport (DCMS) and guidance issued by LACORS (Local Authorities Coordinators of Regulatory Services).
- 3.3 We previously and continue to seek delegated authority to ensure that minor changes to the policy such as spelling mistakes or changes that do not affect the substance of the Policy can be authorised by the Director of Community Services without reference to the full Committee.
- 3.4 In order to streamline the licensing procedure the DCMS have recommended that Officers have delegated authority to approve all licence applications, which are not subject to any objections (relevant representations in the Act.). In accordance with previous Schemes of Delegation the following officers are suggested to authorise non controversial applications, Director of Community Services, Head of Environmental Services, Commercial and Licensing Manager, Pollution Control Manager, Private Sector Housing Manager. In general terms this is the approval of none contentious applications for Premise Licences & Personal Licences and all amendments to Licences.
- 3.5 The Review of the Statement of Licensing Policy must be approved prior to 7<sup>th</sup> January 2008 by full Committee,
- 3.6 The Committee report was written prior to the consultation period closing date, if any comments are made during the writing of the committee report and the closing date of consultation period, which amend the final policy statement, they will be brought to Committee for consideration.

#### **4.0 Financial Implications**

4.1 None

#### **5.0 Corporate Implications**

5.1 None

#### **6.0 Community Implications**

- 6.1 The legislation aims to provide the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.
- 6.2 The legislation additionally aims to give business greater freedom and flexibility and encourage more family friendly premises and further develop the rich culture of live music, theatre and dancing both in rural areas and towns.

#### **7.0 Background Papers**

7.1 Annex 1 - South Derbyshire District Council Statement of Licensing Policy

**DRAFT Statement of Licensing Policy**  
**for**  
**South Derbyshire District Council**

(As required by Section 5 of the Licensing Act 2003)

**ANNEX 1**

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# Licensing Act 2003

## Licensing Statement under the Licensing Act 2003

### 1.0 Introduction

- 1.1 The Policy was reviewed during September 2007 and Approved on the 8<sup>th</sup> November 2007, and comes into force on the 7<sup>th</sup> January 2008
- 1.2 The area served by South Derbyshire District Council ("The Council") includes the town of Swadlincote which is the main focus for employment, shopping and services in South Derbyshire. It serves as an employment, shopping and service centre. Melbourne and Hilton are now the district's next largest centres for population. The District is mostly rural in character with a number of villages and settlements such as the historically significant Repton and Shardlow and larger villages like Etwall, Linton, Hatton and Willington. About 4,000 people now live at Stenson Fields on the edge of Derby.
- 1.3 A large part of the District has been included within the designated area of the National Forest. This major environmental initiative is creating a new and attractive landscape for work, recreation and wildlife. There are potentially 400 premises within South Derbyshire that the new licensing requirements may affect, these include public houses, restaurants, takeaways, social clubs, village halls, supermarkets, outdoor events, theatres etc
- 1.4 The Council's vision for the future is to;
- Promote and enhance the social, economic and environmental well being of the community through the provisions of cost effective, customer focused services.
- The following principles will guide the Council's actions and govern relationships with local people and partners;
- making decisions openly with integrity
  - being accountable to the people of South Derbyshire for our decisions
  - being open and responsive to change
  - promoting equality of opportunity and treating people fairly in everything we do
  - working with partners in the public, private and voluntary sectors to achieve more than we can on our own
  - improving the quality of life for everyone now and for generations to come
  - valuing employees and the essential role they play in service provision.
- 1.5 We recognise the clear connections between the Licensing Act 2003 ("The Act") and our aspirations for the Council.
- 1.6 The Authority recognises that as part of implementing local authority cultural strategies, proper account should be taken to encourage and promote live music, dancing and theatre for the wider cultural benefit of communities generally. The Authority will monitor the impact of licensing on regulated entertainment, particularly live music, dancing and theatre. Where there is any indication that licensing requirements is deterring such events, the policy will be revisited with a view to investigating how the situation may be reversed. Only proportionate and reasonable conditions will be imposed on such events.

### Meaning of Comments Boxes

Comments boxes provided alongside the Licensing Statement do not form part of the Licensing Statement. Comments are not intended to provide an authoritative or comprehensive statement of the law and do not constitute professional or legal advice.

