



# DRAFT Statement of Licensing Policy

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## **Foreword**

This is the third review of our Statement of Licensing Policy which Teigbridge District Council ('the Council') is required, by law, to carry out every five years.

Since the Licensing Act 2003 came into force in November 2005, the Authority has gained valuable experience in the administration and enforcement of the legislation. We have been keen to develop good working relationships with all licence holders and I hope we have succeeded in achieving this aim. We recognise that licensed premises come in all shapes and sizes – whether they are a public house, a restaurant, a community hall or the village shop selling a few bottles of wine – and that our licensing policy must be sufficiently flexible to reflect their differing character and needs. This policy therefore seeks to provide information and guidance to applicants, licence holders, interested parties and responsible authorities on the general approach that the Authority will take when assessing applications and sets out the operating standards we will expect to see. In shaping the Policy, we have also tried to ensure that it is consistent with and supports one of the Council's priorities outlined in its Corporate Plan 2011-15, namely wellbeing, keeping our environment clean and litter free is important for our communities and our economy. The Corporate Plan is currently being updated.

This revision of our Policy has been carried out as part of the closer working arrangements between the Devon authorities. It also makes good sense – given similar characteristics and demographics of some of the Districts - to align our policies as closely as practicable in order to achieve a consistent approach to regulation. This should assist the Responsible Authorities – particularly the police – as it will provide a common baseline for regulation throughout the Authority area.

We will endeavour to apply the Policy fairly, consistently and in a way which promotes the objectives set out in the legislation. Good decision-making makes for good licensing regulation. Officers and Members of the Authority are trained to have a sound understanding of licensing law and the principles which underpin it. This means that applicants and licence holders can be confident that their applications will be dealt with competently and professionally.

The leisure and entertainment industry is a major contributor to the economy of the District. It attracts tourists and visitors to our area, makes for vibrant towns and communities and is a major employer. The Council recognises the value of the industry to the economic health of the area and is keen to promote well managed premises. However, the Council – as the Authority – also has to take account of the needs of its residents who have the fundamental human right to the peaceful enjoyment of their property and possessions. Through this policy, the Authority will try to reconcile these often conflicting demands, balancing the legitimate needs of business with the rights of persons living near licensed premises.

# 1 INTRODUCTION

*NB. This Policy is intended to provide general guidance only. It does not constitute a definitive statement of law. Applicants who require legal advice on a specific licensing topic are advised to consult a licensing solicitor. Text in the shaded boxes is advisory or explanatory and intended only to give general assistance.*

- 1.1 Section 5 of the Licensing Act 2003 requires each Authority “to determine a policy with respect to the exercise of its licensing functions”.

This Statement of Licensing Policy (“the Policy”) draws its Authority from the Licensing Act 2003 (“the Act”) and has been prepared in accordance with revised Guidance issued by the Home Office under section 182 of the Act in October 2012.

The Policy has four main purposes:

- to assist the Authority in determining licence applications in a consistent and equitable manner,
- to inform and advise applicants,
- to inform and advise residents and businesses, and
- to inform a court at appeal.

- 1.2 The Policy relates to the licensable activities identified by the Act, namely: -

- Retail sale of alcohol
- Supply of alcohol to club members
- Provision of 'regulated entertainment' - to the public, to club members or with a view to profit. Regulated entertainment is defined by the Act as:
  - A performance of play
  - An exhibition of a film
  - An indoor sporting event
  - Boxing or wrestling entertainment
  - A performance of live music
  - Any playing of recorded music
  - A performance of dance
  - Entertainment of a similar description to live music, recorded music or dance.
  - The supply of hot food and/or hot drink from any premises including mobile food stalls between 11pm and 5am.

- 1.3 This Policy sets out those matters that the Council as the Licensing Authority (“the Authority”) will normally take into account when determining licence applications. Additionally, the document seeks to provide clarity for applicants, residents and members of the business community, thus enabling them to make plans to move to, remain in or invest in the District with some measure of certainty.

*Section 5 of the Licensing Act 2003 (as amended by s.122 of the Police Reform and Social Responsibility Act 2001) 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 Licensing Authority carries out any function in respect of individual applications made under the terms of the 2003 Act.*

*The Licensing Authority will keep this policy statement under continual review and make such changes as it feels are necessary in accordance with any changes in the legislation and with local circumstances.*

**Where revisions are made, the Authority will publish a statement of those revisions.**

## 1.4 The Authority Area

Teignbridge is about 260 square miles (67 hectares) in area and includes part of Dartmoor National Park (98 square miles).

Teignbridge is an area between Torquay and Exeter, the eastern park of Dartmoor and a rural area to the south and west of Exeter. The coastline includes the Teign and Exe Estuaries, seven of our beaches meet the European bathing water standards and hold Blue Flag or Seaside Awards.

Teignbridge has over 20 countryside parks and nature reserves, including a National Nature Reserve at Dawlish Warren, several Local Nature Reserves and many smaller open spaces for general recreation, family attractions, historic towns, delightful villages and the beauty of Dartmoor.

Nearby are city facilities of Exeter and Plymouth. With an attractive coast and countryside it makes Teignbridge a highly desirable area to live in.

The residential population of Teignbridge, as measured in the 2011 census, was 124,200. There are just over 54,003 households and just over 5,000 businesses in Teignbridge. Over 42.4% of the population living within the Dartmoor National Park live in the Teignbridge area.

The cultural aims are 'to continue to develop and protect a vibrant, vital and sustainable culture for Teignbridge that recognises and promotes the district's uniqueness'.

At the time of preparing this Policy, the Authority has responsibility for regulating:  
Figures as at June 2015.

- 520 alcohol-licensed premises/clubs
- 81 non-alcohol-licensed premises
- 538 temporary events (2014/15 figure).

The corporate aims are to 'make the district of Teignbridge a better place to be for all its inhabitants and visitors'.

## **2. CONSULTATION**

2.1 In preparing this Policy the Authority has consulted the following:-

- The Chief Officer of Police, Devon & Cornwall Police
- Devon & Somerset Fire and Rescue Service
- Public Health Devon
- Devon Safeguarding Children's Board
- Devon County Council Trading Standards
- Representatives of holders of premises licences issued by the Authority
- Representatives of holders of club premises certificates issued by the Authority
- Representatives of holders of personal licences issued by the Authority
- Representative of businesses and residents in its area

Consultation was carried out between \*\*\*\*\* and \*\*\*\*\* in accordance with the HM Government Code of Practice on Consultation.

2.2 Proper weight has been given to the views of organisations and individuals consulted prior to implementing this Policy.

2.3 This Policy was formally adopted by the Council on \*\*\*\*\*.

2.4 The Policy will remain in existence for a maximum period of five years and will then be subject to review and further consultation. The Authority may revise the Policy at any time during the five year period if it considers it appropriate to do so. The Authority will consult on any substantial revisions to the Policy.

*Section 5(3) of the Act places a legal obligation on licensing authorities to consult the above individuals, groups and organisations when determining and publishing its Statement of Licensing Policy. However, the Licensing Authority may consult beyond the statutory requirements if it believes this is necessary and appropriate.*

## **3. THE LICENSING OBJECTIVES**

3.1 The Council, as the Authority, has a duty under Section 4 of the Act to carry out its licensing functions with a view to promoting the four licensing objectives. Each objective is of equal importance and there are no other licensing objectives. The licensing objectives are:

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

3.2 These objectives are the only matters to be taken into account in determining applications and any conditions attached must be necessary to achieve the licensing objectives. If there are no relevant representations then an application must be granted and will be subject only to the mandatory conditions and the applicant's operating schedule.

### 3.3 Prevention of Crime and Disorder

3.3.1 The Authority will endeavour to reduce crime and disorder throughout the district in accordance with its statutory duty under section 17 of the Crime and Disorder Act 1998. Where relevant representations are made, the Authority may look more favourably upon applications where the applicant has addressed the issue of preventing crime and disorder in a positive way.

3.3.2 The Authority will require applicants to take appropriate and proportionate measures to promote the crime and disorder objective. Such measures may include those listed in the Authority's guidance for applicants can be viewed at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003).

### 3.4 Public Safety

3.4.1 All premises will be risk-rated by the Authority, and are to be subject to both announced and unannounced inspections (including multi-agency inspections).

3.4.2 The Authority will require applicants to take appropriate and proportionate measures to promote the public safety objective. Such measures may include those listed in the Authority's guidance for applicants can be viewed at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003).

### 3.5 Prevention of Public Nuisance

3.5.1 Public nuisance can include low level nuisance affecting a few people living locally, as well as a major disturbance affecting the wider community. Nuisance is generally attributable to noise (from loud music or from rowdy customers), vibration, light pollution, noxious smells and litter. Applicants will be required to demonstrate that they have adequate measures in place in their applications to prevent nuisance and disturbance.

3.5.2 Noise from people entering and leaving licensed premises, particularly late at night or in the early hours of the morning, can be a significant problem. Customers under the influence of alcohol are often less inhibited about their behaviour and may be unaware of the noise they are creating. As background noise levels are lower at night, any noise is more intrusive for residents trying to sleep.

3.5.3 The Authority will require applicants to take appropriate and proportionate measures for the prevention of public nuisance. Such measures may include those listed in the Authority's guidance for applicants can be viewed at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003).

### 3.6 Protection of Children from Harm

3.6.1 The Authority recognises the great variety of premises for which licences may be sought. These include theatres, members' clubs, sports clubs, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls, schools and off-licences. The Authority will not restrict access by children to any particular type of premises unless it is considered necessary to do so in order to protect them from harm.

3.6.2 The Authority will require applicants to take appropriate and proportionate measures for the protection of children from harm. Such measures may include those listed in the

Authority's guidance for applicants can be viewed at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003).

## 4. THE LICENSING FUNCTION

### 4.1 Regulation

4.1.1 Licensing is about regulating licensable activities on licensed premises, in qualifying clubs and at temporary events under the provisions of the Act. Licensing also involves making judgements about risk, in particular, the risk of any adverse effect on the licensing objectives of granting licences and club premises certificates.

4.1.2 The licensing function is only one means of delivering the licensing objectives and should not be seen as a panacea for solving all alcohol and entertainment-related problems within the community. The Authority recognises that as well as the licensing function there are a number of other mechanisms for addressing alcohol-related crime and disorder such as:

- planning controls
- Community Alcohol Partnerships
- installation and/or expansion of CCTV systems in problem areas
- powers to designate parts of the District as places where alcohol may not be consumed
- publicly (Designated Public Places Orders)
- S.27 and s.30 Dispersal Orders (Anti-Social Behaviour Act 2003)
- police powers to close some premises for up to 24 hours in extreme cases of disorder
- or excessive noise (Licensing Act, ss.160 & 161)
- the power of Responsible Authorities and other persons to apply for a review of the licence (see 9.2)

The Authority will therefore continue to work in partnership with other licensing authorities, the Responsible Authorities, other agencies such as South Devon and Dartmoor Community Safety Partnership and with local businesses and residents in a co-ordinated approach to tackling alcohol-related crime and anti-social behaviour.

