

Agenda for Licensing & Enforcement Committee Wednesday, 26 August 2015; 9.30am



[Members of the Committee](#)

Venue: Council Chamber, Knowle, Sidmouth, EX10 8HL

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- 1 Minutes for 24 June 2015 (pages 3-7)
- 2 Apologies
- 3 [Declarations of interest](#)
- 4 [Matters of urgency](#) – none identified
- 5 To agree any items to be dealt with after the public (including press) have been excluded. There are no items that officers recommend should be dealt with in this way.

Part A - Matters for Decision

- 6 **Committee Update – Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing, including Apps A - E** (pages 8-18)
- 7 **Licensing Act 2003 – To seek approval to consult on the draft Licensing Policy** (pages 19-79)
- 8 **Gambling Act 2005 – To seek approval to consult on the draft Licensing Policy** (pages 809-129)

- 9 **Street Trading Consultation – Designation of Streets Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982** (pages 130-146)

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EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Licensing & Enforcement Committee held at Knowle, Sidmouth on Wednesday, 24 June 2015

Attendance list at the end of the document

The meeting started at 9.30am and ended at 11.20am

*1 Minutes

The minutes of the meeting of the Licensing & Enforcement Committee held on 18 February 2015, were confirmed and signed as a true record.

*2 Declarations of interest

Councillor Steve Hall

Minute 3

Disclosable Pecuniary Interest – private hire licence holder

Councillor Brian Bailey

Minute 3

Disclosable Pecuniary Interest – hackney carriage licence holder

Councillor Geoff Jung

Minute 3

Personal Interest

Councillor Colin Brown

Minute 3

Personal Interest

*3 Committee update – Licensing Act 2003, Gambling Act 2005 and General Licensing

The Licensing Manager presented his report - the following issues were highlighted and discussed.

1. Licensing Act 2003

The Licensing Manager expanded on the pre-event meetings, that officers are involved with at the beginning of the year, for some of the large summer events that take place in East Devon. During February and April officers chaired multi-agency pre-event meetings for the Sausage and Cider Festival held in Honiton, Folk Week held in Sidmouth and also attended a meeting for the Kite Festival including two concerts held in Exmouth. Officers were also involved in checking the premises of the new Premier Inn on Exmouth Seafront prior to the premises opening to the public and with the opening of a new nightclub known as Fever (previously Pulse) situated in Exmouth Town Centre.

Members noted a report published by the Institute of Economic Affairs looking at the impact of the Licensing Act 2003 over the last decade. This indicated that evidence suggested the changes had neither a strong negative nor strong positive on alcohol-related health problems, public order or Accident and emergency admissions. The report conclusions included information on reduced drinking levels in the UK (including binge drinking) and continuing reductions in the levels of violent crime since the start of the new licensing regime.

2. Gambling Act 2005

No Gambling Act offences had been detected; the regular inspections of premises were regarded as a valuable tool to ensure compliance.

The report drew attention to the Council's challenge of the veracity of supermarket employees' members' clubs in three Tesco branches within the district. This had the interest and support of the Gambling Commission, which was seeking talks with the main supermarket chains to provide guidance.

Members noted that in recent weeks North Devon District Council licensing officers had been liaising with East Devon officers as the same operator who made the unsuccessful applications to this council was in the process of making similar applications relating to Tesco in North Devon. The Licensing Manager also reported that since the report was compiled he had received a similar enquiry from Teignbridge District Council

3. Taxis

Proactive work carried out by the licensing team in respect of education-based enforcement and monitoring of Hackney Carriage and Private Hire drivers and vehicles continued to be effective.

Devon County Council had now carried out works to lower the pavement at one end of the Strand, Exmouth taxi rank.

Councillor Jim Knight reported that Devon County Council had discussed the removal of the taxi rank in Beer and had said that they would expect Beer Parish Council to pay for the traffic order to remove the taxi rank, which was expected to cost between £3-6,000.

Councillor Brian Bailey raised an issue in relation to the licensing of hackney carriage vehicles that were just outside the four year age limit for licensing. He asked that more vigorous tests be made on these vehicles. The Licensing Manager confirmed that this had been investigated and that in future where applicants sought to licence vehicles over 4 years old for the first time they will be advised that members of the Licensing & Enforcement Sub Committee who are considering the application will be expecting the applicant to provide a comprehensive inspection report of the vehicle carried out by a recognised inspection regime nominated by the council. In addition any essential repairs highlighted in the report would also need to have been completed.

Members were advised that a software solution that has been developed by DVLA would enable licensing authorities to carry out driver history checks on new style driving licences. Current arrangements in respect of the counterpart (to facilitate checking driver's history) had ceased from 8 June 2015.

4. General Licensing

The licensing team arranged inspections of pet shops and animal boarding premises by a vet and a member of the Environmental Health Team. The applications for Street Trading pitches on the Esplanade at Sidmouth during Sidmouth Folk Week had been made available on the council's website on the 1 April. The applications for all available 60 pitches were oversubscribed and there was a waiting list being run. The Licensing Manager confirmed that a report

requesting for authority for public consultation to be undertaken on changing the current Street Trading arrangements in East Devon would be considered by the Overview Committee at its meeting on 30 June. The final decision on this policy was within the power of this Committee.

The Licensing Manager reported that the Local Government Association had been a strong supporter of the new Scrap Metal Dealers Act 2013 when it came into force and a copy of a recent press release on the subject by the LGA was attached to the report.

5. Consultations

The minutes of the taxi liaison meeting held on Wednesday 1 April 2015, were attached to the report. The next meeting would be held on Thursday 29 October.

Members noted that a member of the Licensing Team attended the quarterly East and Mid Devon Drug and Alcohol Group meetings, arranged by Gerry Moore, Anti Social Behaviour Safety Co-ordinator. They requested that Gerry Moore be invited to a training session after a future meeting to explain the work of the Group.

6. Member Training

There had been a one day training seminar for members on Monday 8 June 2015 held in the Council Chamber and was taken by Philip Kolvin, QC. The event was very well attended with a total of 65 attendees including councillors and officers from South Somerset, Mid and West Devon, South Hams and Exeter together with three police personnel. The Chairman wished to thank all those members who attended the training. It was envisaged that further short training sessions on specific areas of licensing, for example taxi or gambling licensing would be run at the end of the Committee's quarterly meetings.

7. Entertainment Deregulation came into effect 6 April 2015

The Licensing Manager reported that as a result of the Legislative Reform (Entertainment Licensing) Order 2014 various aspects of entertainment deregulation contained in the Order came into effect from 6 April 2015. The Order generally exempted a number of entertainments up to 11pm only.

8. Deregulation Bill finally receives Royal Assent

The Deregulation Bill received Royal Assent of Thursday 26 March and became the Deregulation Act 2015. The Act brought a swath of deregulation measures across many aspects of our lives, including licensing law. Included were the abolition of the requirement to renew Personal licences and changes to the duration of taxi driver licences and Private hire operator licences.

RESOLVED: that the report be noted.

- *4 Deregulation changes to the duration of Hackney Carriage and Private Hire driver licences and Private Hire operator licences and a proposal to change the council's current default taxi licence expiry dates

Members noted that from 1 October 2015 there would be a deregulation change effecting the duration of Hackney Carriage and Private Hire driver licences and Private Hire Operator licences. In particular there would be a requirement for the

council to offer 3 year driver licences. In order to ensure that all drivers remained fit and proper to carry out their role the Licensing manager requested that the Committee approve a policy of requiring all drivers to produce their DVLA driving licence and share their electronic driving licence record with the licensing authority at initial application, at each renewal and at the end of year one and two of a three year hackney carriage or private hire driver's licence. The licensing Manager also sought the committee's approval of the proposal to change the current taxi licence default expiry date of one per year of 31 May for all Private Hire licences and 31 October for all hackney carriage licences to 12 default dates annually for all taxi vehicles.

RESOLVED:

1. that the legislation requirements introduced by the Deregulation Act 2015 and effective from the 1 October 2015 to introduce 3 year hackney carriage and Private Hire Driver licences and 5 year Private Hire Operator licences be noted;
2. that a policy requiring all drivers to produce their DVLA driving licence and share their electronic driving licence record with the licensing authority at initial application, at each renewal and at the end of year one and two of a three year Hackney Carriage or Private Hire Driver's licence be approved;
3. that a move from one annual licence default expiry date of 31 May for Private Hire licences and 31 October for Hackney Carriages to twelve monthly default dates (the last day of each month) for all taxi licences be approved. This to be effective from 1 October 2015.

*5 Any other business

Exmouth Festival

Councillor Maddy Chapman raised the issue of the TEN notice served allowing the Manor Garden café to serve alcohol after normal licensed hours during Exmouth Festival. This had caused Exmouth Town Council a number of problems, particularly regarding allocating security staff to oversee the activities of members of the public buying alcohol from this facility in the family orientated area. Councillor Chapman indicated this was a recurring issue and centred around the need for the Manor Garden café operators to supply their own security staff. It was suggested that Exmouth Town Council, as the festival organisers, should liaise with the Exmouth Police during the planning of next year's Exmouth Festival. If the police supported the Town Council's view they could bring pressure of the café to provide sufficient security staff and if that failed they could object to any TENs served by the café for this event in future years.

Attendance list

Councillors present

Steve Hall (Chairman)
Jim Knight (Vice Chairman)
Megan Armstrong
Brian Bailey
Dean Barrow
Matthew Booth
Colin Brown
Maddy Chapman
John Dyson
Pat Graham
Alison Greenhalgh
Geoff Jung

Cherry Nicholas

Officers present

John Tippin, Licensing Manager

Steve Saunders, Licensing Officer

Giles Salter, Solicitor

Chris Lane, Democratic Services Officer

Apologies:

Councillors:

John O'Leary

Chairman Date

Report to: **Licensing and Enforcement Committee**

Date of Meeting: 26 August 2015

Public Document: Yes

Exemption: None



Agenda item: 6

Subject: **Committee Update - Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing**

Purpose of report: The report provides an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005 and Taxi legislation together with other general licensing matters.

Recommendation: **That the report be noted**

Reason for recommendation: To keep the Council's statutory committee up to date with current arrangements and statistics relating to the Licensing Service.

Officer: John Tippin, Licensing Manager, Ext. 2787, jtippin@eastdevon.gov.uk

Financial implications: There are no financial implications.

Legal implications: There are no legal implications requiring comment.

Equalities impact: Low Impact

Risk: Low Risk

Appendices:

- Appendix A - Licensing Act 2003 Licensing Statistics
- Appendix B - Gambling Act 2005 Licensing Statistics
- Appendix C - Taxis Licensing Statistics
- Appendix D - Animal, Skin Piercing and Scrap Metal Dealers Licensing Statistics
- Appendix E - Charitable Collections and Street Trading Licensing Statistics
- Appendix F -
- Appendix G -

Link to Council Plan: Living in, working in, enjoying and funding this outstanding place

1 Licensing Act 2003

1.1 Applications Received, Licences Issued and Notices Given

1.1.1 The numbers of applications received, licences issued and notices given since the last update report to the Committee are set out in **Appendix A**.

1.2 Premises Risk Ratings

- 1.2.1 The list of high risk premises in our area have been reviewed this year to ensure that the premises involved still rate a high risk status. Visits to these premises in our area are continuing with no issues found to date.
- 1.2.2 On 21 May officers attended the Devon County Show at the Westpoint Showground to carry out routine checks on the stalls/marquees that had applied for Temporary Events Notices for the event. Officers also carried out a check of the showground in an enforcement capacity to ensure compliance with the Licensing Act 2003. Officers found a 'community shop' on site that was advertising an off licence section with alcohol displayed for sale within the premises. The shop did not have a licence to sell alcohol and the owner was spoken to and advised to stop selling alcohol and to remove it from sale. Checks made during the show confirmed that the owner had complied with the instructions and removed the alcohol from sale.
- 1.2.3 On the 2 June 2015 officers chaired a de-briefing session for the Honiton Sausage & Cider Festival that had taken place on the Honiton Showground on the 1 & 2 May 2015. Those attending included the organisers and the relevant authorities involved in the set up and licensing of the event. It was reported that the festival had been badly affected by the inclement weather but the organisers will continue to plan a similar event next year but on a smaller scale. Apart from one relatively minor licensing issue the event is judged as well run from a licensing point of view.
- 1.2.4 On 18 June 2015 an officer attended a licensed premises in the Clyst St Mary area with an Environmental Health Officer concerning noise complaints following a weekend event billed as 'Fuelfest' held in the grounds of the premises. The issues raised are still ongoing with discussions being held concerning a similar event proposed for next year.
- 1.2.5 On 30 July officers attended a club premises in the Offwell area following a request by an officer of the club for advice on running the premises. The issue was complicated as there are three licences issued to three buildings, a Club Premises Certificate (with alcohol) and two premises adjoining the club with non alcohol Premises Licences. Access can be gained from both premises into the club. These licences were inherited on conversion from the previous licensing regimes prior to 2005. Following the site visit and examination of the plans a resolution was reached on how the club could operate within the limits of a Club premises Certificate and the use of TENs (Temporary Event Notices). A discussion also took place on a proposed new licence application to cover both premises licences with updated conditions.

1.3 Hearings

- 1.3.1 The numbers of hearings held since the last update report to Committee are set out in **Appendix A.**

2 Gambling Act 2005

2.1 Applications Received, Licences Issued and Notices Given

- 2.1.1 The numbers of applications received, licences issued and notices given since the last update report to the Committee are set out in **Appendix B.**

2.2 Enforcement

- 2.2.1 The programme of visits to licensed premises and other premises where gaming is permitted continues. It is still the case that few Gambling Act offences have been detected, a result which is pleasing and confirms that regular inspections are a valuable tool to ensure compliance. This was further borne out in May and June when licensing officers attended a licensed premises in the Exmouth area as part of the gambling inspection regime following transfer of a premises licence with alcohol granted under the Licensing Act 2003.

2.2.2 A series of visits to these premises identified that amongst a number of unregulated machines at the premises were also gaming machines subject to Category D of the Gambling Act and thus requiring a permit. Extensive discussions subsequently took place over a number of weeks involving the Licensing Service, the premises licence holders, the premises owners, the Gambling Commission and the gaming machine suppliers. This identified a situation at a national level concerning an agreement that was being negotiated between the Commission and the gambling trade association, BACTA over the status of the type of machine found in the Exmouth premises. Initially this hampered a local resolution with the operator and machine supplier although officers were satisfied that the machines were of the Category D type. Following the agreement between the Commission and BACTA the Commission agreed to allow a short period of grace for machine operators to obtain the necessary permissions for these Category D regulated machines which various machine suppliers have supplied throughout the country. The requirement was that the operators had to have submitted suitable licensing applications to the relevant licensing authority by 31 August 2015. In the Exmouth case however there were special circumstances involved and Licensing Service insisted that the offending machines were removed immediately. The gaming machine supplier subsequently removed the regulated machines at the premises to comply with existing legislation prior to the deadline. There are no longer regulated machines at the premises and the machine supplier has apologised to the district council for taking so long to comply with the council's instructions.

3. Taxis

3.1 Applications Received and Licences Issued

3.1.1 The numbers of applications received and licences issued since the last update report to the Committee are set out in **Appendix C**.

3.2 Enforcement

3.2.1 The Licensing Team has continued the education based enforcement and monitoring approach to the Hackney Carriage and Private Hire drivers and vehicles as we have used with the Licensing Act. Close liaison is maintained with partner agencies and the taxi trade to ensure that the principles of consistency, transparency and proportionality are maintained.

3.2.2 A Licensing Officer usually attends all meetings of the local taxi trade associations. There are at least two of these meetings annually. Mr Jackson, Licensing Officer, represents the Council and discusses any issues taxi drivers have and provides an update to the taxi association of matters that had arisen. The Council also holds two meetings between the trade and the Licensing Committee every year so that the taxi drivers can liaise with the Councillors and air any grievances they may have and to receive an input from officers into current legislation and trends in the taxi and private hire trade.

3.3 Hearings

3.3.1 There has been no Sub Committee hearing during the past quarter for the months of May, June and July.

3.4 Taxi Licensing Fees Approval

3.4.1 On the 15 July 2015 Cabinet considered a report from the Licensing Manager recommending increases to the taxi licensing fees that this Authority levies. These increases were recommended to Council and were agreed on the 29 July 2015. Following this approval there is a legal requirement for the proposals to be advertised within the District. Should there be representations received against the increases there is a further requirement for the proposed fees to be reconsidered in the light of those representations. It is intended that the increases will take effect from 1 October 2015. The setting of licensing fees is the function of Cabinet and full Council.