## 2.0 ***Aim of South Derbyshire District Council's Licensing Statement***

2.1 The aim of the Councils Licensing Statement is to secure the safety and amenity of residential communities while allowing a sustainable entertainment and cultural industry within the scope of the Act. In adopting this licensing statement the Council recognises the need to;

- secure the safety and amenity of our communities
- facilitate a safe and sustainable licensed trade that contributes to the economy and vibrancy of the District;
- reflect the needs of the community in relation to its cultural needs and diversity by supporting licensable activities, including live music, dancing, theatre and the other cultural experiences offered by such activities.

2.2 To achieve this aim the Council is committed to working in partnership with Derbyshire Constabulary, Derbyshire Fire and Rescue Service, commerce, the licensing trade, residents and others towards promoting the objectives as set out in this Licensing Statement.

2.3 The Licensing Statement sets out how we intend to promote the licensing objectives pursuant to section 5 of the Act. In accordance with the Act, the Licensing Statement will be reviewed at least every three years. In the preparation and publication of this licensing statement, the Council has had regard to the guidance issued by the Secretary of State for Culture Media and Sport under section 182 of the Act.

### ***Comment***

Before determining its Licensing Statement, the Council must consult the following;

- The Chief Officer of Derbyshire Constabulary;
- Derbyshire Fire and Rescue Service
- Representatives of holders of existing licenses in South Derbyshire;
- Representative of clubs registered situated in South Derbyshire.
- Representatives of business and residents in its area.

## 3.0 ***Scope of the Statement of Licensing Policy***

3.1 The Council's Statement of Licensing Policy (Licensing Statement) is concerned with the administration of the licensing functions required of the Council under the Act.

3.2 The statement of Licensing Policy will be relevant to all licensed Premises.

## 4.0 ***Interpretation***

4.1 Any words or expressions in this Licensing Statement have the meanings assigned to them under the Act or regulations made thereunder or, under section 182 guidance or, in absence, guidance produced by the Council. Nothing in the Licensing Statement can be regarded or interpreted so as to prejudice the Act or regulations made thereunder.

## 5.0 ***The Council's licensing function and the licensing objectives***

5.1 The Council will carry out its licensing functions promoting the four licensing objectives of the Act. In carrying out its licensing functions, the Council will have regard to the Secretary of State's guidance issued under section 182 of the Act and its Licensing Statement.

5.2 The four equally important licensing objectives are:

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

***these objectives are the only matters to be taken into account in determining an application and any conditions attached must be necessary to achieve the licensing objectives.***

5.3 The Council's licensing functions are relevant to the control of licensed premises, qualifying clubs and temporary events which are regulated by the Licensing Act 2003, when they are concerned with one or more of the following;

- retail sale of alcohol
- supplying alcohol by or on behalf of a club to, or to the order of, a member of the club
- The provision of **regulated entertainment**, given the meaning in Schedule 1 of the Act
- The supply of **late night refreshment** given the meaning in Schedule 2 of the Act
- Personal Licences

**Comment**

**Regulated entertainment** is defined in Schedule 1 of the Act. It includes the performance of a play; film exhibitions, indoor sporting events, boxing or wrestling events, performing live music and playing recorded music (except incidental music), dance performances and entertainment of similar descriptions

**Late night refreshment** is defined in Schedule 2 of the Act. It means the supply of hot food or hot drink to members of the public on or from any premises at any time between the hours of 11.00 p.m. and 5.00 a.m. The Act includes a number of exemptions.

5.4 Any terms and conditions attached to licences will be focused on matters, which are within the control of individual licensees, and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and **in the vicinity** of those premises and places. In accordance with section 182 guidance, licence conditions may only relate to matters, which the licensee can be expected to control.

**Comment**  
***In the Vicinity***  
*Whether or not matters can be regarded as being "in the vicinity" of licensed premises or places is ultimately a matter of fact to be decided by the courts in cases of dispute.*

5.5 Subject to the requirements of the Act, applicants applying for variation during the transition period, may choose to seek a variation to remove or vary any condition which the Council is required to impose, under paragraph 6(6) Schedule 8, in reproducing the effect of;

- (a) the conditions subject to which the relevant existing licence has effect at the time the application is granted, or
- (b) if there is more than one relevant existing licence, all the conditions subject to which those licences have effect at that time,

This does not prejudice the measures included in the Act, which allow for variation in any licence at any time as provided in the Act.