4.1.3 In discharging its licensing function, the Authority will comply with relevant legislation:

(i) Legislation

- Section 17 Crime and Disorder Act 1998 \*
- The European Convention on Human Rights, which is applied by the Human Rights Act 1998 \*
- The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 \*

And have regard to

(ii)

- Health and Safety at Work etc. Act 1974 \*
- Environmental Protection Act 1990 \*
- Town and Country Planning Act 1990 \*
- Crime and Disorder Act 1998\*

- Private Security Industry Act 2001 \*
- Anti-Social Behaviour Act 2003 \*
- Anti-Social Behaviour, Crime and Policing Act 2014\*
- Building Regulations \*
- The Regulatory Reform (Fire Safety Order) 2005\*
- Clean Neighbourhoods and Environment Act 2005
- Health Act 2009
- Violent Crime Reduction Act 2006\* [\\* www.legislation.gov.uk](http://www.legislation.gov.uk)
- Policing and Crime Act 2009\*
- Police Reform and Social Responsibility Act 2011\*

(iii) Strategies

- Current South Devon and Dartmoor Community Safety Policy
- Current Government Alcohol Strategy
- LGR/TSI Code of Practice on Test Purchasing
- The Council Corporate Plan - current

(iv) Policies / Codes of Practice

- Regulatory Compliance Code (BIS)
- The Council Enforcement Policy
- Devon County Council Transport Plan
- Code of Practice on Environmental Noise Control at Concerts (Noise Council)

(v) Guidance

- Home Office Guide to Safer Clubbing Guide
- Home Office Guidance issued under Section 182 of the Licensing Act 2003
- Guidance to Health & Safety at Outdoor Events (known as Purple Book)
- Guides to Fire Precautions in Entertainment and Like Premises.
- Good Practice Guide on the Control of Noise from Pubs and Clubs (Institute of Acoustics)
- Good Practice in Managing the Evening and Late Night Economy (ODPM)
- LGR Guidance on Licensing Large Outdoor Events.
- Technical Standards for Places of Public Entertainment (ABTT/IOL)
- 'No Proof of Age – No Sale' (Trading Standards handbook)
- The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks.

4.1.4 The central purpose of the licensing function is to promote the licensing objectives through the effective regulation of licensed premises, qualifying clubs and temporary events. The Authority is keen to foster a safe and vibrant leisure economy and will work with applicants and licence holders to encourage and sustain well managed premises which make a positive contribution to the community. The Authority will expect applicants and licence holders to demonstrate that they have given thought to and have in place adequate measures to ensure that the operation of their premises will not have an adverse affect on the quality of life of persons living and/or working in the vicinity of the premises.

4.1.5 The powers of the Authority under the Act may be carried out by the Licensing Committee, by a sub-committee of the Licensing Committee or by one or more officers acting under delegated authority. Many licensing procedures are largely administrative

with no perceived areas of contention. In the interests of efficiency, these procedures will generally be carried out by licensing officers.

4.1.6 The Authority will ensure that all Officers and Members have received adequate and appropriate training for their roles under the Licensing Act 2003.

4.1.7 The Authority will delegate its functions in the following ways:

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for personal licence		If a police objection made	If no police objection
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for minor variation applications for premises licence and club premises certificate			All cases
Application to vary designated premises supervisor		If a police objection made	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection made	All other cases
Applications for interim authorities		If a police objection made	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 an objection to a temporary event notice		All cases	
Determination of application to vary premises licence for community premises to include alternative licence condition		If a police objection made	All other cases
Suspension of premises licence / club premises certificate for non-payment of annual fee			
Review of Licensing Statement of Policy	All cases (Full Council)		
Implementation of Late Night Levy	All cases (Full Council)		
Creation of an Early Morning Restriction Order	All cases (Full Council)		

## **4.2 The Authority as Responsible Authority**

- 4.2.1 Section 103 of the Police Reform and Social Responsibility Act 2011 amended the Licensing Act by making the Authority a 'responsible authority'. This enables the Authority to make representations about an application for a premises licence or club premises certificate or to apply for a review of a premises licence or a club premises certificate.
- 4.2.2 In cases where the Authority is acting in its capacity as a responsible authority, it has established a clear separation of responsibilities within the Authority's Licensing Team in order to ensure procedural fairness and to avoid potential conflict of interest.

## **4.3. Integrating Strategies and the Avoidance of Duplication**

- 4.3.1 This Policy supports two key goals in the Council's Strategic Plan:
- Wellbeing – Public Protection – Make sure that the public are safe by regulating and licensing businesses and premises.
  - Wellbeing – Bring Power to the People – Encourage everyone to take part in local decision making through elections, consultations and involvement.

The Authority recognises that unnecessary and over-burdensome regulation can prevent businesses from thriving and growing. The Authority will therefore endeavour to regulate licensed premises in a proportionate manner in accordance with the Regulators' Compliance Code. Premises will be assessed on the basis of risk to the promotion of the licensing objectives. Premises with a high risk-rating will be inspected more frequently than premises with a low risk-rating.

- 4.3.2 The Authority will endeavour to ensure that this Statement of Licensing Policy is aligned with and supports local crime prevention, planning, transport, tourism and cultural strategies, policies and guidance (see 4.1.3). To this end, the Authority will work closely with other agencies and will contribute, where appropriate, to the development of policies and initiatives to tackle alcohol-related crime and disorder. This may include promoting and participating in schemes such as Best Bar None, Purple Flag, Business Improvement Districts etc.
- 4.3.3 The Authority recognises that it is a fundamental principle of the Act that the licensing function should not duplicate other statutory regulation. In particular, the Authority recognises that licensing applications should not be seen as a repeat of the planning application process and that there is no legal basis to refuse a licence application because it does not have planning permission. Applicants are recommended, however, to ensure that appropriate planning permissions are obtained before an application for a premises licence or club premises certificate is made. (See Section 7 – Licence Conditions – for further advice).

*Home Office guidance 13.57 and 13.58 (S182 March 2015) makes it clear that licensing committees are not bound by decisions made by planning committees and vice-versa. The Guidance also states that, where, as a condition of a planning permission, a terminal hour has been set for use of the premises for commercial purposes and this is different to the licensing hours, the applicant must observe the earlier closing times.*

#### **4.4 Large Scale Public Events and the Safety Advisory Group (SAG) Function**

- 4.4.1 The Authority recommends that organisers of large scale public events (outdoor music concerts, sporting events, festivals, carnivals, firework displays etc) consult the Authority at the earliest opportunity to discuss arrangements for the licensing of those activities falling under the Act.
- 4.4.2 In respect of some events, the organisers may require a single premises licence to cover a wide range of activities at different locations within the premises. This may involve the preparation of a substantial operating schedule. For other events, applications for connected premises licences or TENs may be made which in combination will represent a single event. The Authority consider it is essential to have proper co-ordination of such arrangements and will expect organisers to work with the Authority in ensuring that responsible authorities are aware of the connected nature of the individual applications.
- 4.4.3 Applicants planning a large scale event - whether this involves licensable activities or not – are likely to be requested to convene a Safety Advisory Group (SAG). The SAG will comprise personnel from relevant statutory authorities and will provide the applicant with advice and guidance to help ensure public health and safety. A SAG will generally be recommended where more than 500 persons are expected to attend the event although smaller events with perceived high risks to public safety may also require a SAG. Individuals seeking advice are recommended to contact the Authority if in any doubt as to whether a SAG is required.

#### **4.5. Other Legislation**

- 4.5.1 There is a significant interplay between the Licensing Act 2003 and other legislation. The Authority will endeavour to interpret and apply other statutory requirements in a way which is consistent with the promotion of the licensing objectives.
- 4.5.2 The grant of a licence does not imply the approval of other legislative requirements.
- 4.5.3 Criminal Justice and Police Act 2001

Under the provisions of the Act, consumption of alcohol is not a licensable activity. However, the Authority recognises that consumption of alcohol can be a major contributory factor to disorder and nuisance both within and outside licensed premises. The Council has adopted the relevant powers under the Criminal Justice and Police Act 2001 to designate parts of the District as places where alcohol may not be consumed publicly.

Areas within Newton Abbot, Kingsteignton, Teignmouth, Dawlish, Dawlish Warren, Ashburton and Buckfastleigh currently have designation orders. This introduces an offence for consuming intoxicating liquor in designated places upon being warned by a Police constable not to do so. These orders specifying the specific areas can be found using the following link <http://www.teignbridge.gov.uk/article/2772/Byelaws-and-Designation-Orders>

The Authority, in conjunction with the police, South Devon and Dartmoor Community Safety Partnership and other Responsible Authorities, will keep this under review and may recommend the designation of other areas if there is evidence that this is necessary to reduce or prevent alcohol-related crime and disorder.

#### 4.5.4 Gambling Act 2005

The provision of gaming machines and certain forms of low-stakes gambling (e.g. poker, bingo) are permitted in alcohol-licensed premises and qualifying clubs under the Gambling Act 2005. The type of gambling allowed and stakes and prizes are specified in regulations and are set at levels which are designed to keep this form of gaming a low-risk, sociable activity. Generally, such gaming should be ancillary to the primary use of the premises. The Authority may take action against a premise where it believes that gaming is becoming the dominant activity or is having a detrimental effect on the licensing objectives.

#### 4.5.5 Health Act 2006

The introduction of the Health Act 2006 which prohibited smoking in enclosed or substantially enclosed spaces in England has had a significant impact on alcohol-licensed premises and qualifying clubs. In many premises, customers wishing to smoke must do so in beer gardens, outdoor patio areas or in the street. This can result in noise, nuisance and anti-social behaviour for nearby residents, businesses and passers-by, especially late at night when background noise levels are low. The Authority will expect applicants and licence holders to have particular regard to the management of customers in the immediate vicinity of their premises to ensure that their behaviour does not cause offence or undermine the licensing objectives.

#### 4.5.6 Live Music Act 2012 (as amended by other legislation)

In order to promote live music, the Government has de-regulated various types of live music through the Live Music Act which came into effect in October 2012 there have been a number of amendments. The following information is current as at 6 April 2015 following amendments to the Licensing Act 2003 by way of the Legislative Reform (Entertainment Licensing) Order 2014.

Under the Act, a licence will no longer be required for:

- amplified live music or playing of recorded music between 8am and 11pm before an audience of less than 500 people at premises licensed for sale of alcohol for consumption on the premises
- amplified live music or playing of recorded music between 8am and 11pm before an audience of less than 500 people in workplaces not licensed under LA2003 (or licensed only for late night refreshment)
- unamplified live music between 8am and 11pm at any place
- provision of 'entertainment facilities', that is:
  - (i) facilities for making music,
  - (ii) facilities for dancing, and
  - (iii) any entertainment of a similar description to (i) and (ii) above.

Any conditions relating to live and recorded music which are attached to a premises licence or a Club Premises Certificate will stay in place but will be suspended between 8am and 11pm. However, the Authority will be able to re-impose these conditions (or attach new conditions) following a review of a licence.

A licence will still be required for:

- performances of live– amplified or unamplified – between 11pm and 8am
- a performance of amplified live music on unlicensed premises
- performances of amplified live music on licensed or unlicensed premises before an audience of more than 500 people
- a performance of amplified live music at licensed premises when the premises are not being used for the sale of alcohol for consumption on the premises.

The Authority recognises the importance of encouraging live music as part of the Authority’s wider cultural strategy and will endeavour to promote this activity through its licensing function. However, applicants and licence holders must be aware that, although certain types of live music are no longer licensable, this does not mean that such activity is totally exempt from licensing controls. The legal duty on licence holders to promote the licensing objectives remains. A Responsible Authority or any other person may apply for a review of a premises licence where it can be demonstrated that live music provided under the provisions of the Live Music Act undermines any of the licensing objectives.

When considering whether an activity constitutes ‘the provision 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 constitutes live music or not. If in doubt, organisers of events should check with the Authority.

The impact of this Policy on regulated entertainment, particularly live music and dancing will be monitored. Where it appears that such events are being deterred or constrained by licensing requirements, the Policy will be reviewed.