3.4.2 The proposed date of the 1 October for these increases to take effect is to coincide with the introduction of the requirement for all councils to offer 3 year hackney carriage and private hire driver's licences and 5 year private hire operator's licences. This committee received a report on this subject at your last meeting on the 24 June 2015.

3.4.3 With the intention of recovering the costs of issue, administration, control and enforcement of the Private Hire and Hackney Carriage licensing process the fees have been increased by 6%. The fees were last increased in September 2012 meaning that the increase amounts to 2% each year since the last change.

4. General Licensing including Animal Licensing and Skin Piercing

4.1 Animal, Skin Piercing and Scrap Metal Dealers Licensing Statistics

4.1.1 The statistics relating to animal, skin piercing and scrap metal dealer licensing and registrations since the last update report to Committee are set out in **Appendix D**. These statistics include, where relevant, the numbers of licences issued, the number of hearings held and the number of applications received.

4.2 Street Trading

4.2.1. The statistics relating to street trading since the last update report to Committee are set out in **Appendix E**. These statistics include, where relevant, the numbers of consents issued, the number of hearings held and the number of applications received.

4.2.2 The Sidmouth Folk Week has taken place for 2015 and all the sea front pitches were sold. Licensing Officers, in particular Doug Jackson worked long hours starting at 7.00 am on all 8 days to ensure stall holders behaved and arrangements went to plan.

4.2.3 The vast majority of the feedback from the general public in relation to the street trading has been very positive. This is evident by the large numbers visiting the stalls. However as is not uncommon we have received a few adverse comments about the use of the Esplanade for stalls and this year there has also been comment over amplified music on the seafront. The amplification of music on the Esplanade is not permitted and has only come to notice this year towards the end of the week. Next year licensing officers will liaise with the Environmental Health noise nuisance team to ensure there are no repeat performances.

5. Consultations and Partnership Working

5.1 Meeting between Members, Taxi Proprietors and Officers

5.1.1 The next liaison meeting between members, taxi proprietors and officers has been arranged for Thursday 29 October 2015 (during the Autumn half term) commencing at 1430 hour in the Council Chamber, Knowle, Sidmouth. The Committee's Chairman and Vice Chairman normally attend these meetings but other members are free to attend. Unfortunately recent meetings have not been well supported by the taxi trade.

6. Member Training

6.1 Following the very successful training on Monday 8 June at Sidmouth and taken by Philip Kolvin, QC the Licensing Manager provided some informal training after the last Licensing and Enforcement Committee meeting on Wednesday 24 June 2015. The training included an informal session of discussion on various licensing issues followed by a more formal session on the Licensing Act 2003.

6.2 A further training session is planned following the committee meeting on Wednesday 26 August 2015. The intention on this occasion is look at the relationship between legislation, statutory guidance and policy before moving onto taxi licensing. It is extremely important that members make themselves available for these training sessions especially the new members so that they can become familiar with more aspects of the committee's role. For example if a member of the committee has not received training on a specific licensing regime they will not be eligible to take part in a hearing relating to that regime.

- 6.3 As was explained previously it is planned that further short training sessions on specific areas of licensing, for example gambling and lotteries will be run at the end of the Committee's quarterly meetings. Members are invited to suggest the subjects they would like covered.
7. Taxi and Private Hire Deregulation
- 7.1 Members are reminded that three aspects of hackney carriage and Private hire licensing relating to licence duration and sub-contracting comes into effect on the 1 October 2015.
- 7.2 **Hackney carriage and Private Hire driver licences** – This deregulation changes the law to establish a standard duration of three years for taxi and private hire vehicle driver licences. It specifies that a licence may be granted for a period of less than three years but only in the circumstances of an individual case, not because of a blanket policy.
- 7.3 **Private Hire Operator licences** – The deregulation changes the law to establish a standard duration of five years for a private hire vehicle operator licence. Again there is a requirement that a licence may be granted for a period of less than five years but only in the circumstances of an individual case, not because of a blanket policy.
- 7.4 **Private Hire vehicles: sub-contracting**): The deregulation makes two changes to current legislation in relation to the sub-contracting of bookings from one private hire vehicle operator to another. These changes apply in England and Wales except in London or Plymouth where different legislation applies.

Licensing Act 2003

Number of Current Licences and Notices Given

	Jul-14	Jul-15	Changes
Premises Licences	607	608	1
Club Premises Certificates	57	56	-1
Personal Licences	1,914	1,947	33
Temporary Event Notices including sale or supply of alcohol - includes late TENs	6,086	6,205	119
Temporary Event Notices Entertainment and/or Late Night Refreshment only - includes late TENs	604	615	11

Hearings

	May-15	Jun-15	Jul-15
Hearings where no agreed position has been reached	0	0	0
Hearings held to approve an agreed position	0	0	0

Applications Received and Notices Given

	May-15	Jun-15	Jul-15
Grant of a Premises Licence	0	2	3
Variation of a Premises Licence	1	0	0
Transfer of a Premises Licence	4	5	2
Change of Designated Premises Supervisor	8	9	7
Minor Variations	3	2	2
Grant of a Personal Licences	9	13	18
Personal Licence Change of name or address	10	22	9
Temporary Event Notices given	99	98	81

Gambling Act 2005

Number of Current Licences and Notices Given

	Jul-14	Jul-15	Changes
<u>Premises Licences</u>			
Adult Gaming Centre	4	4	0
Betting	9	10	1
Bingo	1	1	0
<u>Total</u>	14	15	1

Hearings

	May-15	Jun-15	Jul-15
Hearings	0	0	0

	Jul-14	Jul-15	Changes
<u>Premises Permits</u>			
Family Entertainment Centre	8	9	1
Prize Gaming Permit	1	1	0
Club Machine Permit	19	17	-2
Licensed Prem Machine Permit	13	13	0
Notification of Gaming Machines	99	98	-1
<u>Total</u>	140	138	-2

	Jul-14	Jul-15 Change
<u>Small Society Lotteries</u>	164	157 -7

Taxis**Number of Current Licences**

	Jul-14	Jul-15	Changes
Hackney Carriages	164	158	-6
Private Hire Vehicles	11	18	7
Hackney Carriage Drivers	202	204	2
Private Hire Drivers	16	28	12
Private Hire Operators	3	14	11
<u>Total</u>	396	422	26

Hearings

	May-15	Jun-15	Jul-15
Hearings	0	0	1

Applications Received

	May-15	Jun-15	Jul-15
Hackney Carriage Licence (including renewals, transfers & vehicle changes)	3	12	11
Hackney Carriage Drivers Licence (including renewals)	8	4	5
Private Hire Vehicle Licence	7	9	0
Private Hire Vehicle Drivers Licence	13	7	0
Private Hire Operators Licence	6	6	0

EH Licensing**Number of Current
Licences**

	Jul-14	Jul-15	Changes
Animal Home Boarding	24	34	10
Kennels/Catteries	19	24	5
Pet Shops	10	13	3
Dangerous Wild Animals	2	1	-1
Zoo	4	6	2
Riding Establishments	9	10	1
Ear/Body-Piercing	18	22	4
Electrolysis	15	16	1
Tattooing	14	15	1
Acupuncture	24	28	4
Scrap Metal Dealer - Mobile Collector	13	19	6
Scrap Metal Dealer - Site Licence	1	6	5
Sex Entertainment Venue	1	0	-1
<u>TOTAL</u>	154	194	40

Hearings

	May-15	Jun-15	Jul-15
Hearings	0	0	0

Applications Received

	May-15	Jun-15	Jul-15
Animal Home Boarding	6	6	6
Kennels/Catteries	1	0	2
Pet Shops	0	2	0
Animal Breeding	0	0	1
Dangerous Wild Animals	0	0	1
Zoo	0	0	0
Ear/Body-Piercing	1	1	0
Electrolysis	1	0	1
Riding Establishments	0	2	3
Acupuncture	0	0	0
Tattooing	1	0	1
Scrap Metal Dealer - Mobile Collector	0	0	0
Scrap Metal Dealer - Site Licence	0	0	0
Sex Entertainment Venue	0	0	0

General Licensin**Applications Received**

	May-15	Jun-15	Jul-15
Street Collections	24	14	14
House to House	1	2	3
Street Trading	0	0	0
Street Trading (Charitable)	0	0	3

Hearings

	May-15	Jun-15	Jul-15
Hearings	0	0	0

Report to: **Licensing and Enforcement Committee**

Date of Meeting: 26 August 2015

Public Document: Yes

Exemption: None

Review date for release: None



Agenda item: 7

Subject: **Licensing Act 2003 – To seek approval to consult on the draft Licensing Policy**

Purpose of report: This report updates the Licensing & Enforcement Committee on the review of the Council's Licensing Act 2003 Policy and seeks approval to commence the consultation process on the draft policy which has been updated in the light of recent changes in legislation and experience over the past five years.

Recommendation: **That the Committee consider this draft Statement of Licensing Policy (attached as Appendix B) and give approval for the Licensing Service to start the formal public consultation process that is required by the legislation.**

Reason for recommendation: It is a legal requirement of the Act for the Council to determine a Licensing Policy in order to provide a framework for all licence applications regarding the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment. The Policy was last reviewed in 2011. It must be reviewed at least every five years and therefore an amended Policy must be adopted by the 7 January 2016.

Officer: John Tippin, Licensing Manager, jtippin@eastdevon.gov.uk, 01395 517587

Financial implications: If the Policy is not properly adopted by the District Council the Authority will be liable to legal challenge which if successful could entail costs being awarded against the District Council.

Legal implications: The legal implications are set out within the report.

Equalities impact: Low Impact

Risk: Low Risk

Links to background information: **Appendices:**

Appendix A - List of key Organisations and individuals that we intend to consult

Appendix B - Draft Licensing Policy prepared for consultation

Background Papers:

- Licensing Act 2003
- Guidance issued by the Home Office under Section 182 of the Licensing Act 2003 – March 2015 Edition
- East Devon District Council's Policy Statement adopted in 2011

Link to Council Plan: Living in, working in, enjoying and funding this outstanding place

1 Background

Background and Proposed Draft Amendments to the Existing Policy

- 1.1 Under the Licensing Act 2003, it is the responsibility of the Council to develop and publish a Statement of Licensing Policy. The published Policy then provides the framework for all decisions on applications relating to the Licensing Act 2003 and the way the Authority carries out its functions in relation to the legislation. Council adopted the current Policy on the 7 January 2011
- 1.2 The Act requires that the Licensing Authority review its Licensing Policy every five years. The Council's present policy will expire on the 7 January 2016 and therefore the Authority is under a duty to have reviewed and published a fresh policy by that date.
- 1.3 Over the past five years the current policy has been kept under review by the Licensing Service. However a number of changes have now been proposed to reflect current practices and updated guidance under section 182 of the Licensing Act issued over the past five years.
- 1.4 The adopted policy must set out the authority's general approach to licence applications and may only be determined following consultation with the following parties:
 - The Chief Officer of Police, Devon & Cornwall Police;
 - Devon & Somerset Fire & Rescue Service;
 - Members of the licensed trade in the area;
 - The local community.
- 1.5 In addition to these groups, it is proposed to circulate invitations more widely to take part in the draft Policy consultation to include all Responsible Authorities, Council Members, the business community, Town and Parish Councils, the Community Safety Partnership and the Devon Primary Care Trust. A more comprehensive list appears at **Appendix A**. The Policy will also be published on the Licensing Service's dedicated web pages and web users will be invited to comment online.
- 1.6 The consultation and publication timetable for the Policy is:
 - 26 August 2015 - Revised policy circulated for consultation
 - 2 November 2015 - Consultation period ends
 - 18 November 2015 - Result of consultation reported to L & E Committee
 - 2 December 2015 - Cabinet
 - 16 December 2015 - Licensing Policy considered by full Council for adoption

1.7 The main changes to the policy are:

- Section 3 – Licensing Objectives & Related Legislation. The inclusion of additional legislation relating to the Gambling Act 2005, Health Act 2006 and Sexual Entertainment Venues.
- Section 4 – The Licensing Function. Details a more in depth description of the Licensing Function including a chart of delegation and the updating of the Licensing Authority as a Responsible Authority under the Licensing Act.
- Section 5 – The Licensing Process: The addition of an in depth description of the licensing process including large scale public events.
- Section 7 – The addition of the role of the DPS (Designated Premises Supervisor).
- Section 8 – An update of recent amended legislation relating to Temporary Event Notices (TENs).
- Section 13 – The addition of details relating to the CCTV Surveillance Code of Guidance – June 2013.
- Section 18 – The addition of legislation relating to the Late Night Levy.
- Section 19 – The addition of legislation relating to Early Morning Restriction Orders (EMROs).
- The addition of the procedure for dealing with hearings – (Appendix B of the draft policy).

1.7 The draft Policy takes account of the revised Government Guidance issued under S182 of the Licensing Act 2003 (March 2015). A copy of the draft policy appears at **Appendix B**. All the additions/amendments are entered in the document in red but for those who are reading in black and white the additions are also printed in bold type.

1.8 The legislation requires that publication of the policy takes place by 7 January 2016.

APPENDIX A

East Devon District Council

Licensing Policy Document – Licensing Act 2003

Key Organisations and individuals that we intend to consult

- ❑ All premises licensed under the 2003 Act in East Devon district
- ❑ British Beer & Pub Association
- ❑ Licensees Associations
- ❑ Chambers of Commerce within East Devon area
- ❑ Devon & Cornwall Constabulary (Chief Officer of Police)
- ❑ Devon Child Protection Committee
- ❑ Devon Primary Care Trust
- ❑ Devon & Somerset Fire & Rescue Service
- ❑ East Devon District Council - Clerks to Town and Parish Councils
- ❑ East Devon District Council – Property & Economic Development
- ❑ East Devon District Council – Environmental Health Service
- ❑ East Devon District Council Councillors
- ❑ Equity
- ❑ Health & Safety Executive, Plymouth
- ❑ Live Music Forum
- ❑ National Licensing Specialist Solicitors
- ❑ Solicitors within East Devon area
- ❑ Weights and Measures (Trading Standards)
- ❑ Maritime and Coast Guard Agency
- ❑ Environment Agency

Copies of the Policy will also be made available for comment in the following locations:

- ❑ Information Points and CABs within East Devon area
- ❑ Libraries within East Devon area

LICENSING POLICY

LIQUOR, PUBLIC ENTERTAINMENT
& LATE NIGHT REFRESHMENTS

UNDER THE
LICENSING ACT 2003

For the period
7 January 2016 to 6 January 2021

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FOREWORD

This foreword does not form part of the policy and is for information purposes only.

Welcome to East Devon District Council's Licensing Policy statement for **2016 - 2021**.

Section 5 of **the Licensing Act 2003 (thereafter referred to as "the Act")** requires a licensing authority to prepare and publish a statement of its licensing policy every five years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the Act. The Licensing authority will keep the policy statement under constant review and make such revisions to it, as it considers appropriate. Where revisions are made, the licensing authority shall publish a statement of revisions or a revised licensing policy statement.

This revised Policy is published following a public consultation during the latter half of **2015** and adoption by Full Council on the **16 December 2015**. It is effective from the **7 January 2016** for the following five years.

Since the introduction of the Act, licensing authorities have gained extensive experience in the administration and enforcement of the legislation. We understand that the term 'licensed premises' can be applied to numerous types of operation from a nightclub to a traditional pub or a community run village shop and that our policy should provide valuable guidance and information to address the differing character and needs of each premises. This policy is also intended to provide advice and guidance to anyone that may be involved in the licensing application process from applicants to responsible authorities and members of the public who wish to make a representation about an application.

The entertainment industry within the District is a major contributor to the economy of East Devon. It attracts tourists and visitors, makes for vibrant towns and communities and is a major employer. **We understand however our duty to ensure that the needs of residents are considered and anticipate that this policy will help to balance the sometimes conflicting needs of licensees and residents.**

The aim of the policy is to secure the safety and amenity of residential communities whilst facilitating a sustainable entertainment and cultural industry. East Devon District Council, in adopting this Licensing Policy, recognises both the needs of residents for a safe and healthy environment in which to live and work and the importance of well run entertainment premises to the local economy and vibrancy of the District. To achieve this aim the Council is committed to partnership working with police, fire service, and local businesses, licensing trade, residents and others, towards the promotion of the objectives as set out in this policy.