5.6 The Council recognises that the Act is not a mechanism for the control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business, which holds the licence, certificate or permission.

## **6.0 The Council's approach to applications for premises licences & club premises certificates**

- 6.1 The Council recognises that each licensing application must be dealt with on its own individual merits, in the context of the four licensing objectives. Unless relevant representations are received from responsible authorities or interested parties, there is no provision for a licensing authority to impose conditions on a licence other than according to the voluntary steps, which the applicant proposes to make in their application. Furthermore, there is no provision for a licensing authority itself to make representations. If no representations are made in respect of an application, the authority is obliged to issue the licence on the terms sought.
- 6.2 Applicants should set out their proposals for addressing the licensing objectives particularly in their Operating Schedules. These proposals should include the necessary safeguards, which can be attached to licences.
- 6.3 Whilst not a requirement of the Act, applicants may wish to provide supporting material not forming part of the Operating Schedule which confirm that arrangements are in place under separate legislation.
- 6.4 The details provided in the Operating Schedule and application form enable an applicant to demonstrate to the Council the steps they intend to take to promote the four licensing objectives. These details will include the location, character, condition, nature and extent of the proposed use and the customer profile likely to use the premises.

### ***Comment***

#### ***The four licensing objectives that Operating Schedules need to include***

- Prevention of crime and disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from harm

### ***Comment***

Any application not properly made will be returned to the applicant. The time-scales contained in the Act will not begin until a properly completed application is received.

- 6.5 Applications will not be valid unless properly made.
- 6.6 Nothing in the licensing statement will prevent any person from applying for a variety of permissions.

## **7.0 Right to Make Representation and Consultation**

- 7.1 In accordance with the Act for premises licenses and a club premises certificate, the Council must consider relevant representations part of the licensing process. Where the Council is of the opinion that the representation are frivolous or vexatious, the Act prohibits them being considered as relevant representation.
- 7.2 Interested parties or responsible authorities are the only one's that can only make relevant representation

### **Interested Party means:**

- a person or body representing people living in the vicinity of the premise; which now includes Parish Council in their own right
- a person involved in a business or body representing people involved in a business in the vicinity;



**Responsible Authority means -:**

- the Chief Constable of Derbyshire Constabulary;
- Derbyshire Fire and Rescue Service;
- Derbyshire County Council's Child Protection Committee;
- the Health and Safety Enforcing Authority under Health and Safety at Work etc. Act 1974;
- the Council as the local planning authority; or under its powers to minimise or prevent the risk of environmental pollution or of harm to human health;
- Other Local Authorities in whose area part of the premises is situated if the premises straddle the District, boundary; or,
- Other responsible Authorities as included in the Act.

**Comment****Relevant representations may only relate to:**

- matters about the likely effect of the grant of the premises licence on the promotion of the licensing objectives; or
- The Chief Constable may appeal against an application for a new designated premise supervisor on a premise licence.

- 7.3 The Act and regulations prescribed by the Secretary of State detail the consultation requirements placed on the Council and applicants. The Council will inform Community Forums and Parish Councils of new premises / club premises applications, within their areas.
- 7.4 The Council will refer complaints about licensed premises, club premises temporary events or licensed individuals to its own appropriate service teams such as Health and Safety or Pollution Control. It may also refer them to other agencies such as Derbyshire Constabulary or the Derbyshire Fire and Rescue Service for their consideration, in accordance with any enforcement protocols.

**8.0 Cumulative Impact**

- 8.1 The Council will not consider the question of 'need' in determining an application. This is not a matter for a licensing authority or its Licensing Statement. 'Need' is a matter for planning committees and for the market and should be considered in the context of an absence or excess of activities / premises. The Council recognises that in exceptional circumstances the cumulative impact of the number, type and density of licensed / club premise in a given area, may seriously undermine the licensing objectives. Saturated areas are those, which experience exceptional problems of disorder and nuisance over and above the impact of the individual premises. Licence conditions may only relate to matters which the licensee can be expected to control.