#### 4.5.7 The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013

The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 came into effect on the 27 June 2013. As a result of the Order, no licence is required for the following activities if they take place between 8am and 11pm on any day:

- a performance of a play in the presence of any audience of no more than 500 people;
- an indoor sporting event in the presence of any audience of no more than 1,000 people;
- performances of dance in the presence of any audience of no more than 500 people (unless licensed as a sexual entertainment venue).

Any current licence condition that relates to an activity for which a licence is no longer required will have no effect, except in certain circumstances where non-licensable activities take place at the same time as other activities for which a licence is required. Licence holders wishing to remove such conditions may apply for a licence variation. In the course of considering such applications, the Authority will generally remove such conditions unless there are sufficiently serious specific concerns about the hosting of deregulated entertainment activities in relation to the remaining licensable activities taking place in the premises in question.

#### 4.5.8 The Legislative Reform (Entertainment Licensing) Order 2014

The Legislative Reform (Entertainment Licensing) Order 2014 came into force on 6 April 2015. As a result of the Order, amending Schedule 1 and Section 177A of the Licensing Act 2003.

Travelling circuses will be exempt from all entertainment licensing except for:

- an exhibition of a film or a boxing or wrestling entertainment where it takes place between 08.00 and 23.00 on the same day
- The entertainment takes place wholly within a moveable structure and the audience present is accommodated wholly inside that moveable structure;
- The travelling circus has not been located on the same site for more than 28 consecutive days.

Amendments to live music and recorded music which have been included in the Live Music Act 2012 section above in relation to increase in size of audience.

Live and Recorded Music exemptions:

- Local Authorities, health care providers and schools when making their own defined premise available to third parties where activities between 08.00 and 23.00 on the same day for audiences up to 500.
- Community premises, not licensed to supply alcohol, between 08.00 and 23.00 on the same day with audiences up to 500.

Greco-Roman and freestyle wrestling deregulated between 08.00 and 23.00 for audiences up to 1000.

An exhibition of film that is incidental to another activity (where the other activity is not entertainment under the Licensing Act 2003) is exempt from licensing.

#### 4.5.9 Sexual Entertainment Venues

Performances of dance which are “relevant entertainment” within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) are not affected by The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013, regardless of the size of the audience or the time of day. “Relevant entertainment” is defined in the 1982 Act as a live performance or live display of nudity that, ignoring financial gain, can be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.

In almost all cases where a performance of dance is potentially licensable as both the provision of *relevant* entertainment (under the 1982 Act) and *regulated* entertainment (under the 2003 Act), the 1982 Act disapplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments. However, an authorisation under the 2003 Act will be required where:

- the premises are not licensed as a sex entertainment venue under the 1982 Act, and
- relevant entertainment has been provided at those premises on no more than 11 occasions in any 12 month period, with none of those occasions lasting longer than 24 hours or taking place within a month of any other such occasion.

Where the promoter of a sexual entertainment venue wishes to provide any of the licensable activities as outlined in the Licensing Act 2003, in addition to relevant entertainment, a premises licence will also be required to authorise such activities.

The Council's Sex Establishment Policy is the subject of a separate public consultation and the adopted policy stands separate from this Licensing Policy. The Policy can be viewed at [www.teignbridge.gov.uk/article/13034/Sex-Establishments](http://www.teignbridge.gov.uk/article/13034/Sex-Establishments).

## **5. THE LICENSING PROCESS**

### **5.1 Applications**

- 5.1.1 Application forms may be downloaded from the webpage available at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003). Applicants are strongly recommended to discuss their application with a member of the Licensing Team prior to formal submission. The Authority may reject applications which have not been completed correctly or contain insufficient information.
- 5.1.2 Applications, notices or relevant representations shall be treated as having been "given" to the Authority in line with legislation. This is set out in Appendix B.
- 5.1.3 The Act requires that applications for premises licences/club premises certificates – or variations thereof – are advertised in accordance with regulations. The Authority will need to be satisfied that the applicant has complied fully with these regulations and may request copies of notices and advertisements to verify that the application has been properly made. If an application has not been correctly advertised, the Authority may reject the application.

Further guidance on advertising applications is available on the Licensing Act 2003 on the Authority's website at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003).

- 5.1.4 When preparing applications, it is essential that applicants give full consideration to the nature of the premises, the locality in which a premises is situated, the potential risks involved in carrying out licensable activities and put in place measures which are appropriate for the promotion of the licensing objectives. (See also 7.5)

### **5.2 Representations**

- 5.2.1 Representations must be made to the Authority in writing within the 28 day consultation period. For this purpose, a representation made by e-mail or facsimile transmission will be acceptable.
- 5.2.2 Section 18(6) of the Licensing Act 2003 defines what constitutes a 'relevant' representation. To be relevant, a representation must relate to the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives. There is nothing in the Act to say that a representation must be of a negative nature. The Act specifically refers to 'representations' rather than 'objections' recognising that representations may express positive support for an application. The Authority will consider both positive and negative representations provided they are relevant.
- 5.2.3 Where no relevant representations are received, the application will be granted on the terms applied for. Where relevant representations are received, the application will be

considered by a Licensing sub-committee at a hearing as will any application for review of a licence (see 9.2). The Authority has established its own hearing procedures as provided for by regulations made under the Act and these are included at Appendix A.

*Home Office Guidance 9.2 (S182 March 2015) states "A hearing is not required where an application has been properly made and no Responsible Authority or other person has made a relevant representation. In these cases, the licensing authority must grant the application on the terms sought subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the Act".*

- 5.2.4 Any party to a hearing may expand on their representation but may not add new or different representations.
- 5.2.5 Representations which are deemed by the Authority to be repetitious, frivolous, vexatious may be disregarded.
- 5.2.6 Where a notice of a hearing is given to an applicant, the Authority is required by regulations to provide the applicant with copies of the relevant representations that have been made. In exceptional circumstances, a person wishing to make a representation may be reluctant to do so because of fears of intimidation or harassment if their personal details are disclosed to the applicant. Where the Authority considers that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation, the Authority may consider alternative approaches. For example, the Authority may advise the individual to provide the relevant Responsible Authority with details of how they consider that the licensing objectives are being undermined so that the Responsible Authority can make representations if appropriate and justified. Alternatively, the Authority may advise the individual to request their local councillor to make a representation on their behalf. Where appropriate, the Authority may decide to withhold some or all of the person's details from the applicant. The Authority will only withhold such details where the circumstances justify such action. Persons making representations should be aware that their personal details will normally be disclosed during the hearing process.

### **5.3 Determining Applications**

- 5.3.1 When determining a licence application, the overriding principle adopted by this Authority will be that each application will be determined on its merits. The Authority will have regard to any guidance issued by the Home Office, this Statement of Licensing Policy and any measures it deems necessary to promote the licensing objectives. The Authority may depart from the guidelines in this Policy if it has justifiable and compelling reasons to do so. The Authority will give reasons for any such departure from policy.
- 5.3.2 The Authority will expect applicants to demonstrate in their applications active steps for the promotion of the licensing objectives. When determining an application, a key consideration for the Authority will be the adequacy of measures proposed in the Operating Schedule to promote the licensing objectives having regard to the type of premises, the licensable activities to be provided, the nature of the location and the needs of the local community.
- 5.3.3 The Authority will also have regard to wider considerations affecting the residential population, businesses and the amenity of an area. These include alcohol-related violence and disorder, anti-social behaviour, littering, fouling, noise and the capacity of

the infrastructure and police resources to cope with the movement of large numbers of people, particularly late at night and in the early morning.

- 5.3.4 Since the introduction of the Act, the Authority's experience is that the vast majority of complaints about licensed premises are caused by public nuisance, in particular excessive noise from live and recorded music and disturbance caused by customers congregating outside licensed premises. The Authority will expect applicants to have particular regard to these issues and to include in their Operating Schedules adequate and effective steps to control noise and disturbance from their premises. Existing licence holders will also be expected to demonstrate – through the effective management of their premises – that they are taking appropriate and reasonable steps within their control to minimise disorder, anti-social behaviour and public nuisance.

*Public nuisance is not defined in the Licensing Act 2003 and retains its broad common law meaning. It should be noted that public nuisance can include low-level nuisance affecting a few people living locally as well as major disturbance affecting the whole community. It may also include the reduction of the living and working amenity and environment of persons and businesses in the vicinity of licensed premises. (Home Office Guidance 2.15 (S182 March 2015))*

- 5.3.5 When deciding whether to grant a licence, the Authority may take account of any non-compliance with other statutory requirements brought to its attention, if these undermine the licensing objectives. This is because any non-compliance with other statutory requirements may demonstrate that the premises are unsuitable for the activities proposed, or that the management of the premises is not sufficiently competent to protect the public from harm or nuisance.
- 5.3.6 When determining an application, the Authority will consider all relevant evidence, both oral and written, provided by parties to a hearing. Evidence which is irrelevant may be disregarded. The Authority encourages applicants and persons making representations to attend hearings so that they can give evidence. Where an individual fails to attend the hearing, the Authority will consider their application or representation but may attach less weight to it.
- 5.3.7 It should be noted that, when determining an application, the Authority is making a judgement about risk. A key purpose of the licensing function is not to respond to crime and disorder, nuisance or public harm once it has happened but to make an informed assessment of the risk of such things occurring if a licence is granted and to take such steps as it considers appropriate to prevent or minimise such risks.
- 5.3.8 The Authority will generally give its decision on an application at the end of a hearing and will give clear reasons for its decision. In all other cases, the Authority will make its determination within five working days.
- 5.3.9 Any party to a hearing who is dissatisfied with the Authority's decision may appeal to the Magistrates' Court. An appeal must be made within 21 days of formal notification of the decision.

## **5.4 Mobile Vehicles, Remote, Internet and Other Delivery Sales**

- 5.4.1 The Authority shall have due regard to sales of alcohol which are made remotely, by mobile methods, internet or by other delivery sales.

- 5.4.2 The expectation of the Authority is that conditions suggested by way of operating schedules for these types of activities are extremely robust in order to negate any perceived issues.
- 5.4.3 Persons who wish to run premises providing 'alcohol delivery services' should notify the relevant Authority that they are operating such a service in their operating schedule, and premises with existing premises licences who wish to include such a service should apply to vary their licence to add this activity.

## **6.0 LICENSING HOURS**

- 6.1 In general, the Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with hours beyond midnight higher standards of control and supervision will be expected in order to promote the licensing objectives - especially for premises situated in or near residential areas.
- 6.2 The Act does not provide for standard closing times. Licensed premises will generally be permitted to sell alcohol during the hours they intend to open provided they can demonstrate to the satisfaction of the Authority that the premises will be operated in a manner consistent with the licensing objectives, Home Office guidance (S182) and this Policy. However, there is no presumption that applications for extended hours will take precedence over the human rights of local residents and businesses.
- 6.3 The licensed hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives. The Authority may, however, set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area or is necessary to achieve one or more of the licensing objectives.

*Home Office Guidance 10.14 (S182 March 2015) states that the licensing objectives should be the Authority's paramount consideration at all times when determining applications. If the Licensing Committee or a sub-committee believes that granting longer hours would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.*

- 6.4 The Authority recognises that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when large numbers of people tend to leave licensed premises at the same time. Flexible licensing hours in relation to the sale of alcohol may therefore be considered as a potential means of reducing friction at late night food outlets, taxi ranks and other 'flashpoints' in areas where there have already been incidents of disorder and disturbance.
- 6.5 In considering licence applications, the Authority will consider the adequacy of measures proposed to deal with the potential for crime, disorder and/or nuisance having regard to all the circumstances of the case. The Authority strongly encourages the adoption of best practice. This includes the expectation, as an item of best practice that CCTV will be provided in those premises that wish to trade in the sale of alcohol beyond midnight for the purpose of preventing crime and disorder and public safety. Applicants should carry out a risk assessment with regard to CCTV and are expected to include CCTV in their operating schedule. Where they elect not to do so, they are strongly advised to provide information explaining that omission. For example, that the risk assessment has shown CCTV to be unnecessary.