This policy provides information and guidance to licence applicants, interested parties and responsible authorities on the general approach that the licensing authority will take in terms of licensing. **Each application will be considered individually and**



the licensing authority will use the policy to ensure that considerations other than fitness of the applicant and suitability of premises are considered when reaching a decision. We will apply this policy consistently and fairly so that the licensing objectives as set out in the legislation are promoted.

In the preparation and publication of this policy East Devon District Council as the licensing authority has had regard to the guidance issued by the **Home Office** under Section 182 of the Licensing Act 2003.

Nothing in this policy document should be regarded or interpreted as an indication that any requirement of licensing or other law may be overridden.

A copy of the policy together with other licensing related information may be viewed on the licensing pages of the Council website at eastdevon.gov.uk/licensing. Alternatively advice and copies of the policy is available by contacting the Licensing Team via email to licensing@eastdevon.gov.uk on by telephone to 01395 517410/517411.

Should you have any questions or queries about this document you may write to the Licensing Service at:

East Devon Licensing Authority
Council Offices
Knowle
SIDMOUTH
EX10 8HL

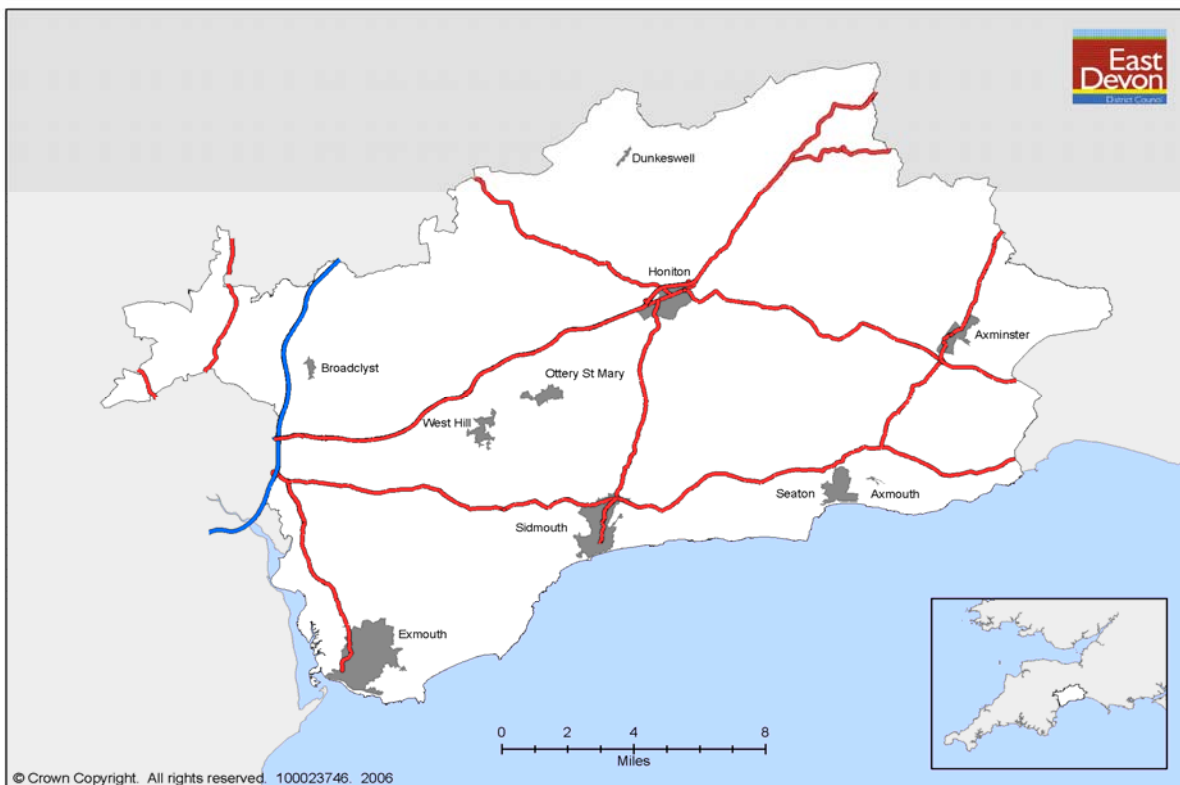
Or contact us by:
Phone: 01395 517410/517411
Email: licensing@eastdevon.gov.uk

The Geographical Area

East Devon is one of eight Devon districts and, in population terms, it is the largest in the County.

The District has a dispersed and mainly rural population. The rural nature of the area is emphasised by the **low population density in comparison to the national average**. The District has **63** Town and Parish Councils with areas of Outstanding Natural Beauty and the World Heritage Coast covering a high proportion of the District.

The main settlements comprise the coastal resorts of Exmouth (**Devon's largest town**), Budleigh Salterton, Sidmouth and Seaton. In the mainly rural inland area the settlements comprise Honiton, Ottery St Mary, and Axminster. There are numerous villages and hamlets **and 2011 saw the emergence of the new town of Cranbrook to the north of the district plus other urban extensions including the Exeter Science Park and Skypark.**



The population of East Devon has an older age profile with the 65+ age range looking set to grow more than any other over the next 10 years. Predominantly, residents are from a white British background, with just 1.59 per cent of the district's population coming from an ethnic background.

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.

The text within the shaded boxes is intended to provide information on the legal framework and statutory guidance but does not form part of the policy itself.

Statement of Licensing Policy

1. Introduction and Scope

1.1 This Statement of Licensing Policy is based upon the Licensing Act 2003 ("the Act") and is in line with the Home Office Guidance to local authorities and takes effect from 2016.

1.2 **This** policy relates to all those licensing activities identified as falling within the provisions of the Act wherever they take place, 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
 - A performance of a 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 making music or dancing.
- The supply of hot food and/or hot drink from any premises including food stalls between 11.00 pm and 5.00 am (Late Night Refreshment).

1.3 The Licensing Act 2003, section 5 requires a licensing authority to prepare and publish a Statement of Licensing Policy every five years.

1.4 Such a policy must be published before the authority carries out any function in respect of individual applications made under the act.

1.5 The purpose of this policy document is to assist the licensing authority in reaching a decision on a particular application, setting out those matters that will normally be taken into account. In addition, the policy document seeks to provide clarity for applicants, residents and other occupiers of property and investors, enabling them to make plans to move to, remain or invest in the District with some measure of certainty.

- 1.6 To achieve the licensing objectives the Council will use its full range of powers and engage all relevant responsibilities including its planning and environmental health controls, crime and disorder policies and powers. The authority will enter appropriate partnership arrangements, working closely with the police, the fire authority, trading standards, local businesses, community representatives and local people in meeting these objectives. Neighbouring authorities and town and parish councils will be consulted where appropriate.
- 1.7 The licensing authority will keep the policy statement under constant review and make such revisions it feels appropriate. Where revisions are made, the licensing authority will publish a statement of revisions or a revised licensing policy statement. Any major changes, unless they are the result of legislation changes will normally be preceded by public consultation.
- 1.8 The Act makes provision for the licensing of individuals for the retail sale of alcohol (personal licences), the licensing of premises for the retail sale of alcohol, provision of regulated entertainment or late night refreshments (premises licence), the supply of alcohol or the provision of regulated entertainment in certain clubs (club premises certificates) and the permitting of certain licensable activities on a temporary basis (temporary event notice).

2. Consultation

- 2.1 Before determining this policy statement the licensing authority has consulted with the following: -
 - the chief officer of police
 - the fire authority
 - persons/bodies representative of local premises licence holders
 - persons/bodies representative of local club premises certificate holders
 - persons/bodies representative of local personal licences
 - persons/bodies representative of businesses and residents in the area
- 2.2 Proper weight has been given to the views of all consulted prior to this policy statement taking effect.
- 2.3 Unless changed by future legislation the policy statement will remain in existence for a maximum period of **5** years and will then be subject to review and further consultation.

The licensing authority may consult beyond the statutory requirements, and seek comments from particular bodies or representatives of groups associated with the entertainment industry, the legal profession, health authority and the welfare of children. Those consulted include a body competent to advise on child protection, Weights and Measures (Trading Standards), Health and Safety Executive, Environmental Health, Planning and Building Control, Maritime and Coast Guard Agency and the Environment Agency.

3. Licensing Objectives and Related Legislation

3.1 Licensing Objectives

3.1.1 The licensing authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives. These are: -

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

3.1.2 These objectives are the only matters to be taken into account in determining the application and any conditions attached must be **appropriate in achieving** the licensing objectives. The legislation requires if there are no relevant representations then an application must be granted and will be subject only to mandatory conditions and conditions consistent with the applicant's operating schedule.

3.1.3 A Licence will only be granted where the licensing authority is satisfied that these objectives have been met.

3.1.4 The licensing authority requires applicants to address the licensing objectives in their operating schedules having regard to the type of premises, the licensable activities to be provided, the operational procedures, and the nature of the location and the needs of the local community.

3.1.5 Operating schedules should not consist of lists of statements but specify specific measures that will be put in place to promote the four licensing objectives. Appendix A gives examples of what the licensing authority would expect to see in operating schedules.

3.1.6 It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as a **"cure all"** for solving all problems within the community. The Licensing Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. The licensing authority will therefore continue to work in partnership with its neighbouring authorities, the police, the fire authority, the Council's Environmental Health Department, local businesses and local people towards the promotion of the objectives as outlined.

3.2 Related Legislation

3.2.1 When making licensing decisions, the licensing authority is bound to apply: -

3.2.2 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
- Equality Act 2010 (When in force)



The Council, when making decisions, has a duty to do all that it reasonably can to prevent crime and disorder, under Section 17 of the Crime and Disorder Act 1998.

The Council is under a duty to protect the rights of residents to privacy and family life under Article 8 of the European Convention on Human Rights. At the same time, the Council must recognise the right of legitimate business to operate their premises without unnecessary restraint.

Public authorities have a legal obligation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups.

3.2.3 The licensing authority will also have regard to other legislation, strategies, policies and guidance in its decision making including: -

3.2.3.1 Legislation

- Crime and Disorder Act 1998
- Health and Safety at Work etc. Act 1974
- Environmental Protection Act 1990
- Anti-Social Behaviour, Crime and Policing Act 2014
- Building Regulations
- Regulatory Reform (Fire Safety) Order 2005
- Town and Country Planning Act 1990
- Private Security Industry Act 2001
- Violent Crime Reduction Act 2006

3.2.3.2 Strategies

- Safe . Sensible. Social. The next steps in the National Alcohol Strategy
- 'Safer Clubbing'
- East & Mid Devon Community Safety Partnership Plan 2008-11

3.2.3.3 Policies

- Regulatory Compliance Code and the Hampton Principles
- Local Plan
- Local Transport Plan
- Enforcement Policies of each Responsible Authority

3.2.3.4 Guidance

- Guidance to Health and Safety at Outdoor Events (Purple Book)
- Working together on Firework Displays
- Managing Crowds Safely
- The Guide for Small to Medium Places of Assembly
- The Guide for Large Places of Assembly
- Guide to Fire Precautions in Entertainments and Like Premises

- Good Practice Guide on the Control of Noise from Pubs and Clubs (Institute of Acoustics)
 - Code of Practice on Environmental Noise Control at Concerts (Noise Council)
 - The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks
 - The District Council's guidance/policy in relation to noise nuisance etc.
 - Security Industry Authority's guidance on security at large outdoor events
- 3.2.4 The aim of the licensing process is to regulate licensable activities so as to promote the licensing objectives. It is the licensing authority's wish to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 3.2.5 The licensing authority recognises that the provision of entertainment is a major contributor to the economy of the District, attracts tourists and visitors and is a major employer. Commercial occupiers of premises have a legitimate expectation of an environment that is attractive and sustainable for their businesses.
- 3.2.6 The licensing authority's Licensing Committee will keep itself informed and consider wider issues which may need to be given due consideration when making licensing decisions. These issues may include:-
- needs of the local tourist economy
 - cultural strategy for the area
 - employment situation in the area and the need for new investment and employment where appropriate
- 3.2.7 The licensing authority will also have regard to wider considerations affecting the residential population and the amenity of any area.
- 3.2.8 **The licensing 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.**

The Home Office 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.

- 3.2.9 In determining a licence application the overriding principle adopted by the licensing authority is that each application will be determined on its merits in the context of the four licensing objectives, and that unless relevant representations are

received from Responsible Authorities or Interested Parties, there is no provision for the authority to impose conditions on a licence other than mandatory conditions or those proposed within an application.

3.3 Gambling Act 2005

The provision of gaming machines and certain forms of low-stakes gambling (for example 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 premises where it believes that gaming is becoming the dominant activity or is having a detrimental effect on the licensing objectives.

3.4 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.

3.5 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, the Licensing Act 2003 will permit the holder of a premises licence to carry out relevant entertainment where the premises are not licensed as a sex entertainment venue under the 1982 Act if:

- The relevant entertainment has only 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.**

The Council has adopted a Sex Establishment Licensing Policy which stands separate from this Licensing Policy. The Policy may be viewed on the District Council's licensing web pages.

4. The Licensing Function

4.1 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 expects 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 effect on the quality of life of persons living and/or working in the vicinity of the premises.

4.2 Delegation of Functions

4.2.1 The powers of the licensing authority under the Act may be carried out by the authority's Licensing Committee, by a Sub-Committee or by one or more officers acting under delegated authority. The Licensing and Enforcement Committee will consist of between 10 and 15 elected members of the Council and will establish sub committees consisting of 3 members of the committee. The Council's delegation of functions follow the Home Office Guidance issued under Section 182 of the Licensing Act.

4.2.2 Many of the licensing procedures will be largely administrative and un-contentious. In the interests of efficiency and effectiveness officers will generally carry these out.



4.2.3 A list of delegations is available below:

<u>Matter to be dealt with</u>	<u>Dealt with by Full Committee</u>	<u>Dealt with by Sub-Committee</u>	<u>Dealt with by Officers</u>
Application for personal licence		If a police objection made	If no police objection made
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 is made
Application for minor variation of premises licence / 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
Decision whether to consult other responsible authorities on minor variation application			All cases
Suspension of premises licence/club premises certificate for non-payment of annual fee			All cases
Review of Statement of Licensing Policy	All cases (Full Council)		
Implementation of a Late Night Levy	All cases (Full Council)		
Creation of an Early Morning Restriction Order	All cases (Full Council)		

4.2.4 If representations have been received against an application for the grant or variation of a premises licence or club premises certificate and this is followed by successful mediation an agreed position will have been reached between the objectors and the applicant. Any amendments or extra conditions that are agreed at the mediation will need to be presented to the licensing sub-committee for approval.

4.3 The Licensing Authority as Responsible Authority

4.3.1 Section 103 of the Police Reform and Social Responsibility Act 2011 amended the Act by making the licensing 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.

4.3.2 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.

4.4 Review of a Premises Licence or Club Premises Certificate

4.4.1 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 licensing 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.

4.4.2 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 and are not a responsible authority are encouraged to take initial steps. For example:

- asking the licensing 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 (for example Environmental Health 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.

4.4.3 The review process is not intended as a means of challenging the grant of a licence following

the failure of representations to persuade the licensing 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 (for example where new problems have arisen) or where it arises following a closure order made under s.160 or s.161 of the Act.

4.4.4 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 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.gov.uk) and our website eastdevon.gov.uk/licensing.

4.4.5 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

4.4.6 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.

4.4.7 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 licensing authority's decision.

4.5 Enforcement

4.5.1 The licensing authority has established protocols with Devon & Cornwall 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.

4.5.2 In general, action will only be taken in accordance with agreed enforcement principles and in line with the licensing authority's own enforcement policy. To this end the key principles of consistency, transparency and proportionality will be maintained.

5. The Licensing Process

5.1 Applications

5.1.1 Application forms may be downloaded from the licensing authority's licensing web pages. Many of the applications are also available to complete online. Applicants are strongly recommended to discuss their application with a member of the licensing team prior to formal submission (the licensing team offers 30 minute appointments with licensing officers). The authority may reject applications which have not been completed correctly or contain insufficient information

5.1.2 The Act requires that applications for the grant or variation of a premise licence or club premises certificate are advertised in accordance with regulations. The authority will need to be satisfied that the applicant has complied fully with these regulations and will check the premises for the site notices and 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 will reject the application. Further guidance on advertising applications and a template notice is available on our Licensing webpage eastdevon.gov.uk/licensing/beer-and-entertainment/premises-licences-and-club-premises-certificates/guidance-documents.