**Comment**

***The meaning of "club premises"***  
The term-licensed clubs is not to be confused with 'nightclubs'. The Act defines club premises as those premises which are a 'qualifying' members clubs to which public access is restricted and where alcohol is supplied other than for profit.

- 8.2 Under the Act the Council can adopt a saturation policy if it receives evidence that an area is experiencing problems of nuisance and disorder caused by too many licensed premises.  
**The Council has not received any evidence that would make it consider that the adoption of a saturation policy is presently necessary.**
- 8.3 The Council would have to adopt a saturation policy before it would be able to consider whether individual new applications relating to a saturated area should be approved on grounds that they will adversely impact on the relevant licensing objective.
- 8.4 Evidence would need to be submitted by a responsible authority or an interested party (see comment box page 7) to establish that an area is saturated.

8.5 Steps to be followed in considering whether to adopt a special policy within the Licensing Statement are;

- identification of concern about crime and disorder or public nuisance;
- consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point when a cumulative impact is imminent;
- consultation with those specified by section 5(3) of the Act as part of the general consultation required in respect of the whole Licensing Statement;
- subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of this Guidance in the Licensing Statement;
- Publication of the special policy as part of the licensing statement required by the Act.

8.6 A saturation policy would not prevent the Council considering further applications for premises licences. These applications would need to be assessed on their individual merits while taking into account the foreseeable impact on the saturated area. The applicant would need to provide information to address these special circumstances.

8.7 The effect of adopting a saturation policy is to create a presumption that applications for new premise licences or club premise certificates or material variations will normally be refused. If relevant representations to that effect are received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced.

8.8 Applicants would need to address the saturation policy issues in their Operating Schedules in order to challenge such a presumption. However, it must be stressed that responsible authorities or interested parties still need to make a relevant representation before the council may lawfully consider giving effect to its saturation policy. If no representation is received, it would remain the case that any application must be granted in terms that are consistent with the Operating Schedule submitted.

8.9 Any responsible authority or interested party can make representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives, even if there is not a saturation policy. The Council regards the adoption of a saturation policy as being exceptional. Many other mechanisms exist outside the licensing regimes that are available to address such issues. For example:

- 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 Council
- the provision of CCTV surveillance in town centres, provision of public conveniences open late at night, street cleaning and litter patrols
- powers of the Council to designate parts of the District as places where alcohol may not be consumed publicly and the confiscation of alcohol from adults and children in these areas
- enforcement of the normal 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 that are selling alcohol to people who are drunk.

**Comment**

The Local Authorities (Alcohol Consumption in Public Places) Regulations 2001 restricts the consumption of alcohol in areas designated by the Council

- the power of Derbyshire Constabulary to instantly close down, for up to 24 hours, any licensed premise or temporary event on the grounds of disorder, the likelihood of disorder or excessive noise emanating from the premise.

8.10 Quotas will not be used by the Council as this does not take into account the individual characteristics of a premise. Proper regard will be given to those differences and the differing impact they will have on the local community.

## **9.0 Licensing Hours**

9.1 The Council will determine licensing hours on the individual merits of each application, but the presumption will be to grant the hours requested unless there are specific objections to those hours raised by responsible authorities or interested parties on the basis of the licensing objectives. The Council recognises that longer licensing hours for the sale of alcohol can avoid large numbers of people leaving premises at the same time. This in turn can reduce the friction at late night fast food outlets, provision of private hire vehicles and other sources of transport, which can lead to disorder and disturbance. The Council will not impose conditions known as zoning that artificially fix opening hours for any premises or area of the District.

9.2 The Council may impose stricter conditions with regard to noise control in areas, which have denser residential accommodation, although this will not prejudice consideration of individual applications where the licensing objectives are observed.

9.3 With regard to shops, stores and supermarkets, the Council will allow the sale of alcohol for consumption off the premises at any time when the retail outlet is open for shopping unless there is a very good reason for restricting them, such as disorder or disturbance. Derbyshire Constabulary would normally be asked to make comment on any alleged patterns of disorder or disturbance.

9.4 Where specific restrictions on trading hours have been applied by the planning authority, licensing hours will not be permitted beyond these times.