- 6.6 Shops, stores and supermarkets will generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes. However, in the case of individual shops, which are known to be a focus of disorder and disturbance then, where relevant representations are received from a Responsible Authority or an interested party, the Authority may consider a restriction on licensed hours where this is necessary to promote one or more of the licensing objectives. The Authority strongly encourages the adoption of best practice. This includes the expectation, as an item of best practice that CCTV will be provided in those premises that wish to trade in the sale of alcohol beyond midnight for the purpose of preventing crime and disorder and public safety. Applicants should carry out a risk assessment with regard to CCTV and are expected to include CCTV in their operating schedule. Where they elect not to do so, they are strongly advised to provide information explaining that omission. For example, that the risk assessment has shown CCTV to be unnecessary.
- 6.7 Because opening hours (i.e. hours when there are no licensable activities taking place) may in themselves impact on the licensing objectives, the Authority will require any proposed change to opening hours for an existing licence to be authorised by way of a variation to the licence. This can be achieved by way of a minor variation application.

## **7. LICENCE CONDITIONS**

- 7.1 Conditions attached to a premises licence or club premises certificate are a key element of the regulatory framework established by the Act. There are three types of condition:
- mandatory conditions set out in the Act,
  - conditions consistent with the operating schedule, and
  - conditions imposed by the Authority.

*The Licensing Authority may only impose conditions on a premises licence or club premises certificate where it has received a relevant representation about an application. The application will then be determined at a hearing by a Licensing Sub-Committee. If no relevant representation is received, the application must be granted on the terms applied for subject only to the mandatory conditions and conditions consistent with the Operating Schedule.*

- 7.2 Conditions are crucial in setting the parameters within which premises can lawfully operate. Any contravention of a condition on a premises licence or club premises certificate is a criminal offence so it is essential that conditions are worded clearly, precisely and unambiguously. In addition, conditions must:
- be appropriate, reasonable and proportionate
  - be enforceable
  - not duplicate other statutory requirements
  - be relevant to the particular type, location and character of the premises concerned
  - not be standardised
  - not replicate offences set out in the Act or in other legislation
  - be written in a prescriptive format
- 7.3 The Authority encourages applicants to seek technical advice from the appropriate Responsible Authorities when preparing their Operating Schedules as this will enable any problems to be resolved at an early stage and will reduce the likelihood of representations.

7.4 Experience has shown that many of the conditions volunteered by applicants are poorly worded, unclear or ambiguous and therefore unenforceable. As an aid to applicants, the Authority has prepared a menu of suggested measures to promote the licensing objectives which applicants are encouraged to consider when preparing their operating schedules. These measures are not prescriptive but will help to ensure that licence conditions are expressed clearly and consistently and enable enforcement to be carried out equitably. The measures can be viewed at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003). The Authority, in consultation with the applicant, may amend the wording of proposed conditions where this is unclear, ambiguous or unenforceable.

*Home Office guidance 10.5 (S182 March 2015) states that it is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.*

7.5 The Authority will pay particular attention to the effect – potential or actual - of licensable activities on those living, working or otherwise engaged in the area concerned and, where relevant representations are received, may attach conditions if it considers it appropriate for the promotion of the licensing objectives.

7.6 Conditions attached by the Authority to Premises Licences and Club premises certificates will relate to matters falling within the control of individual licensees. It is recognised that the licensing function cannot be a mechanism for the control of disorderly behaviour by individuals once they are beyond the direct control of the licence holder. However, the Authority and Responsible Authorities may take action where it can be established that there is a clear linkage between disorderly behaviour and a specific premises.

7.7 The Authority will not impose inappropriate or over-burdensome conditions on licences. The Authority may, however, impose conditions where existing legislation does not provide adequate controls and additional measures are considered to be appropriate for the promotion of the licensing objectives.

7.8 Although it is not a legal requirement, the Authority recommends as good practice - in respect of premises licensed to sell or supply alcohol for consumption on the premises – that a Personal Licence holder is on the premises at all times to make or authorise such sales or supplies. The Authority is keen to encourage the presence of properly trained staff on licensed premises. Applicants may wish to consider including this as a condition of licence, where appropriate, as a measure to promote the licensing objectives. Where this is not possible (because the premises is too small or because staffing levels do not permit) or when the Premises Supervisor/Personal Licence holder will be absent for a significant length of time, a responsible person should be authorised to oversee the sale of alcohol in the place of the Premises Supervisor/Personal Licence holder. The Authority will expect the authorisation to be made in writing, kept securely on the premises and made available for inspection by an authorised person if requested. Copies of the authorisation should be sent to the Authority and the police.

*NB. 'Authorisation' does not mean direct supervision. The government recommends that Personal Licence holders give specific written authorisations to individuals they are authorising to sell or supply alcohol and that such individuals are clearly identified (Home Office Guidance 10.30 - 10.37 (S182 March 2015))*

## **7.9 Disapplication of Certain Mandatory Conditions for Community Premises**

7.9.1 An amendment to the Licensing Act 2003 made in 2009 allows 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' instead of the usual mandatory conditions in sections 19(2) and 19(3) of the Act (requirement for a DPS and for alcohol sales to be made or authorised by a personal licence holder). 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.

7.9.2 Where it is not clear whether premises are community premises, the Authority will approach the matter on a case by case basis. The main consideration will be how the premises are predominantly used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of persons and sectors of the local community for purposes which include purposes beneficial to the community as a whole, the premises will be likely to meet the definition.

## 8. CUMULATIVE IMPACT

*'Cumulative impact' or 'saturation' is not specifically mentioned in the Act but is defined in Home Office guidance 13.20 – 13.23 (S182 March 2015) as 'the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area'. Whilst flexible opening hours may encourage the gradual dispersal of customers from premises, it is possible that the behaviour of customers from a concentration of premises, taken together, may have a disproportionate impact on the amenity of the surrounding area. Where a Licensing Authority believes that a particular area is becoming saturated with licensed premises, it may adopt a 'special policy' of refusing applications for new premises licences where relevant representations relating to cumulative impact have been received.*

8.1 The cumulative impact of licensed premises on the promotion of the licensing objectives is a matter which the Authority can take into account. This should not, however, be equated with 'need' which relates to the commercial demand for a particular type of premises. The issue of 'need' is a matter for planning consideration or for the market to decide and does not form part of this licensing policy statement.

8.2 If the Authority receives relevant representations suggesting that the cumulative impact of new licences is leading to an area becoming saturated with premises of a particular type and thereby creating problems of disorder and nuisance over and above the impact from the individual premises themselves, the Authority may consider the issue of cumulative impact when determining an application. The onus is on any person, or organisation, making such representations to prove the assertion that the grant of the licence would cause the cumulative impact claimed.

8.3 The Authority does not propose to operate a quota system of any kind, which would have the effect of pre-determining any application; nor does it seek to impose general limitations on trading hours in particular areas. The Authority recognises that pubs, clubs, restaurants, hotels, theatres, concert halls and cinemas have contrasting characteristics and styles of operation. Proper regard will be given to those differences and the impact they are likely to have on the promotion of the licensing objectives.

8.4 In determining whether to adopt a 'special' policy for a particular area the Authority may among other things:

- Gather evidence of relevant concerns from a responsible authority or local residents concerning crime and disorder and/or public nuisance.
- Consider whether there is robust evidence of crime and disorder and/or public nuisance and whether it is caused by customers of licensed premises or that the risk of cumulative impact is imminent.

- Identify the boundaries of the area where the problems are occurring.
- Make an assessment of the cause(s).
- Consult with those specified in s.5(3) of the Licensing Act 2003 to consider whether a saturation policy is appropriate for that area.
- Include and publish details of any special policy adopted in its licensing policy statement.
- Review any such special policy regularly.

8.5 Where there is evidence that a particular area of the District is already suffering adverse effects arising from a concentration of late night premises, or that residential areas are under stress, this may be taken into account in determining any further applications for licences within the area identified. In such circumstances the Authority may take into account:

- The character of the surrounding area;
- The impact of the licence on the surrounding area, both individually and cumulatively with existing licences;
- The nature and character of the proposed operation.
- Evidence from a Responsible Authority of potential or actual negative impact on the licensing objectives in any given area,
- The number of substantiated complaints about licensed premises received from residents and/or businesses in any given area.

8.6 The Authority does not currently propose to adopt a 'special policy' in relation to cumulative impact. However, the Authority recognises that there is a significant concentration of licensed premises in Newton Abbot and Teignmouth town centres which, collectively, has the capacity to have a disproportionate effect on residents and businesses both in the town centres and in the immediately adjacent area. Therefore, when considering applications for new licences/club premises certificates or applications to vary existing premises licences/club premises certificates - especially where longer hours are sought - applications will only be granted where the Authority is completely satisfied that there will be no adverse effect on the licensing objectives.

## **9. ENFORCEMENT**

### **9.1 Enforcement Activity and Policy**

9.1.1 The Authority has established protocols with the police and other enforcing authorities. These protocols will provide for the targeting of agreed problem and high-risk premises, but with a lighter touch being applied to those premises which are shown to be well managed and maintained.

9.1.2 In general, action will only be taken in accordance with agreed enforcement principles and in line with the Authority's own enforcement policy. The Authority will apply the key principles of consistency, transparency and proportionality in accordance with the Regulatory Compliance Code. Inspection and enforcement will be risk-based with a lighter touch being adopted for premises which are well managed and where there is little or no evidence of crime and disorder, public nuisance or other problems.

9.1.3 A graduated approach will be adopted starting with a verbal or written warning for infringements of the law or failure to comply with licence conditions. Failure to respond to

such warnings will result in stronger enforcement measures being taken, which could lead to a prosecution or an application being made for a review of the licence or club premises certificate (see 9.2). (Please refer to Section 18 with regard to the suspension of a premises licence or club premises certificate for non payment of an annual maintenance fee).

9.1.4 The Authority will refer to the following Policies when considering enforcement:

- Enforcement Concordat
- The Regulators' Compliance Code
- Enforcement Protocol agreed with Devon and Cornwall Police.

## **9.2 Review**

9.2.1 A Responsible Authority and any other person can, at any time following the grant of a Premises Licence or Club Premises Certificate, apply to the Authority to review the licence/certificate because of concerns arising at the premises which may have an adverse impact on any of the licensing objectives. The Authority regards this as a valuable protection for residents and businesses. Applications for a review must be made in writing and will be considered by a Licensing sub-Committee at a hearing.

9.2.2 Any application for a review should be treated seriously. Responsible authorities will aim to give licensees early warning of any concerns identified at a premises, and talk to the licence or certificate holder to establish whether there are any steps they may be willing to take to rectify the situation. Similarly those seeking a review who are not a responsible authority are encouraged to take initial steps such as:

- asking the Authority to talk to the licence holder on their behalf
- asking their local MP or Councillor to speak to the licence holder on their behalf
- talking to the relevant responsible authority (e.g. Environmental Protection Team in relation to noise nuisance or the police in relation to crime and disorder) to establish whether there is other action that can be taken to resolve the problem.

9.2.3 The review process is not intended as a means of challenging the grant of a licence following the failure of representations to persuade the Authority on an earlier occasion. No more than one review from a person other than a Responsible Authority will be entertained in relation to a particular premises within a period of twelve months on similar grounds, save in compelling circumstances (e.g. where new problems have arisen) or where it arises following a closure order made under s.160 or s.161 of the Act.