5.2. Representations

5.2.1 When an application is made for the grant or the variation of a premises licence or club premises certificate a responsible authority under the Act or any other person may make a representation about the application.

5.2.2 Representations must be made to the authority in writing within the 28 day consultation period. For this purpose, a representation can be made using the form available on our website or by letter or e-mail.

5.2.3 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.

5.2.4 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. The authority has established its own hearing procedure as provided for by regulations made under the Act and this is included at Appendix B.

5.2.5 Any party to a hearing may expand on their representation but may not introduce new or different representations.

5.2.6 Representations which are deemed by the authority to be repetitious, frivolous, vexatious may be disregarded.

5.2.7 Where a notice of a hearing is given to an applicant, the licensing authority is required by regulations to provide the applicant with copies of the relevant representations that have been made which will include names and address of any person who has made a representation. 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.

5.2.8 Where relevant representations have been made against an application the licensing authority will normally offer to chair a mediation meeting, after the expiry of the 28 day notice period, between the applicant and any objectors. The purpose of mediation is to allow each party to express their concerns or views in an attempt to come to an agreed position. A positive mediation result saves time and money as the licensing authority and parties involved will not have to attend a contested hearing before a licensing subcommittee.

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 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. It might be that the applicant has considered all of this and decides that no measures will be appropriate to cover promotion of one or more of the licensing objectives but that consideration will need to be made by the applicant.

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, antisocial behaviour, littering and noise, 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, if considered appropriate, to include in their Operating Schedules adequate and effective steps to control noise and disturbance from their premises.

5.3.5 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 will 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.

5.3.6 It should be noted that, when determining an application, the authority is making a judgment 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.

5.3.7 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.

5.3.8 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.

5.3.9 Other statutory requirements may apply to the provision of any regulated activities at a premises and the responsibility for compliance lies with the licence holder.

5.3.10 In reaching a decision on whether or not to grant a licence, the licensing authority, if relevant representations are made, 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 adequate to protect the public from harm or nuisance.

5.3.11 The grant of a licence does not imply the approval of other legislative requirements.

5.4. Vessels

5.4.1 The licensing authority will give particular weight to the views of the Maritime and Coastguard Agency when considering applications for premises licences in respect of vessels. Where, in the opinion

of the licensing authority, any of the four objectives are undermined and this cannot be resolved through the imposition of conditions, the application will be refused.

5.5 Large Scale Public Events

5.5.1 The Council recommends that organisers of large scale public events (for example outdoor music concerts, beer festivals etc) consult the licensing authority, Police Licensing Officer and the Council's Environmental Health Team at the earliest opportunity to discuss arrangements for the licensing of those activities falling under the Act.

5.5.2 The licensing authority will normally offer applicants the opportunity to book a 30 minute appointment at the Council Offices to discuss/consult with a licensing officer.

5.5.3 The licensing authority will also offer to organise a pre- application meeting to include relevant local authorities in order that the applicant can receive advice and the opportunity to discuss their proposed application prior to submission. The application may involve the preparation of a substantial operating schedule which may take some time to complete so applicants should ensure that they approach the licensing authority well in advance of any such event.

5.5.4 For large scale events the licensing authority will expect an application for a full time limited premises licence and would not normally expect to consider an application for an annual premises licence to cover one off events. This will allow the authorities and members of the public an opportunity to re-visit an application in light of any previous events held.

5.6 Exemptions and de-regulation relating to regulated entertainment

5.6.1 Since the introduction of the Act, the Government has de-regulated various types of regulated entertainment. There are also some exemptions under the Act and applicants are advised to consult our licensing web pages at eastdevon.gov.uk/licensing where full details of the exemptions/de-regulations are explained.

5.6.2 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 regulated entertainment or not. If in doubt, organisers of events should check with the licensing authority.

5.7 Mobile, Remote, Internet and Other Delivery Sales

5.7.1 The licensing authority shall have due regard to sales of alcohol which are made remotely, by mobile methods, internet or by other delivery sales.

5.7.2 The expectation of the licensing authority is that conditions suggested by way of operating schedules for these types of activities should be extremely robust. If new applications are made or existing premises are looking to extend into this area they should seek advice from the police as it might be appropriate for provisions in the operating schedule for age verification and restriction of delivery times/quantities.

6. Conditions

6.1 Licensing relates to the control of licensed premises and other events within the terms of the Act and any conditions, which may be attached to licences, and the various other permissions, which will focus on matters falling within the control of individual licence holders.

6.2 These conditions will relate to the premises and other places being used for licensable activities and the impact of those activities in the vicinity. In this regard the licensing authority will primarily focus on the direct impact of any activities taking place on those living, working or otherwise engaged in the area concerned.

6.3 Generally it is recognised that the licensing function is not to be seen as a mechanism for the general control of anti-social behaviour by individuals/groups once they are beyond the direct control of the licence holder of any premises concerned. But the licensing authority's discretion may be engaged if relevant representations are made and there is an evidential link between the disturbance and the licensed venue.

6.4 The licensing authority will avoid imposing disproportionate and over burdensome conditions on premises. The licensing authority does not propose to implement standard conditions on licences across the board but instead, if its discretion is engaged, will attach conditions as appropriate given the circumstances of each individual case.

6.5 Conditions will cover the licensing objectives: -

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

6.6 Following relevant representations the licensing authority may impose conditions where existing legislation does not provide adequately for the promotion of the four licensing objectives.

- 6.7 Applicants are encouraged to volunteer their own conditions by way of an operating schedule. The terms of a premises licence and any conditions attached should be clear, not just clear to those having specialised knowledge of licensing, such as the licensing authority or the manager of the premises but also to the independent bystander such as neighbours, who may have no knowledge of licensing at all. The licensing authority's experience has shown that many conditions that have been volunteered have been vague, uncertain, imprecise and unenforceable. As an aid to applicants or their representatives to ensure that the operating schedules that are offered are spelt out in clear terms the licensing authority has formulated a menu of common conditions which applicants are invited to use when formulating their operating schedules. This menu of conditions is available in our GN6 guidance document which can be viewed on our website (at eastdevon.gov.uk/licensing) or requested in paper form from our office.

Further conditions are available in Annexe D to the Guidance issued under Section 182 of the Licensing Act 2003 available on the GOV.UK website.

Licensing conditions may only relate to the promotion of the licensing objectives, and to matters which the licence holder can be reasonably expected to control in relation to the carrying on of licensable activities, and these are likely to relate to the premises themselves and the immediate vicinity of those premises.

Conditions will only be attached that are practical, achievable and **appropriate** for the promotion of the licensing objectives and if already provided for in other legislation, they will not be considered **appropriate** in the context of the licensing law.

The Act enables the authority to impose such conditions as are **appropriate** upon premises which have the potential to cause danger to visitors, disturbance to neighbours, crime or harm to children. However, many premises operate without such risks and the authority will reflect this by adopting a lighter touch to the imposition of conditions.

- 6.8 Where a responsible authority or interested party considers the conditions volunteered by an applicant to be inadequate and makes representation to the licensing authority then the authority may, following a hearing, attach further conditions or amend volunteered conditions if it is considered appropriate to promote the licensing objectives.

7. Authorisation to Sell Alcohol

- 7.1 A Designated Premises Supervisor (DPS) who will be named on the Licence will be responsible for the day to day running of any premises licensed to sell alcohol and the main purpose of the DPS is to ensure that there is always one specified individual who can be readily identified for the premises where a premises licence is in force. The licensing authority will normally expect the DPS to have an active role in the day to day operation of the licensed premises, in particular the sale and**

supply of alcohol. A DPS does not have to be on site all the time, but should authorise individuals to supervise the day to day management of the premises in his absence.

- 7.2 A DPS should have sufficient experience and knowledge appropriate for the operation under their control. A DPS should be able to control the activities on site and respond quickly and efficiently to any problems.**

The licensing authority will expect the DPS when authorising another person to sell alcohol to ensure that:

- (a) the person is authorised in writing by the DPS on whose behalf the person is selling or supplying alcohol;**
- (b) the authorisation should specify the acts that may be carried out by the authorised person;**
- (c) the person should be clearly identifiable;**
- (d) there is in place sensible arrangements on a reasonably regular basis for the DPS to monitor the activities that they have authorised.**

8. Temporary Event Notices (TENs)

- 8.1 The Licensing Act 2003 makes provision for regulating temporary events involving the supply of alcohol, the provision of regulated entertainment or the provision of late night refreshment at a premises which are not authorised by a premises licence or club premises certificate. This provision can also be used by holders of premises licences and club premises certificates to authorise extensions to their permitted hours.**

- 8.2 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 licensing authority by way of a Temporary Event Notice (TEN). The person giving the Notice must also serve a copy on the Police and Environmental Health Service unless they make an online application in which case the authority will serve a copy on the relevant authorities.**

- 8.3 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)
- ❑ the maximum duration of an event authorised by a TEN is 168 hours (7 consecutive days)
- ❑ an individual premises can have a maximum total of 21 days covered by TENs in any calendar year
- ❑ no more than 499 people (including all staff and performers) at any one time for each event
- ❑ there must be a minimum of 24 hours between each temporary event notice given by an event organiser at any premises

8.4 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.

8.5 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 licensing authority or the day of the event). In practice 10 working days is unlikely to be sufficient to allow any concerns to be resolved and organisers are advised to serve notice giving as much notice as possible.

8.6 If the minimum period of notice is not given, the licensing authority must reject the Notice and the licensable activities can not legally take place.

8.7 If a TEN is correctly completed and submitted within the required time limits the licensing authority must accept the Notice.

8.8 However, the Police and East Devon District Council’s Environmental Health Service may object to a TEN. No other person or body may object.

8.9 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, or whether

the Notice should be refused. If the Notice is refused a Counter Notice will be served on the notice giver in effect refusing to accept the notice. The authority may also allow the event to go ahead but with conditions imposed on the notice. Conditions can only be imposed on a Notice where the venue at which the event is to be held holds an existing premises licence or club premises certificate with conditions attached.

- 8.10** The Police or the Council's Environmental Health Service may also intervene by agreeing a modification of the proposed arrangements directly with the person giving the TEN (in the case of a standard TEN only).
- 8.11** If a Counter Notice is given the notice giver may make an appeal against the decision to the magistrates' court within 21 days. However it is unlikely that there will be sufficient time for any appeal to be heard by the Magistrates Court unless substantially more than the ten working days notice of the event has been given.
- 8.12** In the case of objections received against a late TEN there is no provision for a hearing and the event cannot legally go ahead. The law does not permit an appeal against refusal of a late TEN.
- 8.13** When giving a TEN, the premises user should consider the promotion of the four licensing objectives. Organisers are strongly advised to contact the Police and Environmental Health Service for advice at the earliest opportunity when planning events. Planning at an early stage may well minimise or avoid potential objections. The council's web pages about temporary event notices have other information on TENs including the option to make an online application and further guidance.
- 8.14** 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.
- 8.15** Organisers are strongly advised to ensure that adequate safety measures (including the recorded findings of a Fire Risk Assessment) are in place in relation to any Temporary Event. Any event held under a TEN may be subject to inspection by officers from the Responsible Authorities.

It should be noted that some private events can involve licensable activities, but only in prescribed circumstances. Entertainment at a private event to which the public are not admitted only becomes licensable if it is provided for a consideration and with a view to profit.

9. Cumulative Impact

- 9.1 The cumulative impact of licensed premises on the promotion of the licensing objectives is a matter which the licensing authority can take into account. This should not however, be equated with 'need' which relates more 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.
- 9.2 The licensing authority may receive representations from either a responsible authority or an interested party (see glossary), that the cumulative impact of new licences is leading to an area becoming saturated with premises of a particular type, making it a focal point and thereby creating exceptional problems of disorder and nuisance over and above the impact from the individual premises themselves. In such cases the issue of cumulative impact can be taken into account when considering the individual merits of any application. The onus is on any person or organisation making such representations to prove any assertion that the addition of the premises concerned would cause the cumulative impact claimed.
- 9.3 The licensing authority will not operate a quota of any kind, which would pre-determine any application, nor will it seek to impose general limitations on trading hours in particular areas. Regard will be given to the individual characteristics of the premises concerned within a given area. It is recognised that pubs, nightclubs, restaurants, hotels, theatres, and other clubs all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. Proper regard will be made to those differences and the impact they are likely to have on the local community. This may result in the amenity of local residents being placed under severe pressure; it will not always be possible to attribute a particular problem to customers of particular premises. This means that whilst enforcement action to ensure conditions are complied with is taken, this may not resolve all problems.
- 9.4 In determining whether to adopt a 'saturation' policy for a particular area the licensing authority may, among other things: -
- gather evidence or identification of serious and chronic concern from a responsible authority or local residents about nuisance and disorder
 - identify the area from which problems are arising and the boundaries of that area
 - make an assessment of the causes
 - adopt a policy about future applications for premises within that area.
- 9.5 If a 'saturation' policy is adopted it will be reviewed regularly to assess if it is needed any longer or should be expanded.
- 9.6 Where there is evidence that a particular area of the District is already suffering adverse effects arising from the concentration of late night premises, or that residential areas

are under stress, this will be taken into account in determining any further applications for premises within the area identified.

As such the licensing authority may take into account matters such as: -

- 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.

9.7 The licensing authority recognises that as well as the licensing function there are a number of mechanisms for addressing issues of unruly behaviour that occurs away from licensed premises. These include: -

- planning controls
- ongoing measures to provide a safer and cleaner environment in partnership with local businesses and others
- powers to designate parts of the District as places where alcohol may not be consumed publicly
- confiscation of alcohol in designated areas
- police enforcement of the law with regard to disorder and anti-social behaviour
- police powers to close some premises for up to 24 hours in extreme cases of disorder or excessive noise
- the power of police, local businesses or residents to demand a review of the licence
- enforcement action against those selling alcohol to people who are already drunk.

9.8 The licensing authority may address a number of these issues through the Community Safety Partnership in line with the strategic objectives for crime and disorder reduction within the District.

Where the number, type and density of licensed premises are unusually high, serious problems of nuisance and disorder have sometimes arisen or have begun to arise outside or some distance from the licensed premises. This has been described as the cumulative impact of the increasing capacity of all premises taken together.

It is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together is greater in these cases than the usual impact from customers of individual premises.

In these circumstances, a licensing authority may receive representations from a responsible authority or interested party that an area is becoming saturated with certain premises making it a focal point for large groups of people to gather and circulate away from the licensed premises themselves. Such representation would need to be based on evidence.

This might be creating exceptional problems of disorder and nuisance over and above the impact from any individual premises. If this is the case it might lead the licensing authority to consider, through consultation, if adopting a special policy not to grant further licences would be one solution in helping to control the problem.

Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from licensed premises and beyond the control of the licence holder but is still a key aspect of such control and will be part of a holistic approach to the management of the evening economy in towns and city centres.

10. Licensing Hours

- 10.1 The licensing authority will deal with the issue of licensing hours on the individual merits of each application. When the authority's discretion is engaged consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or Interested Parties on the basis of the licensing objectives. However, when issuing a licence with hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas.
- 10.2 There is no presumption within the Act for longer opening hours over objections from local residents and businesses located in the vicinity of licensed premises but the licensing authority will consider licensing hours in the interests of avoiding a concentration of disturbance while ensuring that nuisance is minimised to local residents. Shops and public houses will generally be permitted to sell alcohol during the hours they intend to open. Entertainment providers will be encouraged to provide and promote a range of entertainment during their operating hours including live music, dancing and theatre for the wider cultural benefit of the community. It will be a matter for individual applicants to address the licensing objectives in their operational schedule within the context of the nature of the location, type of premises, entertainment to be provided, operational procedures and the needs of the local community.
- 10.3 In considering relevant representations, the licensing authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.
- 10.4 The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the licensing authority believe it necessary, proportionate and reasonable to restrict the hours required.
- 10.5 The licensing authority does not seek to adopt fixed terminal hours in designated areas (known as "Zoning"), as this can lead to the significant movement of people across boundaries in search of premises opening later.

- 10.6 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 unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance.