## **10.0 Use of Standardised Conditions**

10.1 Conditions may only be attached to a premise licence or club premise certificate if relevant representations are received and a Licensing and Appeals Sub Committee confirms them (except for conditions drawn from the applicant's operating schedule, which are voluntary propositions). Any conditions that are attached to licences and certificates will be tailored to the individual style and characteristics of the premises and events concerned. Conditions will only be imposed where there is a need to promote the licensing objectives.

10.2 Standardised conditions will be avoided, but the Council may draw from the pools of conditions contained in Annex D of the Department Culture Media and Sport Guidance.

## **11.0 Crime and Disorder**

11.1 The Council will expect the applicant to detail the steps he/she proposes to deter and prevent crime and disorder.

11.2 Here are some issues, which applicants may need to comment on in their Operating Schedule

- The applicants intention to engage with recognised local liaison groups, such as pub watch, and/or other groups / organisations such as the Council, Derbyshire Constabulary, the Community Safety Partnership and other agencies working to promote the licensing objectives in the District. Applicants might make clear their intention to adopt reasonable safeguards promoted by the recognised groups / organisations.

- Acknowledgement and implementation of the Code of Practice produced by the Portman Group, which seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older.
- Provision of CCTV and recording equipment for inside and outside the premises.
- Radio network communication
- Search facilities, including, as appropriate metal detection equipment for concealed weapons etc
- Use of safety and shatter-resistant glasses and receptacles
- Responsible pricing policies for alcoholic drinks
- Measures to address the incidence supply and consumption of drugs
- Proof of age monitoring arrangements
- Signage and crime prevention notices
- Door supervision
- Recording of incidents
- Capacity limits
- Any other relevant matter(s)

## **12.0 Public Safety**

12.1. Licensees must ensure the physical safety of people using the relevant premises or place.

12.2 The Council recognises the protection afforded by the Health & Safety at Work, Fire Precautions and other safety legislation, and will strive to avoid the imposition of conditions that represent a duplication of existing legislation and other regulatory regimes that place obligations on duty holders. However, where the legislation does not cover the unique circumstances of some regulated activities, the Council will consider attaching conditions to premises licenses and club premises certificates where these are necessary for the promotion of the public safety licensing objective. The Council will expect the applicant to detail the steps he/she proposes to ensure public safety.

Here are some, areas that applicants may need to comment on in their Operating Schedule;

- The relevance to and, if applicable, the implementation of Health & Safety at Work, Fire Precautions and other safety legislation
- Provision of competent personnel
- Maintenance of electrical, fire detection / alarm, emergency lighting, gas appliances and other relevant plant and systems.
- Capacity limits
- The facilities, arrangements and procedures to minimise the harmful effects of drug misuse
- Any other relevant matter(s).

### 13.0 Public Nuisance

13.1 The applicant will only be expected to prevent public nuisance that is under their direct control.

Here are some issues which applicants may need to comment on in their Operating Schedule;

- Prevent noise and vibration escaping from the premises, such measures may include sound proofing, air conditioning, acoustic lobbies and noise limiters;
- Prevent disturbance by customers arriving at, or leaving the premises, which is usually of greater significance later into the evening and in the early morning. Schedules may need to address the potential disturbance caused by queuing;
- Prevent potential litter problems in the vicinity of the premises and caused by their business activity. These could include the distribution of flyers, fly posting, food packaging left by customers from late night refreshment premises;
- Control nuisance associated with public disturbance;
- The generation of odour, for example from the preparation of food
- Any other relevant matter(s)

13.2 The Council recognises that the control of nuisance that is not within the vicinity of the premises or the responsibility of the licence holder falls outside the scope of the Act.

13.3 The Council recognises the cultural benefit of live entertainment / performances, including; music, singing, dancing, carnival events, comedians, children's entertainers and performance artists such as jugglers, mime artists and theatre. A cultural strategy would promote the enjoyment, involvement and celebration of cultural experiences. The potential for limited disturbance in neighbourhoods will be balanced with these benefits, particularly for children.

### 14.0 Children

14.1 The Council recognises the great variety of premises for which licences may be sought, for instance theatres, cinemas, restaurants, pubs, night clubs, cafes, takeaways, community halls and schools.

14.2 The Council will not impose conditions that restrict access to children to any type of premises unless it is considered necessary to protect them from harm.