9.2.4 When considering a review of a premises licence or club premises certificate, the Authority will expect the applicants for the review to provide evidence of previous infringements of licensing regulations, failure to comply with licence conditions and/or of failure to promote the licensing objectives. Further guidance on the review procedure is available from the Home Office ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)) and the Council [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003)).

9.2.5 Following a review, the Authority will focus any remedial action directly on the concerns identified in the representations. In all cases, action will be appropriate, reasonable and proportionate to the nature of the problems giving rise to the review. Options available to the Authority are:

- to modify the conditions of licence
- to exclude a licensable activity from the scope of the licence
- to remove the designated premises supervisor
- to suspend the licence for a period of not more than three months
- to revoke the licence

9.2.6 In cases where the crime and disorder objective has been undermined or where it can be demonstrated that a premises has a history of persistent offending, suspension or revocation of a licence, even in the first instance, may be seriously considered as a form of deterrence. (See also 10.6).

9.2.7 Any person aggrieved by the decision of the Authority has the right of appeal to the Magistrates' Court. An appeal must be made within 21 days of the Authority's decision.

## **10. CHILDREN IN LICENSED PREMISES**

10.1 The Authority recognises the great variety of premises for which licenses may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. As a general principle, access by children to licensed premises will not be limited, and any restrictions will be left to the discretion of the licensee unless it is considered necessary to protect children from harm.

10.2 When deciding whether to limit access to children the Authority will judge each application on its individual merits. Examples which may give rise to concern in respect of children would include premises: -

- where entertainment of an adult or sexual nature is provided
- where there is a strong element of gambling taking place
- with a known association with drug taking or dealing
- where a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal).
- Where it is known that unaccompanied children have been allowed access.
- In some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.

10.3 Where the exhibition of films is permitted, the Authority will expect age restrictions to be complied with in accordance with the British Board of Film Classification's recommendations. The Authority will only consider variations to this general in exceptional cases.

It is a mandatory condition of a Premises Licence that where the licence requires age classification to be carried out in accordance with film classification body under Section 4, Video Recordings Act 1984.

10.4 Where relevant representations have been received, the Authority may impose licence conditions at premises where children will be present for regulated entertainment so that sufficient adult staff must be present to control the access and egress of children and to ensure their safety. Where children may also be present at an event as entertainers it

will be a requirement for there to be a nominated adult responsible for such child performers present at such performances

- 10.5 The Authority will take strong measures to protect children where any licence holder is convicted of serving alcohol to minors, where premises have a known association with drug taking or dealing, gambling takes place on the premises or where entertainment of an adult or sexual nature is provided. Options which the Authority may consider appropriate to limit access by children may include:-
- a limit on the hours when children may be present
  - restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place
  - restricting on the parts of the premises to which children may have access
  - age restrictions (for under 18s)
  - restrictions or exclusions when certain activities are taking place
  - requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult)
  - and full exclusion of people under 18 from the premises when any licensable activities are taking place.
- 10.6 In the event of a review of a premises licence or club premises certificate for under age sales of alcohol, the Authority will take strong and appropriate action to ensure that children are protected. This may include, for example, removal of the Designated Premises Supervisor or suspension or revocation of the licence/club premises certificate.
- 10.7 In the event of a review of a premises licence or club premises certificate for under age sales of alcohol, the Authority will take strong and appropriate action to ensure that children are protected. This may include, for example, removal of the Designated Premises Supervisor or suspension or revocation of the licence/club premises certificate.
- 10.8 The Authority has designated the Devon Child Protection, as the body competent to advise the Authority on issues relating to the protection of children from harm (see Appendix C for contact details).

## **11. DRUGS/ILLEGAL SUBSTANCES**

- 11.1 The Authority recognises that drug use is not something that is relevant to all licensed premises. However, where relevant representations are received, the Authority may need to impose special conditions for certain types of venues in order to reduce the sale and consumption of drugs and to create a safer environment for customers using the premises. The conditions to be imposed in such cases will be taken from the Government Department pool of conditions which take into account the report “Safer Clubbing” published by the Home Office. The sale or use of new psychoactive substances (NPS) (so called Legal Highs) the Authority will consider any issue with NPS in line with current legislation and government policy. Where the Authority deems such conditions to be appropriate for the promotion of the licensing objectives, it will seek advice from the local Drugs Action Team and the Police.

## **12. DOOR SUPERVISORS**

- 12.1 Whenever any persons are employed at licensed premises to carry out any security activity, all such persons must be licensed by the Security Industry Authority. The Authority recognises that certain premises, because of the nature of their operation, their capacity, their licensed hours and the licensable activities provided, may require stricter supervision for the purpose of reducing crime and disorder and public nuisance. In such cases, where relevant representations are received, the Authority may impose a condition that licensed door supervisors must be employed at the premises either at all times or at such times as certain licensable activities are being carried out.
- 12.2 The Authority recognises that Door Supervisors have an important function in terms of supervising customers not only inside premises but also outside. Door Supervisors will therefore be expected to take a pro-active role in managing the behaviour of customers outside premises in order to minimise any disturbance and nuisance to nearby residents. Licence holders should ensure in particular that, at closing times, they have sufficient Door Supervisors to effectively control 'surges' of customers leaving premises.
- 12.3 Whenever security operatives are employed at licensed premises to carry out any security function such operatives must be licensed by the Security Industry Authority (SIA). Competent and professional door supervisors are key to public safety at licensed premises and the provision of door supervisors is an action point for the leisure industry to consider in the Home Office Alcohol Strategy.

It is a mandatory condition of a Premises Licence that where the licence requires personnel to carry out security activity (e.g. screening of customers, dealing with conflict management, crowd control) such personnel are licensed by the Security Industry Authority. (Licensing Act 2003, s.21).

## **13. VESSELS**

- 13.1 There are a number of additional responsible authorities stipulated in the Act which relate to the licensing of vessels (see Appendix C). The Authority will consider any representations made by these Responsible Authorities when considering applications for premises licences in respect of a vessel. Where, in the opinion of the Authority, any of the four objectives are undermined, and this cannot be resolved through the imposition of specific conditions, the application is likely to be refused.

## **14. LICENSING OF PUBLIC LAND**

- 14.1 The Authority recognises that land owned by the Council and by other public bodies often lends itself to the performance of public events which involve one or more licensable activities. In the interests of promoting cultural richness and diversity within the area, the Authority will encourage the Council to apply for such licences for the benefit of the community where it is satisfied that they will not have a negative impact on the licensing objectives.
- 14.2 In order to help event organisers and touring entertainment providers plan where licensable activities will be carried out the DCMS maintain a Register of Licensed Public Spaces in England and Wales ([www.culture.gov.uk](http://www.culture.gov.uk)). When a licence is issued for public land, the Council will provide those areas licensed and the activities to which the licence relates to the DCMS for use in this register.

*The Government encourages local authorities to consider establishing a policy of seeking premises licences for public spaces they own e.g. public parks, promenades, community buildings etc. Where such licences are in force, this removes the burden on individuals and community organisations of applying for a premises licence or giving a Temporary Event Notice.*

## **15. TEMPORARY ACTIVITIES**

- 15.1 The Licensing Act 2003 makes provision for regulating temporary events involving the sale or supply of alcohol, which includes the exchange of monies for example by ticket or donation, the provision of regulated entertainment or the provision of late night refreshment at a premises which is not authorised by a premises licence or club premises certificate. This provision can also be used by holders of premises licenses and club premises certificates to authorise extensions to their permitted hours.
- 15.2 The system of 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 way of an application. Instead, a person wishing to hold an event at which it is proposed to carry out such activities is required to notify the Authority by way of a Temporary Event Notice (TEN).
- 15.3 A number of limitations are imposed on the use of TENs by the Act. The limitations apply to:
- the number of times a premises user may give a TEN (50 times in a calendar year for a personal licence holder and five times in a calendar year for other people);
  - the number of times a TEN may be given for any particular premises (12 times in a calendar year as of 1 January 2016 this has increased to 15 times);
  - the maximum duration of an event authorised by a TEN is 168 hours;
  - a maximum total duration of the events authorised by TEN in relation to individual premises (21 days in a calendar year);
  - the maximum number of people attending at any one time (fewer than 500); and
  - the minimum period between events authorised under separate TEN in relation to the same premises (not including withdrawn TEN) by the same premises user (24 hours).
- 15.4 A TEN can be used for any 'premises'. This could be a building, a room in a building, a vehicle, a marquee, an open field etc. A TEN may only be given by an individual (aged over 18) and not by an organisation or club or business.
- 15.5 There are two types of TEN; a standard TEN and a late TEN. A standard TEN must be given no later than ten working days before the event to which it relates; a late TEN must be given not before nine and no later than five working days before the event. (NB. Notice periods do not include the day the Notice is given to the Authority or the day of the event. If this minimum period of notice is not given, the Authority will reject the Notice and the licensable activities may not take place).
- 15.6 The Police and Teignbridge Environmental Control ('relevant persons') may object to a TEN. If the Authority receives an objection notice from a relevant person that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The Authority must consider any objection on the basis of the licensing objectives and decide whether the event should go ahead. Relevant persons may also intervene by agreeing a modification of the proposed arrangements directly with the person giving the TEN.

- 15.7 Where an objection is received, the Authority may impose conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. The Authority may only otherwise intervene if the statutory permitted limits on TEN would be exceeded.
- 15.8 When giving a TEN, the premises user should consider the promotion of the four licensing objectives. Organisers are strongly advised to contact relevant persons for advice at the earliest opportunity when planning events. Planning at an early stage may well minimise or avoid potential objections.
- 15.9 Where the TEN includes the supply of alcohol, the responsibility for the supply rests with the person giving the Notice (the 'premises user'). The premises user does not have to be on the premises for the entire duration of the event but will be liable for any offences committed.
- 15.10 Persons wishing to use Temporary Event Notices should refer to Appendix B of this document in relation to the "giving" of notices and applications.
- 15.11 Further advice on Temporary Events is available on our website at [www.teignbridge.gov.uk/temporareventnotice](http://www.teignbridge.gov.uk/temporareventnotice) or on the Home Office website at <https://www.gov.uk/government/organisations/home-office>

## **16. LATE NIGHT LEVY**

- 16.1 The Late Night Levy is a power conferred on licensing authorities by Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011. This provision came into force on 31st October 2012 and enables the Authority to charge a levy on premises in the authority's area which are licensed to sell alcohol late at night as a means of raising a financial contribution towards the costs of policing the late-night economy. The levy applies to the whole of the authority's area.
- 16.2 The levy will be payable by the holder of any premises licence or club premises certificate in the authority's area which authorises the sale or supply of alcohol on any days during the 'late night supply period'. This is a period beginning at or after midnight and ending on or before 6am.
- 16.3 The decision to introduce the levy is for the Authority to make. Before making any such decision, the Authority must consult the Chief Officer of Police, the Police and Crime Commissioner and the holders of relevant late night licences or certificates. Local residents can use existing channels and forums to put forward views and call for the implementation of the levy in their area if they wish to do so.
- 16.4 The Authority must pay at least 70% of the net levy revenue to the police. The Authority can deduct the costs it incurs in connection with the introduction, administration, collection, variation and enforcement of the levy prior to the levy revenue being apportioned between the police and the Authority. The Authority has discretion to exempt certain premises - prescribed by regulations - from the levy and to reduce the amount of the levy by 30% for premises which participate in business-led best practice schemes.

- 16.5 At the time of approving this Policy, the Authority has taken no decision to implement the Late Night Levy but is aware that it is a power which it can use if it considers it appropriate for the promotion of the licensing objectives.
- 16.6 The Authority will review the need for a Late Night Levy at least every five years in conjunction with the review of this policy. The Authority will, however, consider the introduction of a Late Night Levy at any time if circumstances change and evidence supports this course of action.