Fixed and artificially early closing times promote, in the case of sales of alcohol, rapid binge drinking close to closing times and are considered a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously.

This creates excessive pressures at places where fast food is sold or public or private transport is provided.

This in turn can produce friction, particularly between young people, and gives rise to disorder and peaks of noise and other nuisance.

11. Children and Licensed Premises

- 11.1 The licensing authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls and schools. Access by children to all types of premises will not be limited unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm.
- 11.2 When deciding whether or not to limit access to children the licensing authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children 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 there have been convictions of the current management for serving alcohol to minors or with a reputation for allowing underage drinking
 - where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- 11.3 In such circumstances as listed above the licensing authority would expect for the applicant to suggest restrictions in relation to access for children. If such restrictions are not contained within the operating schedule, then if relevant representation are made the licensing authority will consider making such restrictions as are deemed necessary to meet the licensing objectives.
- 11.4 Conditions may be imposed, if not covered in other legislation, on licences for premises where children will be present at places of regulated entertainment to the effect that sufficient adult staff must be present to control the access and egress of children and to ensure their safety. Where children may be present at an event as entertainers there may be a requirement for there to be a nominated adult responsible for such child performers at such performances

- 11.5 The options available for limiting access by children would include: -
- a limit on the hours when children may be present
 - a limitation or exclusion when certain activities are taking place
 - the requirement to be accompanied by an adult
 - access may be limited to parts of the premises but not the whole
 - an age limitation (for under 18s).
- 11.6 The licensing authority will not impose any condition which specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed the issue of access will remain a matter for the discretion of the individual licence holder or club.
- 11.7 The licensing authority will take strong measures to protect children where any licence holder is convicted of serving alcohol to minors, 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 commonly provided. In such circumstances it may sometimes be necessary to impose a complete ban, or require limitations on the hours when children may be present, age limitations or conditions requiring an accompanying adult, exclusions during certain activities of persons under 18.
- 11.8 In relation to exhibition of films, a mandatory condition will apply, requiring access to be restricted to those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification.
- 11.9 In relation to theatrical entertainment, it may be necessary to impose a condition to restrict the admission of children to theatres which are incorporating adult entertainment in their productions. It may also be necessary where entertainment is provided specifically for children, to consider whether a condition should be attached requiring the presence of a sufficient number of adult staff to ensure the wellbeing of children during an emergency.

12. Drugs

- 12.1 The licensing authority recognises that drug use is not something that is relevant to all licensed premises. However, if relevant representations are made special conditions may need to be imposed for certain types of venues to reduce the sale and consumption of drugs and to create a safer environment for those who may have taken them. Where these conditions are to be imposed, if appropriate, advice will be taken from the local Drugs Action Team and the Police.

13. CCTV Standards Policy

13.1 When considering a premises licence or club certificate application the licensing sub-committee will have regard to the Surveillance Camera Code of Guidance – June 2013.

13.2 The sub-committee will in particular have regard to guiding principle one of this code which states:



“Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need”

13.3 Therefore we will not impose a blanket requirement to attach CCTV conditions as part of the conditions attached to a licence or certificate.

13.4 Applications in relation to licensed premises will be considered on the individual circumstances surrounding the application and whether a requirement to have a CCTV system is appropriate in that particular case. For example, it is unlikely that a trouble-free community pub would present a pressing need such that a CCTV condition would be justified. In such circumstances where a licence or certificate is granted subject to CCTV conditions, the consideration of all other guiding principles in this code is a matter for the licensee as the system operator.

13.5 Where the provision of CCTV system is a requirement of the conditions of either a Premises licence or a Club Premises Certificate, whether these are placed on the licence/certificate as offered by the applicant's Operating Schedule or imposed following a Sub Committee hearing, the system must comply with at least the licensing authority's CCTV minimum standard. This has been set in consultation with the police to ensure that the systems provide a tool to prevent criminal and anti-social behaviour and to ensure that the images provided by the systems meet the recognition and identification standards necessary for the detection and prevention of crime and disorder.

13.6 The Minimum Standard

(1) All installed CCTV systems must be of an evidential standard and installed and operated to the satisfaction of the licensing authority and the Police. It should cover all areas to which the public have access, excluding, where relevant, the inside of toilets. Images must be recorded at a frame rate no less than 25 frames per second. All cameras located on entrances must be able to produce images of an evidential standard as defined by the Home Office Guidance Manual or any guidance replacing it. Entrance cameras must be capable of providing good quality head and shoulder images of persons entering/leaving the premises. They should be high-resolution colour cameras complete with an auto iris vari-focal lens. Cameras in the main areas of the premises must be able to cope with the extreme lighting conditions that may be present. The cameras, recording equipment and all ancillaries should be maintained according to the manufacturers' instructions to ensure that the standard of the image is not compromised.

(2) The numbers of cameras located within the premises and where appropriate for external coverage must be appropriate for the type of licensing activity carried out at the premises. The numbers of cameras, locations and views provided by these cameras must be to the satisfaction of the licensing authority and Police. All

cameras must provide evidence of identification and be correctly maintained.

- (3) Where, to satisfy the licensing authority and the Police, there is a requirement to provide an external camera for coverage of entrances it must be a high resolution, minimum of 450tvl colour day/night camera, complete with an auto iris vari-focal lens, fitted in a heated weatherproof external housing.
- (4) In all areas where cameras are operating including externally the lighting must be of sufficient brightness to complement the quality of the camera images.
- (5) The CCTV recordings must be stored on a digital multiplex recorder with either an on board CD/DVD re-writer and/or a USB port for evidence recovery.
- (6) The system must be capable of producing single images and forward, reverse, pause and slow motion at full screen resolution.
- (7) CCTV images must be retained for a minimum of 14 days and be produced on the request of the Police or a Licensing Officer of East Devon District Council. Recording media must be set to 25 frames per second.
- (8) Recordings of incidents occurring at the premises must be made secure and held for possible inspection.
- (9) All equipment shall have constant time/date generation.
- (10) Unless otherwise agreed in writing by the licensing authority there must be sufficient members of trained staff available during the hours of operation to be able to download evidence at the request of the police including the creation of evidential discs. Where an exemption to this requirement is agreed in writing then the evidence requested must be provided no later than 48 hours after the request.
- (11) The Designated Premises Supervisor or Premises licence holder must be able to demonstrate that they have devised a recording management system that prevents recordings being tampered with, stolen, misplaced or failure to record. Recording equipment must be housed in a secure room/cabinet where access is restricted and the operation is strictly limited to authorised persons.
- (12) The CCTV system must be operational at all times whilst the premises are trading. If the system is faulty or not working then the Police and East Devon Licensing Service must be informed immediately. Details of the malfunction must be recorded in the premises incident book.
- (13) A4 sized warning notices must be displayed in public areas of the premises and at all entrances advising that CCTV is in operation. The signs located at entrances should be located on the exterior of the building at, and adjacent to, all public access doors. All signs must comply with the requirements of the Data Protection Act 2002.

13.7 This policy applies to all Premises licences and Club Premises certificates issued or varied (not minor variation) following the licensing authority's adoption of the policy on the 7 September 2010. Holders of existing licences and

certificates that require the maintenance and use of CCTV are encouraged to comply with the policy as soon as possible.

14. Door Supervisors

- 14.1 Whenever any persons are employed at licensed premises to carry out any security activity, all such persons must comply with the Private Security Industry Act 2001 and the Violent Crime Reduction Act 2006 and any successive legislation.
- 14.2 The licensing authority having regard to advice from relevant responsible authorities may consider that certain premises require strict supervision for exceptional reasons relating to the licensing objectives to prevent crime and disorder and public nuisance. In such cases, if relevant representations are made the licensing authority may impose a condition that licensed supervisors must be employed at the premises either at all times or at such times as certain licensable activities are being carried out.

Overcrowding is a matter for public safety but it can lead to disorder and violence. Where this is an issue consideration will be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

15. Control of Consumers

- 15.1 The District Council has adopted the relevant powers to designate parts of the District as places where alcohol may not be consumed publicly. **The locations of these areas can be found on our website or by contacting the licensing authority.**
- 15.2 'Pub Watch' schemes or Licensee Associations will be promoted by the licensing authority. This is intended to promote and encourage public safety and the reduction of crime. **Licensing Officers will attend meetings whenever possible. The licensing authority will encourage licence holders to attend their nearest Licensee Associations meetings as the licensing authority feel this is an excellent forum for exchange of ideas and local information.**
- 15.3 The licensing authority will continue to liaise with the police licensing section to inspect licensed premises. This joint partnership approach is intended to maximise the potential for controlling crime, disorder and hazards at premises and to ensure compliance with relevant conditions as appropriate.

16. Nuisance

- 16.1 To promote the licensing objectives, applicants for licences for licensable activities will be required to demonstrate the measures they have in place for the prevention of public nuisance. The impact of the licensable activities on people living in the vicinity should not be disproportionate or unreasonable. The issues will mainly concern noise

nuisance, light pollution, noxious smells and litter. The prevention of public nuisance can include low-level nuisance affecting a few people living locally as well as a major disturbance affecting the whole community. It may also include the prevention of the reduction of the living and working amenity and environment of interested parties.

The Licensing Act does not exempt licence holders from their statutory obligations under the Environmental Protection Act 1990. But in certain circumstances where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to imposing conditions.

The Licensing Authority can only attach conditions if there have been relevant representations and only then if such conditions are deemed appropriate, proportionate and reasonable and are not already contained within the applicant's operating schedule.

17. Capacity

17.1 Where it is considered necessary to control the maximum numbers of persons attending premises for the purpose of preventing crime and disorder or for public safety the licensing authority will expect this to be addressed in the operating schedule. The licensing authority, if relevant representations are made and only then if such conditions are deemed necessary proportionate and reasonable, may impose a condition stipulating a maximum number of persons permitted to attend premises where it considers it necessary to prevent crime and disorder or for public safety purposes.

18. Late Night Levy

18.1 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 31 October 2012 and enables a licensing 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 if adopted by the council would apply to the whole of the licensing authority's area.

18.2 The levy would 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.

18.3 The decision to introduce the levy is for the licensing authority to make. Before making any such decision, the licensing 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.

18.4 The licensing authority must pay at least 70% of the net levy revenue to the police. A licensing 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 licensing authority. The licensing 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.

18.5 At the time of preparing this Policy, this authority has taken no decision and has no plans to implement the Late Night Levy but is aware that it is a power which it may use if it considers it appropriate for the promotion of the licensing objectives.

18.6 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.

19. Early Morning Restriction Orders (EMROs)

19.1 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 31 October 2012. This power enables a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of midnight and 6 a.m. in the whole or part of its area if it is satisfied that this would be appropriate for the promotion of the licensing objectives.

19.2 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. Unlike the Late Night Levy there are no powers to charge a fee in connection with making an EMRO.

19.3 The decision to implement an EMRO must be evidence based. Evidence will be considered from partners including Responsible Authorities

and the East and Mid Devon Community Safety Partnership alongside the authority's own evidence to determine whether an EMRO is appropriate for the promotion of the licensing objectives.

19.4 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
- encouraging licence or certificate holders to make variations with respect of hours for licensable activities.

19.5 The only exemptions relating to EMROs are premises which are authorised to sell alcohol between midnight and 6.00 am on New Year's Eve and the provision of alcohol to residents in premises with overnight accommodation by means of mini bars and room service.

19.6 At the time of preparing this Policy, this 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.

19.7 The authority will consider the introduction of an EMRO at any time if circumstances change and evidence supports this course of action.

Definitions

Club Premises Certificate – authorises the use of premises by a qualifying club for one or more licensable activity

Designated Premises Supervisor means the person (who must be a Personal Licence holder), in the case of premises selling alcohol, 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 (who must also be a Personal Licence holder).

Regulatory Compliance Code – **Is a code to promote efficient and effective approaches to regulatory inspections and enforcement.**

The Hampton Principles – These are the principles that outline the way that regulation and enforcement should be planned and implemented by the regulatory authorities.

An Interested Party – **a responsible authority or any other person making a representation about an application**

Late Night Refreshment - **the provision of hot food or hot drink between the hours of 11pm and 5am for consumption on or off the premises either to members of the public or from premises to which the public have access**

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

Operating Schedule means a document containing a statement including the following matters: -

- the relevant Licensable Activities
- the times at which the Licensable Activities are to take place and any other times when premises are open to the public
- information regarding the person who will be specified in the Premises Licence as the Premises Supervisor
- where the Licensable Activities involve the supply of alcohol, whether it is for the supply on and/or off the premises
- the steps being taken to promote the Licensing Objectives

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

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
- (h) Entertainment of a similar description to that falling within paragraph (e), (f) or (g)

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.

Residential Area - An area whose character is residential at the material time of day. Where there is doubt, the licensing 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 (who are they?) -

- (i) the Chief Officer of Police for any police area in which the premises are situated
- (ii) the Fire Authority for any area in which the premises are situated
- (iii) the local planning authority within the meaning given by the Town and Country Planning act 1990 (c.8) for any area in which the premises are situated
- (iv) 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
- (v) a body which:
 - (a) represents those who, in relation to any such area, are responsible for, or interested in matters relating to the protection of children from harm, and
 - (b) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters

(vi) Trading Standards

(vii) the Director of Public Health

- (viii) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc Act 1974 for any area in which the premises are situated
- (ix) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated
- (x) in relation to a vessel:
 - (a) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c.57)) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is or is proposed to be, navigated at a time when it is used for licensable activities
 - (b) the Environment Agency
 - (c) the British Waterways Board, or
 - (d) the Secretary of State
 - (e) a person prescribed for the purpose of this subsection

Temporary Event - the use of premises for one or more of the licensable activities during a period not exceeding **168** hours, usually where a premises licence covering the licensable activity is not in place.

Temporary Event Notice means 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;
- scale – they cannot involve the presence of more than 499 people at any one time;
- use of the same premises – the same premises cannot be used on more than 12 occasions in a calendar year, but are



subject to the overall aggregate of **21** days irrespective of the number of occasions on which they have been used, and

- the number of notices given by an individual within a given period of time – a Personal Licence holder is limited to 50 notices in one year, and any other person to five notices in a similar period.

(in any other circumstances, a full Premises Licence or Club Premises Certificate will be required for the period of the event involved)

Terminal Hour refers to the time at which authorised licensable activities should cease and the 'opening hours' when premises are open to the public is not necessarily the same. The authorisation of a licence relates to the sale or supply of alcohol and not to the consumption. 'Drinking up time' no longer applies but applicants would be expected to address this issue when preparing their operating schedules.

Responsible Authority Contacts

The list of Responsible Authorities and their contact details may change where additional responsible authorities are designated by regulations from the Secretary of State or existing Responsible Authorities change their address.

An up to date list of Responsible Authorities relating to East Devon with their contact details can be obtained by accessing the East Devon District Council's Licensing pages on the Council's website or by request to the Council's Licensing Service by emailing licensing@eastdevon.gov.uk or telephoning 01395 517410.