14.3 For example premises which would give rise for concern are;

- where entertainment or services of an adult or sexual nature are commonly provided
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- where there have been convictions of members of the current staff at the premises for serving alcohol to minors or in premises with a reputation for underage drinking

***Comment***

It is an offence under section 145 of the Act for an unaccompanied child under the age of 16 to be present in premises primarily or exclusively used for the supply or sale of alcohol. An adult must accompany children

***Comment***

It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to apply common sense to this matter. However such entertainment or services, for example, would generally include topless bar staff, striptease, lap, table or table dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism or entertainment involving strong and offensive acts.

- with a known association with drug taking or dealing
- where there is a strong element of gambling on the premises (but not, for example, the simple but not for example, the presence of a small number of cash prize gaming machines)

- 14.4 It would be unusual for the Council to completely prohibit access of children from premises. The Council may use the following options in order to protect children from harm;
- limitations on the hours when children may be present
  - age limitations
  - limitations or exclusions when certain activities are taking place
  - requirements for accompanying adult
  - full limitations of people under 18 years old from the premises when certain licensable activities are taking place.

- 14.5 The Council will not impose any condition, which requires the admission of children to any premises.

- 14.6 Where the Council imposes no restriction on access by children, it is for the discretion of the individual licensee or club to ensure the licensing objectives are observed.

- 14.7 The Council will liaise with Derbyshire Constabulary and Derbyshire County Council's Trading Standards about the extent of unlawful sale and consumption of alcohol to minors and, as appropriate, will be involved in strategies to control or prevent these unlawful activities and to pursue prosecutions.

- 14.8 The Council recognises the protection afforded to children under The Protection of Children Act 1999 ("the 1999 Act") which places obligations on Child Care Organisations. Additionally, other organisations are able to make use of the scheme set up to support the 1999 Act, which would include obtaining information from the Criminal Records Bureau. The holder of a premise licence, a club premises certificate and premises users must take appropriate steps, including, where necessary, the use of these services to ensure the protection of children from harm.

### ***Cinemas and Children***

- 14.9 In the case of premises giving film exhibitions, the Council expects applicants to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or other approved body

#### **Comment**

The Act makes it mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films that the admission of children to the showing of any film be restricted in accordance with the recommendations given by a body designated under section 4 of the Video Recordings Act 1984 - the British Board of Film Classification is the only body which has been so designated - or by the licensing authority itself

#### **Comments**

The protection of children Act 1999 defines "child care organisations" to mean an organisation:

- a) which is concerned with the provision of accommodation of, social services or health care services to children or the supervision of children;
- b) whose activities are regulated by virtue of any prescribed enactment, and
- c) which fulfils such conditions as may be prescribed under "the 1999 Act".

## 15.0 Temporary Events Notices

- 15.1 The Act provides for certain occasions when small – scale events where no more than 500 people at a time and lasting for up to 96 hours do not need a licence providing that advance notice is given to the Police and the Licensing Authority.
- 15.2 The Act states that at least 10 days notice must be given to the Licensing Authority and Derbyshire Constabulary before a temporary event can take place
- 15.2 Applicants are encouraged to provide at least three months notice to the Council of their intention to hold these events.

*Comment*

The Act includes further limitations on the use of Temporary Event Notices. The Police can only object to a Temporary Event Notice if the event is likely to undermine the crime and disorder objective.

*Comment*

**What is a Provisional Statement?**  
The Act provides a mechanism whereby those engaged in or about to engage in construction or development work at premises to be used for licensable activities, or already used for those activities, can obtain a certain degree of assurance about their potential trading conditions. By obtaining a **provisional statement** they can receive at an early stage, a statement describing the likely effect of the intended licensable activities on the licensing objectives and an indication of the prospects of any future application for a premises licence.