## **17. EARLY MORNING RESTRICTION ORDERS**

- 17.1 Early Morning Restriction Orders (EMROs) are a new licensing power conferred on licensing authorities by s.119 of the Police Reform and Social Responsibility Act and came into force on 31st October 2012. This power enables the Authority to prohibit the sale of alcohol for a specified time period between the hours of midnight and 6am in the whole or part of its area if it is satisfied that this would be appropriate for the promotion of the licensing objectives.
- 17.2 EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times, serious public nuisance and other instances of alcohol-related anti-social behaviour which are not directly attributable to specific premises.
- 17.3 The decision to implement an EMRO must be evidence based. Evidence will be considered from partners including Responsible Authorities and local Community Safety Partnerships alongside the Authority's own evidence to determine whether an EMRO is appropriate for the promotion of the licensing objectives.
- 17.4 Measures that may be considered in advance of making an EMRO include:
- introducing a Cumulative Impact Policy
  - reviewing licences of specific problem premises
  - encouraging the creation of business-led practice schemes in the area and
  - the other mechanisms designed for controlling cumulative impact see 8.4
  - encouraging licence or certificate holders to make variations with respect of hours for licensable activities.
- 17.5 The only exemptions relating to EMROs are premises which are authorised to sell alcohol between midnight and 6am on New Years Eve and the provision of alcohol to residents in premises with overnight accommodation by means of mini bars and room service.
- 17.6 At the time of approving this Policy, the Authority has taken no decision to introduce an EMRO but is aware that it is a power which it can use if it considers it appropriate for the promotion of the licensing objectives.
- 17.7 The Authority will review the need for an EMRO at least every five years in conjunction with the review of this policy. The Authority will consider the introduction of an EMRO at any time if circumstances change and evidence supports this course of action.

## **18. FEES**

- 18.1 Part 2 of the Police Reform and Social Responsibility Act 2011 that came into force in October 2012 amended the Licensing Act to require the Authority to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due. This took effect from 25 April 2012.
- 18.2 It is the practice of the Authority to issue an invoice for the annual fee. Non payment will then result in a suspension notice being served. Regulations state that the premises licence or club premises certificate holder will be given notice of a suspension that is at least 2 working days before the suspension is to take place, the Authority allows 5 working days.
- 18.3 The Authority will not generally refund fees for licence applications, as it is an application fee and not a licence fee.

## **19. EQUALITY AND HUMAN RIGHTS ISSUES**

- 19.1 In developing this policy, the Authority recognises its responsibilities under the Equality Act 2010, to consider the need to eliminate unlawful discrimination and to promote equal opportunities. The Policy therefore supports and is supported by the Council's Equality Scheme and any equality issues will be addressed in an Equality Impact and Needs Assessment.
- 19.2 The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for the Authority to act in a way that is incompatible with a convention right. The Authority will have regard to the Human Rights Act when exercising its licensing functions.
- 19.3 Conditions relating to disabled access will not be attached to licences, as this would duplicate existing statutory requirements. The Authority therefore takes this opportunity to remind holders of premises licences and club premises certificates of their duties under the Equality Act 2010.

## **20. FURTHER INFORMATION**

- 20.1 Contact details of the Authority and Responsible Authorities are given in Appendix C.
- 20.2 Further information and guidance on the Act can be viewed on the Authority's website at [www.teignbridge.gov.uk/licensingact2003](http://www.teignbridge.gov.uk/licensingact2003). Application forms can be downloaded from the site or electronic applications submitted online.
- 20.3 Further information on alcohol and entertainment licensing is available on the Home Office website at [www.gov.uk/government/organisations/home-office](http://www.gov.uk/government/organisations/home-office) and on the website for the Department of Culture, Media and Sport at [www.gov.uk/government/organisations/department-for-culture-media-sport](http://www.gov.uk/government/organisations/department-for-culture-media-sport)

## APPENDIX A

### Licensing Act 2003

#### PROCEDURE AT LICENSING SUB-COMMITTEE HEARINGS INFORMATION FOR PARTIES

References in these notes to "the Act" are to the Licensing Act 2003 and references to "the Regulations" are to The Licensing Act 2003 (Hearings) Regulations 2005.

#### 1. Right of attendance, assistance and representation

You may attend the hearing and be assisted or represented by any person whether or not that person is legally qualified. This right is subject to the licensing authority's right to exclude any person from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing or that part of the hearing taking place in public.

#### 2. Representations and supporting information

At the hearing you will be entitled:-

- a) to address the sub-committee;
- b) to give further information in support of your application, representations or notice (as applicable) in response to any point(s) upon which the licensing authority has advised that you will be required to provide clarification (see page 2 above); and
- c) if given permission by the sub-committee, to question any other party. This authority generally will allow all parties to ask questions of another party present, but this decision will be taken on a case by case basis and in some exceptional circumstances (a reason will be given) cross examination may be prohibited.

#### 3. Consequences if you fail to attend or be represented

- 3.1 If you inform the licensing authority that you do not intend to attend or be represented at the hearing, the hearing may proceed in your absence.
- 3.2 If you do not so inform the licensing authority and then fail to attend or be represented at the hearing, the hearing may either be adjourned to a specified date or be held in your absence.
- 3.3 Where the hearing is held in your absence, the sub-committee will consider your application, representations or notice (as applicable).
- 3.4 Where the hearing is adjourned to a specified date you will be notified of the date, time and place to which the hearing has been adjourned.

#### 4. The hearing – general matters

- 4.1 Each matter to be dealt with by the sub-committee shall be called in turn, usually in the order listed on the sub-committee agenda. However, the Chairman may change the order at his/her discretion.
- 4.2 If appropriate, the sub-committee may make a resolution under Section 100A of the Local Government Act 1972 to exclude the public from the hearing of a particular matter. Alternatively the sub-committee may make a resolution to exclude the public from the hearing of a particular matter where it considers this to be in the public interest. If the matter is being heard in private,

the Member Services Officer will direct everyone except the Members, officers and parties to leave the room.

- 4.3 The Chairman shall identify the elected Members, the Legal Advisor, the Member Services Officer (and the Licensing Officer, if present) for the benefit of those attending the hearing. The Chair shall explain the officers' respective roles.
- 4.4 Parties may be assisted or represented by any person whether or not that person is legally qualified, except that the sub-committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return, or permit them to return only on such conditions as the sub-committee may specify; but such a person may, before the end of the hearing, submit to the sub-committee in writing any information which they would have been entitled to give orally had they not been required to leave.
- 4.5 If a party has informed the authority that they will not be attending or be represented at the hearing, it may proceed in his absence. If a party who has not informed the authority that they will not be attending or represented fails to attend or be represented, the sub-committee may hold the hearing in that party's absence or, if it considers it to be necessary in the public interest, adjourn the hearing to a specified date.
- 4.6 Where the authority holds a hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.
- 4.7 Where the authority adjourns a hearing to a specified date, it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.
- 4.8 Applications, relevant representations and/or notices shall have been sent to the authority and to the other parties entitled to receive them prior to the hearing within the statutory time-limits. The sub-committee may, at its discretion take into account additional documentary or other information produced by a party in support of its application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. Any party seeking to produce additional documentary information shall provide sufficient copies for the Members, officers and other parties attending the hearing.
- 4.9 The sub-committee shall disregard any information given or evidence produced by a party or a witness that is not relevant to:-
- (1) its application, representations or notice (as applicable), and
  - (2) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a Chief Officer of Police, the crime prevention objective.
- 4.10 The four licensing objectives, as given by the Licensing Act 2003, are:
- the prevention of crime and disorder;
  - public safety;
  - the prevention public nuisance; and
  - the protection of children from harm
- 4.11 Each application that comes before this committee will be treated on its own merits, and this licensing authority will take its decision based upon:
- The merits of the application
  - The promotion of the four licensing objectives
  - The policy of the licensing authority, a copy of which can be obtained from Teignbridge District Council's Licensing Section or on the Council's website at [www.teignbridge.gov.uk](http://www.teignbridge.gov.uk)

- The guidance issued by the Secretary of State for Culture, Media and Sport on 7th July 2004 under section 182 of the Licensing Act 2003.

## 5. The Hearing – procedure

The procedure of the sub-committee is as follows:

- 5.1 The Chairman will open the meeting, introducing Members of the sub-committee (advising of any substitute members) and officers present to those attending the meeting and explaining the nature of the decision to be taken
- 5.2 The legal advisor will explain the procedure to be followed and ask the parties if they understand the procedure
- 5.3 The sub-committee will consider any request(s) previously made by any party(ies) (in its Response to Notice of Hearing) for permission for another person to appear, and such permission shall not be unreasonably withheld
- 5.4 The licensing officer will outline the application, any relevant representations and relevancies to the Council licensing policy statement and statutory guidance (optional). This may be done by reference to the report circulated with the Agenda.
- 5.5 Members may ask any relevant questions of the Licensing officer.
- 5.6 The legal advisor will introduce the applicant (if present) and invite him or her, or person representing them, to clarify any information arising from the licensing officer's outline, if necessary. (\*See note (a) below).
- 5.7 The legal advisor will invite those parties making representations to address the sub-committee in the following order: (\*See note (a) below).
  - (1) Responsible authorities
    - Police authority
    - Environmental Health
    - Fire Authority
    - Local Planning Authority
    - Health & Safety enforcing authority
    - Body responsible for protecting children from harm
    - Other licensing authority
    - Other
  - (2) Interested parties (\*See note (b) below).
- 5.8 Members to ask any relevant questions of those parties making representations.
- 5.9 Applicant or person representing them to ask any relevant questions of those parties making representations.
- 5.10 Applicant or person representing them addresses the committee. (\*See note (a) below).
- 5.11 Members may ask any relevant questions of the applicant or person representing them.
- 5.12 Parties that made representations to ask any relevant questions of the applicant or person representing them in the same order as set out in 5.7 above. (\*See note (a) and (d) below).

- 5.13 The Chairman will invite any parties making representations (in the order set out in 5.7 above), followed by the applicant or those representing them, to briefly summarise their points if they wish. (\*See note (a) below).
- 5.14 Members of the committee discuss and make their decision (See notes 8.1 and 8.2 below), and may move into private session to do so.
- 5.15 The Chairman relays the decision and the reasons given for the decision, and any conditions placed upon the licence (if granted) and the licensing objective(s) that they relate to. (\*See notes 8.3, 8.4 and 8.5 below).

### **Notes**

- (a) This licensing authority grants a maximum 15 minutes per party in total to make all relevant statements, but respectfully request that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.
- (b) Where there is more than one interested party speaking either in objection to, or in support of the application, a spokesperson should be agreed to speak on behalf of the objectors/supporters.
- (c) Applicants and persons who have made relevant representations have a right to appeal in various circumstances, details of which can be obtained from the licensing officer.
- (d) It is expected that this will consist of a summary of matters that have already been presented to the Sub-committee. New information will not be accepted at this stage.

## **6. Evidence**

The strict legal rules of evidence shall not apply and evidence shall not be given on oath.

## **7. Legal Advice**

- 7.1 The role of the sub-committee's Legal Adviser is to provide the Members with advice on:-
- questions of law;
  - matters of practice and procedure;
  - the options available to the sub-committee in making their decision;
  - any relevant decisions of superior courts, or other guidelines (eg. - Government Guidance on the 2003 Act and the Council's Statement of Licensing Policy);
  - other issues relevant to the matter before the sub-committee (eg. any consultation currently in progress through Council etc.)
  - where appropriate to assist the sub-committee in recording the reasons for its determination.
- 7.2 The Legal Adviser may ask questions of parties and persons appearing on their behalf in order to clarify the evidence and any issues in the case.
- 7.3 The Legal Adviser has a duty to ensure that every case is conducted fairly.