Useful Contacts

Home Office

www.gov.uk

2 Marsham Street

London

SW1P 4DF

Telephone: 020 7035 4848

Email: public.enquiries@homeoffice.qsi.gov.uk

Licensing Documents that can be viewed on that website include:

- Licensing Act 2003
- Guidance under Section 182 of the Act

Association of Convenience Stores (ACS)

<http://www.acs.org.uk/>

Federation House

17 Farnborough Street

FARNBOROUGH

GU14 8AG

Email: acs@acs.org.uk

Association of Licensed Multiple Retailers (ALMR)

<http://www.almr.org.uk/>

9 Central Chambers

Ealing

LONDON

W5 2NR

Telephone: 020 8579 2080

Email: info@almr.org.uk

Association of Town and City Management (ACTM)

<http://www.atcm.org/>

ATCM

32-36 Loman Street

London

SE1 0EH

Telephone: 0300 330 0980

Email: info@atcm.org

British Beer and Pub Association (BBPA)

<http://www.beerandpub.com/>

British Beer & Pub Association

Ground Floor

Brewers' Hall

Aldermanbury Square

LONDON

EC2V 7HR

Telephone: 020 7627 9191

Email: contact@beerandpub.com

British Board of Film Classification (BBFC)

www.bbfc.co.uk

3 Soho Square

LONDON

W1D 3HD

Telephone: 020 7440 1570

Email: feedback@bbfc.co.uk

British Institute of Inn Keeping (BII)

<http://www.bii.org/>

Infor House

1 Lakeside Road

Farnborough

GU14 6XP

Telephone: 01276 684449

British Retail Consortium (BRC)

<http://www.brc.org.uk>

21 Dartmouth Street

Westminster

LONDON

SW1H 9BP

Telephone: 020 7854 8900

Email: info@brc.org.uk

Cinema Exhibitors' Association (CEA)

<http://www.cinemauk.org.uk/>

3 Soho Square

LONDON

W1D 3HD

Telephone: 0207 734 9551



Institute of Licensing (IOL)

<http://www.instituteoflicensing.org/>

Institute of Licensing

Ridgeway

Upper Milton

Wells

Somerset

BA5 3AH

Telephone: 0845 287 1347

Email: info@instituteoflicensing.org

Central Devon Magistrates' Court

Southernhay Gardens

Exeter

EX1 1UH

Telephone: 01392 415300

National Pub Watch

<http://www.nationalpubwatch.org.uk/index.php>

National Pubwatch

PO Box 3523

BARNET

EN5 9LQ

Telephone: 020 8755 3222

Email: admin@nationalpubwatch.org.uk

The Portman Group

www.portmangroup.org.uk

The Portman Group

4th Floor

20 Conduit Street

LONDON

W1S 2XW

Telephone: 0207 290 1460

Email: info@portmangroup.org.uk

Appendix A

To make sure operating schedules offered are clear and understandable the following list of measures should be considered when formulating operating schedules:

3.4.1 Prevention of Crime and Disorder –

- The use of toughened glass/polycarbonate or other plastic/non glass bottles/receptacles
- Measures to prevent open bottles and other drinks containers being carried from premises
- Restrictions on drinks promotions
- Measures to prevent binge drinking
- Marketing promotions that do not encourage excessive consumption and should be socially responsible.
- Participation in pubwatch schemes or licensee associations and attendance at meetings
- Use of the appropriate number of security personnel and stewards ensuring effective control of venue at all times
- Training staff in crime prevention measures
- Search procedures
- Use of CCTV inside and outside the premises ensuring that digital systems comply with Home Office guidance and the authority's own CCTV policy
- Lighting
- For new premises, designing out crime
- Quality of supervision and surveillance in premises
- Regular checks by staff of all public areas including toilets
- Assessment of customer profiles ensuring effective management of customers both inside and in outside smoking/external seating areas
- Anti-discrimination policies and unlawful practices including homophobia and racism
- And any other measures deemed appropriate

3.4.2 Public Safety –

- Promotion of sensible drinking
- Awareness and measures to prevent 'drink spiking'
- Zero tolerance drug policies including the appropriate use of searching/amnesty boxes to combat drug crime
- Monitoring capacities to a safe level with management controls ensuring safe capacities are maintained particularly with premises with more than one floor or zone (including electronic counting where necessary)
- Special arrangements for large events
- Security Personnel/Stewards
- Traffic Management
- Crowd Management
- Noise exposure
- Customer profile
- Physical environment of premises
- Use of special effects
- Ventilation and temperature
- Removal of glass/bottles to prevent use as weapon

- Where take away food is served measures in place to prevent the build up of grease on pavement surfaces in the vicinity of the premises

3.4.3 Prevention of Public Nuisance –

- The nature of the activities
- The location of premises and character of the surrounding area in relation to the proximity to residential and other noise sensitive premises
- Latest admission times
- Provision of welfare facilities for example toilets
- Measures for the limitation of noise emissions from the premises. These may include as appropriate noise limitation devices, sound insulation, whether windows are to be opened, the installation of acoustic lobbies and double glazing
- Measures to deal with queuing, where necessary
- Use of outdoor areas
- Odour and light nuisance
- Measures to deal with dispersal of customers from the premises as necessary, including the employment of door supervisors, use of dedicated cab firms, notices in the premises requesting customers to respect neighbours
- Winding down periods particularly in public houses and night clubs etc
- Disposal of waste, particularly glass
- Use and maintenance of plant, including air extraction and ventilation systems
- Litter collection in vicinity including discarded flyers and other promotional material
- Noise from deliveries/collections
- Traffic Management
- Measures to supervise and prevent nuisance to local residence from customers' use of beer gardens, smoking and external seating areas
- Where take away food is served sufficient litter bins provided in the vicinity of the premises

3.4.4 Protection of Children from Harm –

- Limitation of access dependent on nature of activities
- Use of British Board of Film Classification for film exhibition
- Robust proof of age provisions to include prevention of under 18's entering the premises where appropriate and the requirement for anyone looking under 18 to provide proof of age in the form of a photo driving licence, passport or accredited photo ID card bearing the PASS hologram
- Adoption of the **Challenge 21 or Challenge 25 policy**
- Requirements for accompanying adults
- Full range of soft drinks

This list is not exhaustive

Appendix B

Strategic Lead – Legal, Licensing and Democratic Services
Legal, Licensing and Democratic Services
East Devon District Council
Council Offices
Knowle
Sidmouth
EX10 8HL



LICENSING ACT 2003

INFORMATION FOR PARTIES

PROCEDURE FOR DEALING WITH HEARINGS UNDER THE LICENSING ACT 2003 AND THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

1. RIGHT TO DISPENSE WITH HEARING UNDER THE ACT

1.1 The Act specifies various situations when a licensing authority must hold a hearing to consider either relevant representations or police objections to an application. This procedure applies to all such applications. The Regulations authorise the licensing authority to dispense with holding a hearing if all persons required by the Act ('relevant persons') agree a hearing is unnecessary and have notified the authority that they consider a hearing unnecessary. If the licensing authority agrees that no hearing is necessary it must forthwith give notice to all parties that the hearing has been dispensed with.

2. TIMING OF HEARING UNDER THE ACT

2.1 In relation to applications received under the Act, the authority shall arrange for hearings to be held within the periods of time specified by the Regulations.

3. NOTICE OF HEARING

3.1 The authority shall give due notice of any hearing held under the Act to those persons specified under the Regulations together with any documents required.

3.2 In the case of all other licensing hearings, the parties will be sent a notice of hearing at least 10 days before the day of the hearing.



3.3 In all cases the notice of hearing sent to the parties will include the following information:

- the date, time and place of the hearing;
- the right of the party to be represented at the hearing by another person, whether that person is legally qualified or not; subject to the power of the licensing authority to exclude him or her from any part of the hearing in the public interest (Regulation 14) or for disruptive behaviour (Regulation 25);
- the right of the party at the hearing to give further information where the authority has given notice to a party that it will want clarification of any point under Regulation 7 (1) (d), representations or notice (as applicable);
- if given permission by the authority, to question any other party;
- to address the authority, subject to any maximum time limit imposed by the sub-committee
- the consequences if the party fails to attend or is not represented at the hearing;
- the procedure to be followed at the hearing
- any particular points on which the authority considers that it will want clarification from a party at the hearing;
- any information the licensing authority has received in support or opposition of the application (or a summary thereof, if appropriate).

3.4 In the notice of hearing the applicant will be asked if they have any special needs or requirements at the hearing and requested to notify the licensing authority of any difficulty in attending.

4. PARTY'S RESPONSE TO NOTICE OF HEARING

4.1 Following receipt of the notice of hearing a party must give to the authority within the period of time required by it a notice:

- Stating whether he intends to attend or be represented at the hearing;
- Stating whether he considers a hearing to be unnecessary;
- Stating whether he wishes to make a request for any other person to appear at the hearing

(e.g. a witness on an issue relevant to the licensing objectives which is in dispute.)

- Enclosing any documents on which he seeks to rely to support the representations already made, the application or the notice as the case may be. A summary of key points on which the party seeks to rely should be included

4.2 Where the time for a party to give his or her response to the Notice of Hearing is not stated in the Regulations it must be given no later than 5 working days before the first day of the hearing

4.3 A party must include with their notice requesting permission for another person to appear at the hearing details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.

4.4 Parties who do not comply with the requirements of this paragraph 4 have no right to be heard at the hearing.

5. RIGHT TO DISPENSE WITH HEARING IF ALL PARTIES AGREE

5.1 The authority may dispense with a hearing if all persons required by the Act agree that a hearing is unnecessary, other than the authority itself, have given notice to the authority that they consider a hearing to be unnecessary.

5.2 If all the persons required to agree that a hearing is unnecessary have done so in accordance with paragraph 5.1, then if the authority agrees a hearing is unnecessary it will give notice forthwith to the parties that the hearing has been dispensed with.

6. WITHDRAWAL OF REPRESENTATIONS

6.1 Representations may be withdrawn either by giving written notice to the authority no later than 24 hours before the day of the hearing, or orally at the hearing.

7. POWER TO EXTEND TIME OR ADJOURN HEARING

7.1 The licensing authority may extend time limits specified in the Regulations for a specified period where it considers this necessary in the public interest. Notice of the period of any

extension must be given to the parties forthwith stating the reasons.

7.2 The licensing authority may adjourn a hearing to a specified date, or arrange for it to be held on specified additional dates, where it considers this necessary for its consideration of any representations or notice made by a party. Notice of the date, time and place to which the hearing has been adjourned, or specified an additional date, time and place at which the hearing is to be held, must be given to the parties forthwith.

7.3 Matters may be adjourned to enable the sub-committee's time to be used efficiently. This means that the parties to all hearings should not expect that their case will necessarily be heard in full on the first date it is listed, particularly if it appears complex or likely to take up more time than is available on that day. Adjournments may also be useful in cases where the parties need time to discuss their respective positions with a view to resolving objections.

8. PUBLIC ACCESS TO HEARINGS

8.1 Subject to 8.2, the licensing authority shall hear all matters in public except: -

8.1.1 where it considers the public interest in excluding the public outweighs the public interest in the hearing (or part of it) taking place in public

8.1.2 that it 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;
- ❑ permit them to return only on such conditions as the authority may specify;
- ❑ but such a person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.

8.2 The sub-committee will normally exclude the public from the part of the hearing when they make their determination (decision) in the case.

9. PROCEDURE AT HEARING

- 9.1 This procedure will apply to the Licensing Act 2003 hearings by the Licensing and Enforcement Committee and its sub-committees. The Chairman shall have the power to determine procedural matters to the extent they are not already governed by the Regulations. The sub-committee will appoint its Chairman at the beginning of the meeting.
- 9.2 The Chairman will open the sub-committee and will remind members of their obligation to declare any personal and prejudicial interests. Ward members are not prevented by the legislation from hearing matters in their ward but will need to consider carefully whether they have any connection with a particular matter which would lead an objective bystander to believe that the sub-committee might be biased as a result.
- 9.3 The Chairman will identify the Legal Advisor and the Democratic Services Officer for the benefit of those attending the hearing. The Chairman will explain that the Member Services Officer's role is to record the key points of the hearing and the Legal Advisor's role is to provide legal advice to Members of the sub-committee.
- 9.4 The Chairman will then explain to the parties present that the hearing is the subject of this procedure, copies of which will have been distributed to the parties with the notice of hearing. He will enquire of the parties whether there are any questions of clarification concerning its contents.
- 9.5 Each matter to be dealt with by the sub-committee will 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.
- 9.6 As each matter is called, the Chairman will ask the applicants and any other parties in the case to identify themselves and then consider any requests made by Parties for another person to appear at the hearing (e.g. a witness) provided he has already made such a request in writing in accordance with paragraph 4.3. Such permission shall not be unreasonably withheld.
- 9.7 If a party has informed the authority that he will not be attending or be represented at the hearing, it may proceed in his absence. If a party has informed the authority that he will attend or be represented and does not do so, Members will decide if it is in the public interest that the hearing of the matter should be adjourned, in which case the authority must

notify the parties of the date, time and place to which the hearing has been adjourned.

- 9.8 Where the authority holds the hearing in the absence of a party who had indicated he would attend, the authority shall consider the application together with any representations made or notice given by that party. The sub-committee must give full reasons for proceeding in his/her absence. The Democratic Services Officer will record these reasons and the applicant will be informed of the decision.
- 9.9 Any documentary evidence or written representations lodged with the authority in response to the authority's notice of hearing (see paragraph 4.1) within the time periods specified in Annex 1 to this procedure will be made available to the sub-committee.
- 9.10 Where a party seeks to raise a new issue not raised in his response to the notice of hearing, it will be in the discretion of the Chairman whether to allow that matter to be introduced, and/or adjourn the hearing to another date.
- 9.11 The Chairman will ask the Licensing Officer who is presenting the case summary to identify him/herself. If the case is being held in private, or partly in public and partly in private, the Chairman will explain the hearing process to be adopted to all parties, which will be a modified form of this procedure but will give each party the opportunity to be heard.
- 9.12 The hearing shall take the form of a discussion led by the Chairman and assisted by the Legal Advisor as appropriate and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require.
- 9.13 The Chairman may indicate at the outset any particular issues relating to the licensing objectives he will be seeking to explore in the course of the hearing. He may also seek to clarify the main outstanding areas of objection to the application before each party addresses the Committee. He may also seek to establish whether the applicant proposes further conditions in the light of relevant representations received.
- 9.14 The Licensing Officer will open the hearing with a summary of the relevant facts and issues.

- 9.15 The Chairman will ask each party to make their representations, including any documentary evidence they wish to rely on which was submitted in advance in accordance with paragraph 4.1, and call any witnesses in support of their application the Chairman has agreed may appear under paragraph 9.6.
- 9.16 The order of representations will normally be the applicant, the responsible authorities, and then the interested parties at the discretion of the Chairman.
- 9.17 The normal maximum time limit for each party to make their case and call any witnesses will be ten minutes, since all parties will have had the opportunity to make written representations and those received within the statutory time-limits will be circulated to the committee (summarised if lengthy). This time limit may be varied at the discretion of the Chairman, but the time limit will always be equal for all parties.
- 9.18 The Members of the Committee may ask questions of any party or other person at the hearing at any point in the hearing that the Chairman considers appropriate, through the Chairman if he so decides. Questions will normally be after the party has made their representations.
- 9.19 The Chairman will ask the Licensing Officer and any party whether they have any questions following each party's representations, after the sub-committee members have asked theirs. The Chairman will use his discretion to decide whether to permit direct questioning by each party of other parties, or whether the questions will be put by the Chairman himself. The Chairman has the right to curtail questioning at any time.
- 9.20 The content of any representations and/or documentary or other information on which a party seeks to rely should have been disclosed by that party to all parties prior to the hearing within the period of time specified in the Notice of Hearing. Additional representations and/or evidence, which have not been submitted to the authority before the hearing, may only be made or submitted at the hearing with the consent of all the other parties.
- 9.21 The sub-committee shall disregard any information given or evidence produced by a party which is not relevant to:-
- (a) their application, representations or notice (as applicable), and

- (b) the promotion of the Licensing Objectives (prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm), or in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

9.22 The Chairman may remind parties where necessary that their representations should be relevant to the licensing objectives. If in his opinion irrelevant representations are being made he may advise a party of the need for relevance, and if necessary curtail his representations on an irrelevant point.

10. EVIDENCE

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

11. LEGAL ADVICE

11.1 The role of the sub-committee's Legal Advisor 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;
- ❑ whether information or evidence is relevant to the licensing objectives;
- ❑ any relevant decisions of "superior courts" or other guidelines (e.g. – Government Guidance on the 2003 Act and the Council's Statement of Licensing Policy);
- ❑ other issues relevant to the matter before them (e.g. any consultation currently in progress through Council etc);
- ❑ where appropriate to assist the sub-committee in formulating the reasons for its decision.

11.2 The Legal Advisor may ask questions of parties and witnesses in order to clarify the evidence and any issues in the case.

11.3 The Legal Advisor has a duty to ensure that every case is conducted fairly.

12. DETERMINATION OF APPLICATIONS

- 12.1** When all the representations have been heard, the Members may choose to withdraw while they make their deliberations in private. The Legal Advisor will only remain with the sub-committee if requested to give legal or procedural advice but not otherwise and will then return to the committee room while the Members make their decision. The Legal Advisor will explain to applicants/parties the reason for his being called to where the Members were deliberating (e.g. to advise on a point of law etc).
- 12.2** In the event that the sub-committee is unable to agree on its decision, the Chairman shall have a casting vote.
- 12.3** If the sub-committee needs to ask any further questions of either the applicant or any other party, all parties will be asked to return before the sub-committee.
- 12.4** In the case of hearings held under the following sections of the Act, the sub-committee must make its determination at the conclusion of the hearing:
- hearing to consider counter notice following police objection to temporary event notice [s.105(2)(a)];
 - hearing to consider review of premises licence following closure order [s.167(5)(a)];
- 12.5** In any other case the authority must make its determination within the period of 5 working days beginning with the day (or the last day) on which the hearing was held.
- 12.6** Once the sub-committee has reached its decision the Democratic Services Officer and the Legal Advisor/MSO may withdraw to assist the Members in writing up their decision. Again the Legal Advisor will explain to applicants/parties the reason for his being called to where the Committee were.
- 12.7** Where a hearing has been dispensed with under paragraph 5 above, the authority must make its decision within the period of 10 working days beginning with the day on which it gives notice to the parties.