## 16.0 Integrating Strategies

- 16.1 The Council will ensure its licensing function promotes the licensing objectives through its decision making process and by appropriate use of its powers (under the 2003 Act and more widely), observance of its responsibilities and through liaison and partnership work. The Council will secure proper integration strategies in carrying out its licensing function with the Local Plan, planning, local crime prevention, community safety, transport, tourism and cultural strategies. Applicants will be expected to have taken into account the Council's integrating strategies when making applications and determining their operating schedules.
- 16.2 The Council recognises the importance of attaching licence conditions that reflect local crime prevention strategies.
- 16.3 Where the Council has concerns or receives valid representations From Derbyshire Constabulary, it will, as necessary, liaise with Derbyshire County Council's Public Transport Unit and other bodies to address the need for the swift and safe dispersal of people to avoid concentrations which could produce disorder and disturbance.
- 16.4 Arrangements will be made for the appropriate Council Committee dealing with licensing matters to receive reports on the following to ensure these are reflected in their consideration.
  - the needs of the local tourist economy and cultural strategy in the District
  - the employment situation in the District and the need for investment and employment where appropriate.
- 16.5 The Council will expect each applicant to have obtained the necessary planning permission in respect of the premises or club premises applied for. Applications for licences should not be a re-run of the planning application and should not **go against** decisions taken by the Development Control Committee. The Council recognises it may receive applications for provisional statements under the Act for premises applications even though the planning process has not progressed beyond outline planning permission. The licensing committee will look on the merits of the application but may refuse to grant a licence following representations from the local planning authority if the activity to be authorised would amount to an unlawful use of the premises and it does not comply with one or more of the licensing objectives. The applicant would have to demonstrate any special circumstances to justify a departure from this policy.
- 16.6 To enable the planning authority will have regard to licensing matters when taking its decisions and avoid unnecessary overlap, the Planning Services Manager will provide reports to the planning committee on the situation regarding licensed and club premises in the area. Reports to the planning committee may include information concerning the general impact of alcohol related crime and disorder.

## **17.0 Promotion of Racial Equality**

- 17.1 The Council recognises that the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places an obligation on all public authorities to have regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons and different racial groups.
- 17.2 In general the Council already records the number of racial incidents in accordance with the Council's Racial Incident Policy. This already includes incidents in and around licensed premises and information obtained from other agencies.

## **18.0 Human Rights Act 1998**

- 18.1 The Council will implement the Act in a manner consistent with the Human Rights Act 1998.

## **19.0 Avoidance of Duplication with other regulatory regimes**

- 19.1 The Council acknowledges the efforts and responsibilities of other regulators, for instance Derbyshire Constabulary, Derbyshire Fire and Rescue Service, Health and Safety Enforcing Authority under other legislation, which benefit the promotion of the licensing objectives. The Council intends only to impose conditions on premise licences and club premise certificates where other legislation does not already places obligations on employers and operators e.g. The Health and Safety at Work etc Act 1974 and the Regulatory Reform (Fire Safety) Order 2005.
- 19.2 Where other legislation does not cover the unique circumstances of some licensable activities, the Council will consider attaching conditions to premises licences and club premises certificates where these are necessary for the promotion of the licensing objectives.

## **20.0 Enforcement**

- 20.1 The Council will provide adequate resources to enforce the requirements of the Act in accordance with its enforcement policy, any enforcement protocols, agreed with other agencies and the Government's Enforcement Concordat.
- 20.2 In determining the most appropriate course of action to secure the licensing objectives, the Council will take into account other separate legislation and other enforcement bodies' powers.
- 20.3 The responsible authorities and Licensing Authorities have agreed an enforcement protocol, copies of the protocol can be obtained from South Derbyshire District Council. All enforcement will be both proportionate and risk-based, targeting high-risk premises, which require greater attention, while applying lighter touch approach in respect of low risk premises.

## **21.0 Designated Premises Supervisor and Personal Licence holders**

- 21.1 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment.
- 21.2 The Council accepts that not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder. Premises at which alcohol is sold or supplied should ensure that adequate risk assessments have been undertaken in order to ensure that there are adequate arrangements and numbers of at personal licence holders.



21.3 The Council recognises the responsibility of personal licence holders, particularly the Designated Premises Supervisor in overseeing the day-to-day sale of alcohol. The Council expects there to be clear control in the absence of the Designated Premises Supervisor.

**22.0 Review of a Premises Licence or Club Premise Certificate**

22.1 The Council recognises the importance of reviewing its premise licences. The proceedings set out in the Act for reviewing premises licences represent a key protection in problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm. It is important that prior to the commencement of the review process that responsible authorities or interested parties in regard to working in partnership will try to give licensees early warning of any concerns identified at the premises.