## **8. Determination of applications**

- 8.1 When all the evidence has been heard, the Members may move into private session and withdraw to make their deliberations. The Legal Advisor may accompany the sub-committee to give legal or procedural advice, but the Members will make the determination.
- 8.2 If the sub-committee needs to ask any further questions of any party, all parties will be asked to return before the sub-committee.

8.3 In the case of hearings held under the following sections of the Act, the sub-committee shall make its determination at the conclusion of the hearing:

- Hearing to consider police objection to temporary event notice [s.105(2)(a)]
- Hearing to consider review of premises licence following closure order [s.167(5)(a)]
- Hearing to determine application for conversion of existing licence to a new premises licence [Schedule 8, para 4(3)(a)]
- Hearing to determine application to vary a premises licence which is made at the same time as an application to convert an existing licence [s. 35 or s.39]
- Hearing to determine application for conversion of existing club certificate to a new club premises certificate [Schedule 8, para 16(3)(a)]
- Hearing to determine application to vary club premises certificate which is made at the same time as an application to convert an existing club registration certificate [s.85]
- Hearing to determine application for grant of personal licence to existing justices' licence holder [Schedule 8, para 26(3)(a)]

8.4 In any other case the authority shall make its determination within the period of 5 working days beginning with the day (or the last day) on which the hearing was held.

8.5 Where all the parties have agreed that no hearing is required, the authority shall make its determination within the period of 10 working days beginning with the day on which it gives notice to the parties.

## **9. Quorum**

9.1 The quorum for any hearing of a licensing sub-committee shall be two (2) Members but every effort will be made to ensure that wherever practicable the decision shall be taken by 3 members.

9.2 Determinations shall be made by a majority vote with the Chair having a casting vote in the event of an inconclusive result.

## APPENDIX B

### GIVING OF NOTICES AND APPLICATIONS

The Authority will apply the following guidelines on the “giving” of notices and applications made under provisions of the Licensing Act 2003:

#### Temporary Event Notices (TENs)

- (1) A person wishing to give a TEN to the licensing authority and relevant persons (the Police, the Council’s Licensing and Environmental Protection Team) shall be treated as having satisfactorily done so at the point when:  
  
either -  
  
(i) the Notice (including the prescribed fee) is delivered by hand to a member of the reception staff at Teignbridge District Council, Forde House, Brunel Road, Newton Abbot TQ12 4XX (for notifications to the Licensing Authority, Teignbridge Environmental Control) and to a member of the reception staff at at the Police Headquarters, Middlemoor, Exeter EX2 7HQ (for notifications to the police)  
  
or -  
  
(ii) the Notice (including the prescribed fee) is received in the ordinary course of the post at the Teignbridge District Council, Forde House, Brunel Road, Newton Abbot TQ12 4XX (for notifications to the Licensing Authority, Teignbridge Environmental Control) and at the Police Headquarters, Middlemoor, Exeter EX2 7HQ (for notifications to the police).
- (2) A Notice which is delivered by hand or post to a police station within the Authority’s area shall be treated as having been “given” to the Chief Officer of Police on the day served but for the avoidance of doubt, the only address to be used should be to the Chief Officer of Police, Police Headquarters, Middlemoor, Exeter, EX2 7HQ. Notices given to individual officers of the Devon and Cornwall Police shall not be treated as having been properly served on the Chief Officer of Police.
- (3) A Notice which is delivered by hand to any of the Authority’s offices will need to indicate what time and date it was delivered on the envelope or it may be treated as being ‘given’ on the next day following the original delivery.
- (4) A Notice which is delivered by post to any of the Authority’s offices will be treated as being given on the day received.
- (5) A notice received by way of facsimile transmission will be treated as being “given” on the day it is transmitted.
- (6) If the Notice is sent electronically via GOV.UK or via the licensing authority’s own electronic facility, the licensing authority will notify the Police and Teignbridge Environmental Control on behalf of the individual giving the Notice. In other cases, individuals must send the Notice to the licensing authority, Police and Teignbridge Environmental Control on their own behalf. All parties must receive the Notice within the prescribed time frame. Where notices are given via GOV.UK the Notice will be deemed to have been “given” at the point when the applicant has submitted a valid Notice, paid the prescribed fee and the Notice becomes accessible to the Authority by means of the facility.

- (7) 'Working day' means a Monday to Friday (excluding bank holidays, Christmas Day and Good Friday). For the purposes of calculating the notice period, the ten working days (or, for Late TENs, not before nine and not later than five working days) excludes the day on which the event is to start, and the day on which the Notice is given.

### **Other Applications**

- (8) A person wishing to submit an application to the licensing authority will be deemed to have satisfactorily done so at the point when it is given to a member of the reception staff at Teignbridge District Council, Brunel Road, Newton Abbot TQ12 4XX.
- (9) An application which is delivered by hand to the Authority at Forde House, Newton Abbot at any time on a Saturday, Sunday or a Bank Holiday shall be deemed to have been "given" on the next working day.
- (10) An application received by way of facsimile transmission shall be deemed to have been "given" on the day it is transmitted excluding Saturday, Sunday or a Bank Holiday these shall be deemed to have been "given" on the next working day.
- (11) Where applications are made via GOV.UK or via the Authority's own electronic facility, the application will be deemed to have been "given" when the applicant has submitted a valid application form and paid the prescribed fee and the application becomes accessible to the Authority by means of the facility.
- (12) The Authority will act in accordance with the s182 guidance with respect of 'holding' and 'deferring' electronic applications. The Guidance recommends that (as for written applications) electronic applications should not be returned if they contain obvious and minor errors such as typing mistakes or small errors that can be rectified with information already in the Authority's possession. However, if this is not the case and required information is missing or incorrect, the Authority will 'hold' the application until the applicant has supplied all the required information. This effectively resets the 28 day period for determining an application and may be done any number of times until the application form is complete. The Authority will notify the applicant as quickly as possible of any missing (or incorrect) information, and explain how this will affect the statutory timescale and advertising requirements.

## APPENDIX C

### RESPONSIBLE AUTHORITIES CONTACTS

**(a) Devon & Cornwall Police**

Licensing Department, Devon and Cornwall Police Headquarters, Middlemoor, Exeter, EX2 7HQ  
Tel: 01392 452225 E-mail: [licensingeast@devonandcornwall.pnn.police.uk](mailto:licensingeast@devonandcornwall.pnn.police.uk)  
Fax: 01392 452447

**Depending on the location of the premises (please see plan on reverse of this page)**

**(b) Devon & Somerset Fire & Rescue Service**

Western Command, The Fire Station, Newton Road, Torquay, TQ2 7AD  
Tel: 01803 653700 E-mail: [southfiresafety@dsfire.gov.uk](mailto:southfiresafety@dsfire.gov.uk)

Or

Central Command, Exeter Group, Exeter Fire Station, Danes Castle, Howell Road, Exeter, EX4 4LP  
Tel: 01392 872200 (ask for Exeter Group) E-mail: [exeterfs@dsfire.gov.uk](mailto:exeterfs@dsfire.gov.uk)

**Depending on your Health & Safety Enforcing Authority contact either:**

**(c) Health & Safety / \*\*Environmental Health**

Food & Health & Safety Manager / Environmental Control Manager, Environmental Health and Housing Services Department, Teignbridge District Council, Forde House, Brunel Road, Newton Abbot, TQ12 4XX  
Tel: 01626 361101 E-Mail: [food&safety@teignbridge.gov.uk](mailto:food&safety@teignbridge.gov.uk) / [envc@teignbridge.gov.uk](mailto:envc@teignbridge.gov.uk)

Or

**\*\* Health & Safety Executive, North Quay House, Sutton Harbour, Plymouth, PL4 0RA**

Tel: 01752 668481

**If your application relates to a factory, farm, school or college, fairground, hospital, nursing home or government premises, your Health and Safety Enforcing Authority is Plymouth please ensure \*\* receive a copy of your application.**

**(d) Local Planning Authority**

Planning Department, Teignbridge District Council, Forde House, Brunel Road, Newton Abbot, TQ12 4XX  
Tel: 01626 361101 Email: [Planning@teignbridge.gov.uk](mailto:Planning@teignbridge.gov.uk)

**Or if premises situated within the Dartmoor National Park:**

Dartmoor National Park, Haytor Road, Bovey Tracey, TQ13 9JQ  
Tel: 01626 832093 Email: [devcl@dartmoor-npa.gov.uk](mailto:devcl@dartmoor-npa.gov.uk)

**(e) Child Protection**

CP Checks, MASH, PO Box 723, Exeter, EX1 9QS  
Tel: 01392 383000 Email: [cpchecks@devon.gcsx.gov.uk](mailto:cpchecks@devon.gcsx.gov.uk)

**(f) Teignbridge District Council**

Licensing Section, Forde House, Brunel Road, Newton Abbot, TQ12 4XX  
Tel: 01626 215108/215187 Email: [licensing@teignbridge.gov.uk](mailto:licensing@teignbridge.gov.uk)

**(g) Weights & Measures**

Devon Trading Standards, Trading Standards Service, County Hall, Topsham Road, Exeter EX2 4QD.  
Tel: 01392 381381 Email: [tsslicensingact2003@devon.gov.uk](mailto:tsslicensingact2003@devon.gov.uk)

**(h) Health Authority**

Devon DDAT, NHS Devon, Room 255, County Hall, Topsham Road, Exeter, EX2 4QL  
Tel: 0845 002 3456 Email: [alcohollicensing-mailbox@devon.gov.uk](mailto:alcohollicensing-mailbox@devon.gov.uk)

**The following are only applicable in respect of a vessel which is usually moored in waters where it is, or proposed to be navigated at a time when it is used for licensable activities.**

**(i) Navigation Authority**

Harbour Master, Teignmouth Harbour Commission, The Old Quay House, Old Quay, Teignmouth, TQ14 8ES.  
Tel: 01626 773165 Email: [info@teignmouthharbour.com](mailto:info@teignmouthharbour.com)

**Environment Agency – South West**

Tel: 01392 444000 Email: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)

## **GLOSSARY OF TERMS**

### **Alcohol, authorised sale of**

- it is a mandatory condition of a Premises Licence that every supply of alcohol must be made or authorised by a person who holds a Personal Licence.

### **Alcohol, retail sale of**

- defined by the Act (s.192) as any sale of alcohol other than to:
  - a trader for the purposes of his trade
  - a club which holds a Club premises certificate for the purposes of the Club
  - the holder of a Personal Licence for the purpose of making sales authorised by a Premises Licence
  - the holder of a Premises licence for the purpose of making sales authorised by that licence, or to the premises user in relation to a Temporary Event Notice for the purpose of making sales authorised by that Notice.and which is made for consumption off the premises.

### **Annual Fee**

- premises licence and club certificates annual fee is due each year on anniversary of date the licence was granted or your licence could be suspended.

### **Appeals**

- the Act provides for right of appeal to the Magistrates' Court against a decision of the Authority. Appeals must be brought within 21 days of notification of the Authority's decision
- If you wish to appeal you must give notice of appeal to the Clerk to the Justices at the South Devon Magistrates' Court, 1st Floor, Riviera House, Nicholson Road, Torquay TQ2 7TT, within the period of 21 days beginning with the day on which you were notified in writing of the decision.