13. NOTIFICATION OF DETERMINATION

13.1 The authority will send a notification of determination to a party forthwith upon making it, or where there is a particular period for notification specified in the Licensing Act, within that period.

13.2 Notification of determination will give reasons for the decision. If the licensing authority has departed from the statutory Guidance or from the Council's Licensing Policy, reasons should also be given for that departure.

13.2 Where the Act requires the Chief Officer of Police to receive notification of determination, and that Chief Officer has not been a party to the hearing, the authority shall send him that determination forthwith.

13.3 Notification of determination shall be accompanied by information concerning the right of a party to appeal.

13.4 Decisions shall be that of the licensing authority (i.e. not individual members).

14. QUORUM

14.1 The quorum for any hearing of a licensing sub-committee shall be two Members.

15. RECORD OF PROCEEDINGS

15.1 The authority shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for six years from the date of the decision or, where an appeal is brought against the decision of the authority, the disposal of that appeal. This shall be the responsibility of the Strategic Lead – Legal, Licensing and Democratic Services.

16. IRREGULARITIES

16.1 Any irregularity resulting from any failure to comply with any provision of the Regulations before the authority has made a decision shall not of itself render the proceedings void.

16.2 In the case of any such irregularity, where it considers that any person may have been prejudiced as a result, the authority shall take such steps, as it thinks fit to remedy the irregularity before reaching its decision.

16.3 The authority may correct clerical mistakes in any document recording a decision of the authority or errors arising in such a document from an accidental slip or omission.

17. FORM OF NOTICES

17.1 Any notices required to be given under this procedure must be given in writing.

17.2 The requirement that any notice must be given in writing is satisfied where: -

- (a) the text of the notice**
 - (i) is transmitted by electronic means;**
 - (ii) is capable of being accessed by the recipient;**
 - (iii) is received in legible form, and;**
 - (iv) is capable of being reproduced in written form and used for subsequent reference.**

- (b) the person to whom the notice is to be given has agreed that such a notice may be given to them by those electronic means, and**

- (b) forthwith on sending the text of the notice by electronic means the notice is given to the recipient in writing.**

17.3 Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the text of the notice is received by the recipient in accordance with paragraph 17.2(a).

18. Costs

Neither the Licensing and Enforcement Committee nor its sub-committees have the legal power to make any order as to the costs incurred by a party in connection with a hearing under the Licensing Act. If a party has a lawyer or any other person to represent them it will be at their own expense.

19. Licensing Act 2003 (Hearings) Regulations 2005 (as amended)

The interpretation provisions of the Regulations will apply to any term used in this procedure defined in the Regulations. In the event of any conflict between this Procedure and the regulations, the requirements of the Regulations

will prevail. The legal advisor will advise the committee should such an issue arise and the chairman's ruling on procedure will be final.

Report to: **Licensing and Enforcement Committee**



Date of Meeting: 26 August 2015

Public Document: Yes

Exemption: None

Review date for release: None

Agenda item: 8

Subject: **Gambling Act 2005 – To seek approval to consult on the draft Gambling Policy**

Purpose of report: This report updates the Licensing & Enforcement Committee on the review of the Council's Gambling Act 2005 Policy and seeks approval to commence the consultation process on the draft policy which has been updated in the light of recent changes in legislation and experience over the past three years.

Recommendation: **That the Committee consider this draft Statement of Gambling Policy (attached as Appendix B) and give approval for the Licensing Service to start the formal public consultation process that is required by the legislation..**

Reason for recommendation: It is a legal requirement of the Act for the Council to determine a Gambling Policy in order to provide a framework for all licence applications regarding the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment. The Policy was last reviewed in 2013. It must be reviewed at least every three years and therefore an amended Policy must be adopted by the 31 January 2016.

Officer: John Tippin, Licensing Manager, jtippin@eastdevon.gov.uk, 01395 517587

Financial implications: If the Policy is not properly adopted by the District Council the Authority will be liable to legal challenge which if successful could entail costs being awarded against the District Council.

Legal implications: The legal implications are set out within the report

Equalities impact: Low Impact

[Click here to enter text on impact level relating to your report. Link to an equalities impact assessment form if necessary.](#)

Risk: Low Risk

Links to background information:

- Appendix A - List of key Organisations and individuals that we intend to consult
- Appendix B - Draft Gambling Policy prepared for consultation

Link to Council Plan: Living in, working in and enjoying this outstanding place

Report in full

Background and Proposed Draft Amendments to the Existing Policy

- 1.1 Under the Gambling Act 2005, it is the responsibility of the Council to develop and publish a Statement of Gambling Policy. The published Policy then provides the framework for all decisions on applications relating to the Gambling Act 2005 and the way the Authority carries out its functions in relation to the legislation. Council adopted the current Policy on the 31 January 2013.
- 1.2 The Act requires that the Licensing Authority review its Gambling Policy every three years. The Council's present policy will expire on the 31 January 2016 and therefore the Authority is under a duty to have reviewed and published a fresh policy by that date.
- 1.3 Over the past three years the current policy has been kept under review by the Licensing Service. However a number of changes have now been proposed to reflect current practices including recent and updated guidance issued by the Gambling Commission under Section 25 of the Gambling Act.
- 1.4 The adopted policy must set out the authority's general approach to licence applications and may only be determined following consultation. The revised policy now includes the additional updates:
 - The introduction of a Geographical & Local area profile. Whilst not a requirement on a licensing authority but in line with developing a more local focus for statements of licensing policy and reflecting good practice, the Gambling Commission suggests that Licensing Authorities should adopt a 'Local Area Profile' (Part A. Sec.3);
 - Inclusion of the Gambling Commission function (Part A. Sec.12);
 - From the 6 April 2016 all non-remote licensees 'must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks, through introduction of Local Risk Assessments (Part A. Sec.13)
 - The Licensing Authority will need to satisfy itself that a club meets the requirements of the Gambling Act 2005 to hold a club gaming permit. In order to do this, it may require additional information from an operator with inclusion of requirements for provision of Club Gaming Machine Permit applications (Part C. Sec 4.2)
 - Inclusion of Small Society Lottery regulation (Part C. Sec 7).
- 1.5 It is proposed to circulate invitations widely to take part in the draft Policy consultation to include all Responsible Authorities, Council Members, the business community, Town and Parish Councils, the Community Safety Partnership and the Devon Primary Care Trust. A more comprehensive list appears at **Appendix A** and Section 4 of the draft Policy document. The Policy will also be published on the Licensing Service's dedicated web pages and web users will be invited to comment online.
- 1.6 The consultation and publication timetable for the Policy is:
 - 26 August 2015 - Revised policy circulated for consultation
 - 2 November 2015 - Consultation period ends
 - 18 November 2015 - Result of consultation reported to L & E Committee
 - 2 December 2015 - Cabinet
 - 16 December 2015 - Licensing Policy considered by full Council for adoption

2 Conclusion

- 2.1 A copy of the draft Gambling Policy appears at **Appendix B**. The legislation requires that publication of the policy takes place by 31 January 2016.

EAST DEVON DISTRICT COUNCIL



Draft Statement of Licensing Policy

GAMBLING ACT 2005

31 January 2016
to
30 January 2019

**Draft Version 1 (2015)
APPENDIX B**

(To be Approved by Full Council.16 December 2015)

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Part A

1 The Licensing Objectives

1.1 The Licensing Authority has a duty under the Gambling Act 2005 to carry out its licensing functions in a manner which is consistent with three licensing objectives. The relevant licensing objectives are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
- ensuring that gambling is conducted in a fair and open way, and
- protecting children and other vulnerable persons from being harmed or exploited by gambling

1.2 This Licensing Authority particularly notes the Gambling Commission's Guidance (5.28) to local authorities that:

"In deciding to reject an application, a licensing authority should rely on reasons that demonstrate that the licensing objectives are not being, or are unlikely to be, met. Licensing authorities should be aware that other considerations such as moral or ethical objections to gambling are not a valid reason to reject applications for premises licenses. This is because such objections do not relate to the licensing objectives. An authority's decision cannot be based on dislike of gambling, or a general notion that it is undesirable to allow gambling premises in an area (with the exception of the casino resolution powers)."

1.3 This licensing authority is aware that, in making decisions about premises licenses and temporary use notices it should aim to permit the use of premises for gambling in so far as it thinks it:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any relevant guidance issued by the Gambling Commission
- reasonably consistent with the licensing objectives and
- in accordance with the authority's statement of licensing policy

2 Introduction

2.1 The Gambling Act 2005 (the "Act") requires this Licensing Authority to draft, consult and publish a Statement of Licensing Policy in relation to its responsibilities under the Act. Once published, this Policy Statement, called the Statement of Gambling Policy will be kept under constant review and, in any case, will be re-published after every three years. Before any revision of the Statement of Gambling Policy is published this Authority will carry out a full consultation exercise on the relevant sections. This version of the Statement of Gambling Policy has been revised following the third 3 year review and is for the period 2016 – 2019.

2.2 This Statement of Principles (Licensing Policy) is written to conform to the provisions of the Gambling Act 2005 and regulations and Guidance issued under s.25 of the Act by the Gambling Commission. It outlines the way the licensing Authority will deal with applications for a range of premises licences, permits and enforcement of the Act.

- 2.3 Section 25 of the Gambling Act 'Guidance to local authorities' states that the Commission shall from time to time issue guidance as to:
- (a) The manner in which local authorities are to exercise their functions under this Act, and
 - (b) In particular, the principles to be applied by local authorities in exercising functions under this Act."
- 2.4 The aim of this Guidance is to ensure that every licensing authority has the information it needs to make effective decisions but does not seek to impose a 'one size fits all' model across all licensing authorities. The commission recognises that every licensing authority is different and will have different views about how it wishes to manage gambling locally. Indeed, the Act establishes a high degree of local accountability for gambling regulation'.

The Gambling Act 2005 can be accessed on this link:

<http://www.legislation.gov.uk/ukpga/2005/19/contents>

2.5 The Statement takes effect on 31 January 2016.

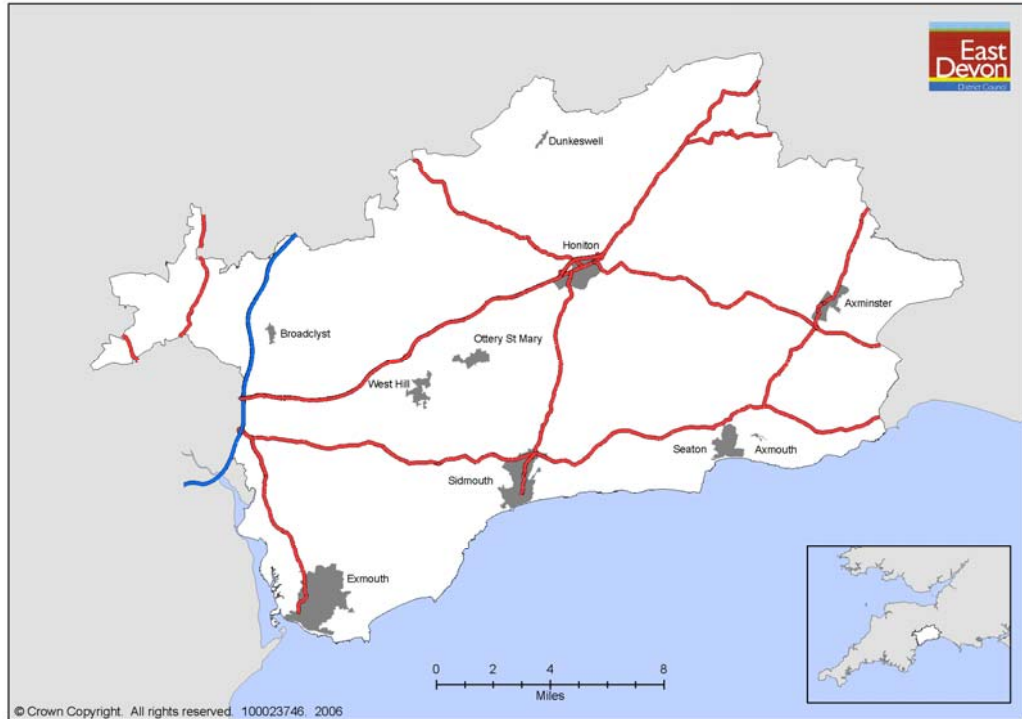
3 The Geographical and Local Area Profile of East Devon

- 3.1 East Devon is one of eight Devon districts and, in population terms, it is the largest in the County. The District has a dispersed and mainly rural population which currently stands at 135,560. Holiday and tourism industries are major contributors to the economy of the district. The population of East Devon has an older age profile with 34% of the population over 60 years of age.
- 3.2 The District is fully parished with 63 Town and Parish Councils. The main settlements comprise the coastal resorts of Exmouth (Devon's largest town – population 35,989), Budleigh Salterton, Sidmouth and Seaton. In the mainly rural inland area the settlements comprise Honiton, Ottery St Mary, and Axminster. There are numerous villages and hamlets and 2011 saw the emergence of the new town of Cranbrook to the north of the district along with other urban extensions including the Exeter Science Park and Skypark.
- 3.3 The tourist economy brings with it a number of gambling activities, for example Adult Gaming Centres (4)* and Unlicensed Family Entertainment Centre Permits (9)* requiring a permit rather than a premises licence.
- 3.4 The towns of Exmouth, Sidmouth, Seaton and Honiton have a number of betting shops, for which there are 10* across the district. East Devon currently has 578* licensed premises and clubs under the Licensing Act 2003, of which 113* have notified the licensing authority of having gaming machines. Additionally there are 16* Club Machine Permits across the district.
- 3.5 Predominantly, residents are from a white British background, with just 1.59 per cent of the district's population coming from an ethnic background. The migration of population into East Devon from other parts of the UK show that there were 1246 more people moving into the area than out. The largest age group moving in and out of the district was the 25-44 age group.
- 3.6 Overall, the district is relatively well-off and is in the 40% least deprived districts nationally. Despite lower than average wages, the District has a low rate of claimants for Income Support.
- 3.7 East Devon is one of the lowest crime rate areas in Britain with the levels of recorded crime in East Devon falling for the last 6 years.
- 3.8 Whilst not a requirement, in line with developing a more local focus for this statement, it is the desire of the Council to adopt a Local Area Profile. The creation of such a profile will entail a process of gathering and presenting information about the East Devon area and any particular areas of concern within the locality.

Data Sources

1 2014 Knowing East Devon report EDDC

*Figures correct at the time of publication



4 Review of Statement of Principles

- 4.1 Licensing authorities are required by the Act to publish a statement of the principles which they propose to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from “time to time” and any amended parts re-consulted upon. The statement must be then re-published.
- 4.2 The Gambling Act requires that the following parties be consulted by Licensing Authorities:
- The Chief Officer of Police;
 - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority’s area;
 - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority’s functions under the Gambling Act 2005.
- 4.3 Before adopting this policy statement the Licensing Authority also made the draft policy available to the following for comment:
- All premises licensed to sell alcohol in the East Devon district
 - British Beer & Pub Association
 - Chambers of Commerce within East Devon area
 - Citizen’s Advice Bureau
 - Environmental Health Authority for the district
 - Devon and Cornwall Police
 - Devon County Council Children and Young Peoples Services
 - Devon Fire and Rescue Service
 - Devon Licensing Officers Group
 - East and Mid Devon Community Safety Partnership

- Planning Authority for the district
- Gamblers Anonymous
- Gambling Commission
- Gamcare
- HM Commissioners of Custom and Excise
- Local businesses and their representatives
- Local faith groups
- Local residents and their representatives
- Mencap
- NSPCC
- Premises holding Club Premises Certificates
- Primary Care Trust
- Representatives of existing licence/permit holders including bookmakers
- Town and Parish Councils within East Devon
- Voluntary & Community organisations working with children & young people

4.4 Proper weight has been given to the views of all those who have made comment on the draft Statement of Principles.

Our consultation will place between 26 August 2015 and 2 November 2015 and we will follow the HM Government Code of Practice on Consultation (published July 2008), which is available at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>

4.5 The Statement of Principles is to be approved at a meeting of the Full Council on 16 December 2016 and will be published via the Council's website. Copies will be placed in the public libraries of the area as well as being available for viewing at the offices of the East Devon District Council, Knowle, Sidmouth, EX10 8HL

4.6 Should you have comments regarding this Statement of Licensing Principles please write to the above address or email licensing@eastdevon.gov.uk

4.7 It should be noted that this statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Act.

5 Declaration

5.1 In producing the Licensing Policy Statement, the licensing authority declares that it has had regard to the licensing objectives of the Gambling Act 2005, the Guidance to Licensing Authorities issued by the Gambling Commission, and any responses from those consulted on the policy statement.