22.2 The licensing authorities role will be to administrate the process and determine its outcome at a hearing where an evidential- basis for the allegations made will need to be submitted.

22.3 Where crime prevention objective is being undermined it is expected that revocation of the licence – even in the first instance – will be seriously considered.

**23.0 Administration and Delegation of Functions**

23.1 The Council recognises many of the decisions and functions under the Act are purely administrative in nature. In the interest of speed, efficiency and cost-effectiveness, the delegation set out in the Council's Constitution sets out various duties of its licensing committee and officials.  
(Table 1 – illustrates the Council's Constitution in this respect).

23.2 In special cases applications normally dealt with by officers will be passed up for committee determination.

**Comment**

The review of a premise licence or a club premise certificate can be requested at any time only by an interested party or a responsible authority provided it is relevant to one or more of the licensing objectives, and is not frivolous, vexatious or is a repetition. The Licensing Authority itself can not initiate a review. The Council will hold a hearing to determine the application for a review.

## 24.0 Contact Details

### Responsible authority contacts and addresses

<p><b>Licensing Section / Authority</b>          South Derbyshire District Council          Civic Offices          Civic Way          Swadlincote          Derbyshire          DE11 0AH</p> <p>Telephone: (01283) 595890          Fax: (01283) 595855          e-mail: <a href="mailto:licensing2@south-derbys.gov.uk">licensing2@south-derbys.gov.uk</a></p>	<p><b>Police</b></p> <p>Derbyshire Constabulary          Licensing Section          Derby Divisional HQ          St. Mary's Wharf          Prime Park Way          Chester Green          Derby          DE1 3AB</p>	<p><b>Fire &amp; Rescue</b></p> <p>Area Manager          Derbyshire Fire &amp; Rescue Service          South Area Licensing          Fire Station          Ascot Drive          Derby          DE24 8GZ</p>
<p><b>Health &amp; Safety Enforcement</b></p> <p><i>Split between Local Authority and Health &amp; Safety Executive (When not enforced by Local Authority)</i></p> <p>Health and Safety Executive          North Midlands Area Office          Pearson Buildings          55 Upper Parliament Street          Nottingham          NG1 6AU</p>	<p><b>Planning</b></p> <p>Planning Services Manager          Planning Department          South Derbyshire District Council          Civic Offices          Civic way          Swadlincote          Derbyshire          DE11 0AH</p>	<p><b>Local Authority</b></p> <p><i>having statutory functions in relation to minimising or preventing the risk of pollution of the environment or harm to human health.</i></p> <p>Pollution Control Manager          Environmental Health Division          South Derbyshire District Council          Civic Offices          Civic Way          Swadlincote          Derbyshire DE11 0AH</p>
<p><b>Body Responsible for Welfare of Children</b></p> <p>Safeguarding Children Board          Licensing Sub Group          St Helena Centre          Sheffield Road          Chesterfield          S41 7LU</p>	<p><b>Trading Standards</b></p> <p>Derbyshire County Council          Cultural and Community Section          Trading Standards Service          Chatsworth Hall          Chesterfield Road          Matlock          DE4 3FW</p>	

Table 1

## Licensing Delegation Scheme – To be taken from the Council's Constitution

Matter to be dealt with	Committee	Officers
Application for personal licence	If a representation from Derbyshire Constabulary	If no representation made
Application for personal licence with unspent convictions	All cases	
Application for premises licence/club premises certificate	If a representation made	If no representation made
Application for provisional statement	If a representation made	If no representation made
Application to vary premises licence/club premises certificate	If a representation made	If no representation made
Application to vary designated personal licence holder	If a representation from Derbyshire Constabulary	All other cases
Request to be removed as designated personal licence holder		All cases
Application for transfer of premises licence	If a representation from Derbyshire Constabulary	All other cases
Applications for Interim Authorities	If a representation from Derbyshire Constabulary	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint / <i>objection</i> is irrelevant frivolous vexatious or repetitious		All cases
Decision to object when the Council is a consultee and not the lead authority		All cases
Determination of a representation from Derbyshire Constabulary to a temporary event notice	All cases	