### **Authorised Person**

- an officer of the Authority who has been authorised by the Authority – generally for the purposes of inspection and/or enforcement – under the provisions of the Licensing Act 2003;
- an inspector appointed under s.18 of the Health and Safety at Work Act 1974;
- an officer of the local authority exercising a statutory function in relation to pollution control or harm to human health;
- in relation to a vessel, an inspector or surveyor of ships appointed under s.256 of the Merchant Shipping Act 1995;
- a person prescribed under s.13 (2) of the Act.

### **British Board of Film Classification**

- the body responsible for determining the age rating of films screened in the UK. Current ratings are:
  - U – generally suitable for audiences over 4 years of age
  - PG – suitable for general viewing but some scenes may be unsuitable for young children
  - 12A – suitable for children aged 12 years and over
  - 18 - suitable only for adults

### **Club Premises Certificate**

- authorises the use of premises by a qualifying club for one or more licensable activity

## **Day**

- means a period of 24 hours beginning at midnight.

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

- The individual specified in the premises licence as the designated premises supervisor – in relation to premises selling alcohol, the person (who must hold a Personal Licence, who will normally have been given the day to day responsibility for running the premises by the holder of the Premises Licence or will be the Premises Licence holder himself.
- The Authority note that in July 2009, the Government approved the removal of the requirement for a DPS and a personal licence holder to authorise alcohol sales at community premises, where the premises licence holder is or is to be a committee or board of individuals, with the responsibility for the management of the premises.
- Any application to change a DPS will be dealt with in accordance with the 2003 Act. Where an objection is received from the Police, unless previously resolved, the Authority is required to hold a hearing.

## **Hearing**

- a meeting of a Licensing sub-Committee – generally held in public - to determine an application for a Premises Licence where relevant representations have been received from a Responsible Authority or an interested party. The hearing will be held before a licensing ‘panel’ comprising three members of the Licensing Committee who will hear evidence from the applicant and from the objectors.

## **Hot Food or Hot Drink**

- food or drink supplied on or from any premises is “hot” for the purposes of Schedule 2 to the Act if the food or drink, or any part of it:
  - (i) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature, or
  - (ii) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

## **Interested Party**

- persons who can make representations
  - a person living in the vicinity of the premises
  - a body representing persons who live in that vicinity
  - a person involved in a business in that vicinity
  - a body representing persons involved in such businesses
  - an elected councillor (member) of the Authority.

## **Late Night Refreshment**

- the provision, between 11pm and 5am, of hot food or hot drink, to members of the public or a section of the public on or from any premises, whether for consumption on or off the premises between 11pm and 5am or at any time between 11pm and 5am when members of the public, or a section of the public, are admitted to any premises, a person supplies, or holds himself willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises.

Hot Food or Hot Drink - food or drink supplied on or from any premises is “hot” for the purposes of Schedule 2 to the Act if the food or drink, or any part of it:

- (i) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature,  
or
- (ii) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

### **Licensable Activities and Qualifying Club Activities –**

the sale by retail of alcohol

the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club

the provision of regulated entertainment

the provision of late night refreshment

the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club for consumption on the premises where the supply takes place

the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place

the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests

### **Licensing Authority**

– meaning Teignbridge District Council as Licensing Authority.

### **Licensing Committee**

– The Committee established by the Authority to discharge the licensing functions of the Authority.

### **Licensing Hours**

- The hours during which authorised licensable activities can take place

### **Licensing Qualification**

- A qualification accredited or certified by the Secretary of State.

### **Operating Schedule**

- a document containing a statement including the following matters:-
  - (a) the relevant licensable activities,
  - (b) the times during which it is proposed that the relevant licensable activities are to take place,
  - (c) any other times during which it is proposed that the premises are to be open to the public,
  - (d) where the applicant wishes the licence to have effect for a limited period, that period,
  - (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
  - (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
  - (g) the steps which it is proposed to take to promote the licensing objectives,
  - (h) such other matters as may be prescribed.

### **Personal Licence**

- authorises an individual to supply or authorise the supply of alcohol in accordance with a premises licence.

### **Premises Licence**

- authorises the premises to be used for one or more licensable activity

### **Qualifying Club**

- in order to be a 'qualifying club' for the purposes of the Act, a club must meet the following criteria:
  - a person must not be admitted to membership or enjoy the privileges of membership without a period of at least 48 hours between their application for membership and their admission,
  - the club must be established in good faith as club, and
  - the club must have at least 25 members.

(NB. A proprietary club (i.e. a commercial club which is established and operated for profit) cannot be regarded as a 'qualifying club' for the purposes of the Licensing Act 2003).

### **Regulated Entertainment -**

- (a) A performance of a play
- (b) An exhibition of film
- (c) An indoor sporting event
- (d) A boxing or wrestling entertainment
- (e) A performance of live music
- (f) Any playing of recorded music
- (g) A performance of dance

### **Relevant Persons**

- References to relevant persons in relation to any premises are references to the following:
  - a) the Chief Officer of Police for any police area in which the premises are situated,
  - b) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health (i.e. the Council's Environmental Protection).

### **Relevant Representation**

- is only relevant if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. A representation that fails to do so is 'irrelevant' for the purposes of the Act.

It is for the Authority to determine on its merits whether any representation by an interested party is frivolous or vexatious. The interested party may not consider the representation to be frivolous or vexatious, but the test is whether the Authority is of the opinion they are frivolous or vexatious. The Authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. A trivial complaint would not always be frivolous but would have to be pertinent in order to be relevant. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. In borderline cases the benefit will be given to the interested party making the representation. An interested party aggrieved by a rejection of his representations on these grounds may challenge the Authority's decision by way of judicial review.

If the Authority decides a representation is relevant then a hearing will be required in relation to that representation unless the Authority, the applicant and each person who has made representations agree that a hearing is unnecessary and that the Authority take such steps, having regard to the representations and promotion of the licensing objectives.

### **Residential Area**

- An area whose character is residential at the material time of day. Where there is doubt, the Authority will consider the number of residential units in the area and the proportion of such units to units used for other purposes.

### **Responsible Authority**

- The public bodies that must be fully notified of applications and that are entitled to make relevant representations to the Authority in relation to the grant, variation, minor variation or review of a premises licence or club premises certificate. Appendix B shows a contact list but if any amendments have been made an up to date list can be found at the following link <http://www.teignbridge.gov.uk/index.aspx?articleid=1804>.

### **Temporary Event Notice**

- a Notice authorising a Permitted Temporary Activity involving one or more licensable activities subject to the following various conditions and limitations:-  
*duration* – they are limited to events lasting for up to 168 hours;

### **Working Day**

- means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c.80) in England and Wales, these are New Year's Day, Easter Monday, Early May Bank Holiday, Spring Bank Holiday, Summer Bank Holiday and Boxing Day.

### **Year (Temporary Events)**

- means a calendar year (January to December).

## **USEFUL CONTACTS**

(Details correct as at July 2015)

### **Association of Convenience Stores (ACS)**

[www.acs.org.uk](http://www.acs.org.uk)

Federation House  
17 Farnborough Street  
Farnborough  
Hampshire  
GU14 8AG.  
Email: [acs@acs.org.uk](mailto:acs@acs.org.uk)

### **Association of Licensed Multiple Retailers (ALMR)**

[www.almr.org.uk](http://www.almr.org.uk)

The ALMR  
Central Chambers  
Ealing  
W5 2NR  
Tel: 020 8579 2080  
Email: [info@almr.org.uk](mailto:info@almr.org.uk)

### **Association of Town Centre Managers (ACTM and Purple Flag)**

[www.atcm.org](http://www.atcm.org)

ATCM  
32-36 Loman Street  
London  
SE1 0EH  
Email: [info@atcm.org](mailto:info@atcm.org)

### **British Beer and Pub Association (BBPA)**

[www.beerandpub.com](http://www.beerandpub.com)

British Beer & Pub Association  
Ground Floor  
Brewers' Hall  
Aldermanbury Square  
London  
EC2V 7HR  
Tel: 020 7627 9191  
Email: [contact@beerandpub.com](mailto:contact@beerandpub.com)

### **British Board of Film Classification (BBFC)**

[www.bbfc.co.uk](http://www.bbfc.co.uk)

3 Soho Square,  
London  
W1D 3HD  
Email: [feedback@bbfc.co.uk](mailto:feedback@bbfc.co.uk)

### **British Institute of Inn Keeping (BII)**

[www.bii.org](http://www.bii.org)

Infor House  
1 Lakeside Road  
Farnborough  
Hampshire  
GU14 6XP

Tel: 01276 684449  
Email: [customersupport@bii.org](mailto:customersupport@bii.org)

**British Retail Consortium (BRC)**

[www.brc.org.uk](http://www.brc.org.uk)

21 Dartmouth Street  
Westminster  
London  
SW1H 9BP  
Tel: 020 7854 8900  
Email: [info@brc.org.uk](mailto:info@brc.org.uk)

**National Centre for Circus Arts**

[www.nationalcircus.org.uk](http://www.nationalcircus.org.uk)

Coronet Street  
London  
N1 6HD  
Email: [info@nationalcircus.org.uk](mailto:info@nationalcircus.org.uk)

**UK Cinema Association**

[www.cinemauk.org.uk](http://www.cinemauk.org.uk)

Soho Square  
London  
W1D 3HD  
Tel: 0207 734 9551

**Department for Culture, Media and Sport** (see links to the Licensing Act 2003, Explanatory Notes, Guidance and Regulations)

[www.culture.gov.uk](http://www.culture.gov.uk)

100 Parliament Street  
London  
SW1A 2BQ  
Tel: 020 7211 6000  
Email: [enquiries@culture.gov.uk](mailto:enquiries@culture.gov.uk)

**Equity**

[www.equity.org.uk](http://www.equity.org.uk)

Equity  
Guild House  
Upper St Martins Lane  
London  
WC2H 9EG  
Telephone: 020 7379 6000  
Email: [info@equity.org.uk](mailto:info@equity.org.uk)

**Independent Street Arts Network (ISAN)**

[www.streetartsnetwork.org.uk](http://www.streetartsnetwork.org.uk)

54 Chalton Street,  
London  
NW1 1HS  
Tel: 020 7388 9767 (if urgent)  
Email: [info@isanuk.org](mailto:info@isanuk.org)

**Institute of Licensing Ltd (IOL)**

[www.instituteoflicensing.org](http://www.instituteoflicensing.org)

Institute of Licensing Ltd

Ridgeway

Upper Milton

Wells

Somerset

BA5 3AH

Tel: 0845 287 1347

Email: [info@instituteoflicensing.org](mailto:info@instituteoflicensing.org)

**Federation of Licensed Victuallers Associations (FLVAs)**

[www.flva.co.uk](http://www.flva.co.uk)

Federation of Licensed Victuallers Associations

The Raylor Centre

James Street

York

YO10 3DW

Tel: 01904 415469

Email: [admin@flva.co.uk](mailto:admin@flva.co.uk)

**Arts Development : UK**

[www.artsdevelopment.org](http://www.artsdevelopment.org)

Oak Villa

off Amman Road

Lower Brynamman

Ammanford

Wales

SA18 1SN

Phone: 01269 824728

Email: [artsdevUK@aol.com](mailto:artsdevUK@aol.com)

**National Pub Watch**

[www.nationalpubwatch.org.uk](http://www.nationalpubwatch.org.uk)

National Pubwatch

PO Box 3523

Barnet

EN5 9LQ

Tel: 020 8755 3222

Email: [admin@nationalpubwatch.org.uk](mailto:admin@nationalpubwatch.org.uk)

**The Portman Group**

[www.portman.org.uk](http://www.portman.org.uk)

The Portman Group

4th Floor

20 Conduit Street

London

W1S 2XW

Tel: 0207 290 1460

Email: [info@portmangroup.org.uk](mailto:info@portmangroup.org.uk)