6 The Overriding Principle

6.1 In exercising its functions under the Act, this Licensing Authority will aim to permit the use of premises for gambling in so far as it thinks fit:

- in accordance with any relevant codes of practice issued by the Gambling Commission;
- in accordance with any relevant guidance issued by the Gambling Commission;
- as is reasonably consistent with the licensing objectives; and
- in accordance with the authority's Statement of Licensing Policy under section 349.

- 6.2 Each case will be considered on its merits.
- 6.3 In deciding whether or not to grant a licence, this authority does not have regard to the expected demand for the facilities that are the subject of the application.
- 6.4 The overriding principle does not, however, apply to the consideration of an application for a casino licence if this Authority resolves not to issue casino premises licences.

7 Responsible Authorities

- 7.1 Responsible authorities are those public bodies, as specified by the Gambling Act, which must be notified of applications for premises licence. Such bodies are entitled to make representations to the licensing authority in relation to the applications. The Responsible Authorities are detailed in Appendix A and available via the Council's website at <http://eastdevon.gov.uk/licensing/gambling/>.
- 7.2 The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:
- the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
 - the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.
- 7.3 In accordance with the suggestion in the Gambling Commission's Guidance for local authorities, this authority designates the Area Child Protection Committee and Local Safeguarding Children Board.

8 Interested Parties

- 8.1 Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as: "For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person -
- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
 - b) has business interests that might be affected by the authorised activities, or
 - c) represents persons who satisfy paragraph (a) or (b)"
- 8.2 The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:
- (a) Each case will be decided upon its merits. This licensing authority will not apply a rigid rule to its decision-making. It will consider the examples of considerations provided in the Guidance at 8.11 to 8.18. The authority will also consider the Gambling Commission's Guidance that "business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.
 - (b) Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the

ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these, however, this licensing authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation may normally be sufficient.

If individuals wish to approach councillors to ask them to represent their views then care should be taken that the councillors are not part of the Licensing and Enforcement Committee or Sub Committee dealing with the licence application. If there are any doubts then please contact the Licensing Service: East Devon District Council, Knowle, Sidmouth, Devon, EX10 8HL, email:- licensing@eastdevon.gov.uk or telephone:- 01395 517410/517411

9 Exchange of Information

- 9.1 The principle that this Licensing Authority applies is that it will act in accordance with the provisions of the Gambling Act 2005 in its exchange of information which includes the provision that the Data Protection Act 1998 will not be contravened. The Licensing Authority will also have regard to any Guidance issued by the Gambling Commission to Local Authorities on this matter, as well as any relevant regulations issued by the Secretary of State under the powers provided in the Gambling Act 2005. The Licensing Authority will have regard to the principles of Better Regulation.
- 9.2 Should any protocols be established regarding information exchange with other bodies then they will be made available.

Licensing authorities are required to include in their Statement the principles to be applied by the authority in exercising the functions under sections 29 and 30 of the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under section 350 of the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act.

10 Enforcement

Licensing authorities are required by regulation under the Gambling Act 2005 to state the principles to be applied by the authority in exercising the functions under Part 15 of the Act with respect to the inspection of premises; and the powers under section 346 of the Act to institute criminal proceedings in respect of the offences specified.

- 10.1 This licensing authority's principles are that it will be guided by the Gambling Commission's Guidance for local authorities and in line with the Regulatory Compliance Code.
- 10.2 This licensing authority's principles are that it will endeavour to ensure its enforcement should be:
- Proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
 - Accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
 - Consistent: rules and standards must be joined up and implemented fairly;
 - Transparent: regulators should be open, and keep regulations simple and user friendly; and
 - Targeted: regulation should be focused on the problem, and minimise side effects.
- 10.3 In line with the Gambling Commission's Guidance for local authorities this licensing authority will endeavour to avoid duplication with other regulatory regimes so far as possible.
- 10.4 This licensing authority has adopted and implemented a risk-based inspection programme, based on:
- The licensing objectives
 - Relevant codes of practice
 - Guidance issued by the Gambling Commission, in particular at Part 36
 - The principles set out in this statement of licensing policy

The main enforcement and compliance role for this licensing authority in terms of the Gambling Act 2005 will be to ensure compliance with the Premises Licences and other permissions which it authorises. The Gambling Commission is the enforcement body for the operating and personal licences. It is also worth noting that concerns about manufacture, supply or repair of gaming machines are not dealt with by this licensing authority but should be notified to the Gambling Commission.

This licensing authority will also keep itself informed of developments regarding the work of the Better Regulation Executive in its consideration of the regulatory functions of local authorities.

Bearing in mind the principle of transparency, this licensing authority's enforcement/compliance protocols/written agreements will be available upon request to the Licensing Service at East Devon District Council and available via the Council's website at <http://www.eastdevon.gov.uk/>. Our risk methodology will also be available upon request.

11 Licensing Authority functions

- 11.1 Licensing Authorities are required under the Gambling Act 2005 to:
- Be responsible for the licensing of premises where gambling activities are to take place by issuing **Premises Licences**
 - Issue **Provisional Statements**
 - Regulate **members' clubs and miners' welfare institutes** who wish to undertake certain gaming activities by issuing Club Gaming Permits and/or Club Machine Permits
 - Issue **Club Machine Permits to Commercial Clubs**
 - Grant permits for the use of certain lower stake gaming machines at **unlicensed Family Entertainment Centres**
 - Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines
 - Issue **Licensed Premises Gaming Machine Permits** for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
 - Register **small society lotteries** below prescribed thresholds
 - Issue **Prize Gaming Permits**
 - Receive and Endorse **Temporary Use Notices**
 - Receive **Occasional Use Notices**
 - Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
 - Maintain registers of the permits and licences that are issued under these functions
- 11.2 It should be noted that local Licensing Authorities will not be involved in licensing remote gambling. This will fall to the Gambling Commission via operating licences. The Financial Services Authority regulates spread betting and the National Lottery Commission regulates the National Lottery.

12 The Gambling Commission

- 12.1 The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling; by ensuring that gambling is conducted in a fair and open way; and by protecting children and vulnerable people. The Commission provides independent advice to the Government about the matter in which gambling is carried out, the effects of gambling and the regulations of gambling generally.
- 12.2 The Commission has issued guidance under Section 25 of the Act about the manner in which licensing authorities exercise their licensing functions under the Act and, in particular, the principles to be applied.
- 12.3 The Commission has also issued Codes of Practice under Section 24 about the way in which facilities for gambling is provided, which may also include provisions about the advertising of gambling facilities.
- 12.4 The Gambling Commission can be contacted at:

Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP
Website: www.gamblingcommission.gov.uk
Email: info@gamblingcommission.gov.uk

13 Local Risk assessments

- 13.1 The Gambling Commission's Licence Conditions and Codes of Practice will require operators to consider local risks with effect from the 6 April 2016.
- 13.2 Social Responsibility (SR) code 10.1 will require licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, licensees should take into account any relevant matters identified in this Statement of Principles and any associated local area profile produced by this Licensing Authority (see Section 3 above).
- 13.3 Licensees are required to undertake a local risk assessment when applying for a new premises licence. Their risk assessment must be also be updated:
- When applying for a variation of a premises licence
 - To take account of significant changes in local circumstances, including those identified in this policy statement
 - Where there are significant changes at a licensee's premises that may affect their mitigation of local risks.
- 13.4 Where concerns do exist, perhaps promoted by new or existing risks, the Licensing Authority will request that the licensee share a copy of its own risk assessment which will set out the measures the licensee has in place to address specific concerns.
- 13.5 This Authority will pay particular attention to applications for the new grant of, or variations to existing, premises licenses where those premises lie within areas with a concentration of schools, Anti Social Behaviour (ASB) hotspots and hostels or homes for vulnerable people.

- 13.6 Applicants will be expected to tailor their application, and have policies, procedures and control measures to mitigate any risks. They should have the appropriate numbers of trained staff, and propose licence conditions to cater for the local area in which they propose to run their business.
- 13.7 As regards the term “*vulnerable persons*” it is noted that the Gambling Commission is not seeking to offer a definition but states that ‘... *it does, for regulatory purposes, assume that this group includes people who gamble more than they want to, people who gamble beyond their means and people who may not be able to make informed or balanced decisions about gambling due to, for example, mental health, a learning disability or substance misuse relating to alcohol or drugs.*’
- 13.8 This Licensing Authority will consider the licensing objective of protecting children and other vulnerable persons on a case by case basis. Should a practical definition prove possible in future then this policy statement will be updated with it, by way of a revision. This Authority will also make itself aware of the Codes of Practice which the Gambling Commission issues in relation to this.

14 The Licensing Process

- 14.1 A Licensing Committee (Licensing and Enforcement Committee), a Sub-Committee, or an officer acting under delegated authority may carry out the powers of the authority under the Gambling Act 2005.
- 14.2 Many of the licensing procedures are largely administrative in nature. In the interests of efficiency, non-contentious procedures are carried out by licensing officers.
- 14.3 The Licensing Authority ensures that all Licensing Officers and Members of the Licensing and Enforcement Committee have received adequate training for their role under the Gambling Act 2005.
- 14.4 Where admissible and relevant representations are received in relation to an application for a premises licence, or in relation to the review of a premises licence, a Sub-Committee is delegated to hear the matter.
- 14.5 Applicants for premises licences are required to copy their applications in full to the responsible authorities as listed in Appendix A.

Part B - Premises Licences: Consideration of Applications

1 General Principles

- 1.1 Premises Licences are subject to the requirements set out in the Gambling Act 2005 and regulations, as well as specific mandatory and default conditions which are detailed in regulations issued by the Secretary of State. Licensing authorities are able to exclude default conditions and also attach others, where it is believed to be appropriate.
- 1.2 This licensing authority is aware that in making decisions about premises licences it should aim to permit the use of premises for gambling in so far as it thinks it:
 - in accordance with any relevant code of practice issued by the Gambling Commission
 - in accordance with any relevant guidance issued by the Gambling Commission
 - reasonably consistent with the licensing objectives and
 - in accordance with the authority's Statement of Principles.
- 1.3 It is appreciated that in line with the Gambling Commission's Guidance to licensing authorities "moral objections to gambling are not a valid reason to reject applications for premises licences" (except as regards any 'no casino resolution' - see section on Casinos later) and also that unmet demand is not a criterion for a licensing authority.
- 1.4 **Definition of "premises"** - In the Act, "premises" is defined as including "any place". Section 152 therefore prevents more than one premises licence applying to any place. But a single building could be subject to more than one premises licence, provided they are for different parts of the building and the different parts of the building can be reasonably regarded as being different premises. This approach has been taken to allow large, multiple unit premises such as a pleasure park, pier, track or shopping mall to obtain discrete premises licences, where appropriate safeguards are in place. However, licensing authorities should pay particular attention if there are issues about sub-divisions of a single building or plot and should ensure that mandatory conditions relating to access between premises are observed.
- 1.5 The Gambling Commission states in its Guidance that: "In most cases the expectation is that a single building / plot will be the subject of an application for a licence, for example, 32 High Street. But, that does not mean 32 High Street cannot be the subject of separate premises licences for the basement and ground floor, if they are configured acceptably. Whether different parts of a building can properly be regarded as being separate premises will depend on the circumstances. The location of the premises will clearly be an important consideration and the suitability of the division is likely to be a matter for discussion between the operator and the licensing officer. However, the Commission does not consider that areas of a building that are artificially or temporarily separated, for example by ropes or moveable partitions, can properly be regarded as different premises.
- 1.6 Any premises granted multiple licences prior to clarification of guidance issued by the Gambling Commission in 2009, may be reviewed from time to time having regard to the amended guidance including more recent amendments; the decision making process taken at that time; the separation control measures put in place; any material changes noted since the granting of the application and the relevance of all these factors having regard to the promotion of the licensing objectives. In particular to the protection of children and vulnerable persons from being harmed or exploited by gambling.

1.7 This licensing authority takes particular note of the Gambling Commission's Guidance to licensing authorities which states that: Licensing authorities should take particular care in considering applications for multiple licences for a building and those relating to a discrete part of a building used for other (non-gambling) purposes. In particular they should be aware of the following:

- The third licensing objective seeks to protect children from being harmed by gambling. In practice that means not only preventing them from taking part in gambling, but also preventing them from being in close proximity to gambling. Therefore premises should be configured so that children are not invited to participate in, have accidental access to or closely observe gambling where they are prohibited from participating.
- Entrances to and exits from parts of a building covered by one or more premises licences should be separate and identifiable so that the separation of different premises is not compromised and people do not "drift" into a gambling area. In this context it should normally be possible to access the premises without going through another licensed premises or premises with a permit.
- Customers should be able to participate in the activity named on the premises licence.

The Guidance also provides a list of factors which this licensing authority should consider and includes:

- Do the premises have a separate registration for business rates?
- Is the premises' neighbouring premises owned by the same person or someone else?
- Can each of the premises be accessed from the street or a public passageway?
- Can the premises only be accessed from any other gambling premises?
- This licensing authority will consider these and other relevant factors in making its decision, depending on all the circumstances of the case.

The Gambling Commission's relevant access provisions for each premises type are reproduced below from the Guidance, 7.26:

Casinos

- The principal access entrance to the premises must be from a street (as defined at 7.24 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

- No customer must be able to access the premises directly from any other licensed gambling premises

Betting Shops

- Access must be from a street (as defined at paragraph 7.24 of the Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

Tracks

- No customer should be able to access the premises directly from:
 - a casino
 - an adult gaming centre

Bingo Premises

- No customer must be able to access the premise directly from:
 - a casino
 - an adult gaming centre
 - a betting premises, other than a track

Family Entertainment Centre

- No customer must be able to access the premises directly from:
 - a casino
 - an adult gaming centre
 - betting premises, other than a track

Part 7 of the Guidance contains further guidance on this issue, which this licensing authority will also take into account in its decision-making.

1.8 Premises “ready for gambling”

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that this licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this licensing authority will determine applications on their merits, applying a two stage consideration process:-

- First, whether the premises ought to be permitted to be used for gambling
- Second, whether appropriate conditions can be put in place to cater for the situation that the premises are not yet in the state in which they ought to be before gambling takes place.

1.9 Applicants should note that this licensing authority is entitled to decide that it is appropriate to grant a licence subject to conditions, but it is not obliged to grant such a licence.

1.10 More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.58 – 7.67 of the Guidance.

1.11 **Location** - This licensing authority is aware that demand issues cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives are relevant to its decision making. In line with the Gambling Commission’s Guidance to licensing authorities, this authority will pay particular attention to the protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder. Should any specific policy be decided upon as regards areas where gambling premises should not be located, this statement will be updated. It should be noted that any such policy does not preclude

any application being made and each application will be decided on its merits, with the onus upon the applicant showing how potential concerns can be overcome.

1.12 Planning:

The Guidance states:

Paragraph - 7.60 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

This licensing authority will not take into account irrelevant matters in line with the above guidance. In addition this licensing authority notes the following excerpt from the Guidance:

Paragraph - 7.67 - When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

- 1.13 Duplication with other regulatory regimes** - This licensing authority seeks to avoid any duplication with other statutory/regulatory systems where possible, including planning. This authority will not consider whether a licence application is likely to be awarded planning permission or building regulations approval, in its consideration of it. It will, though, listen to, and consider carefully, any concerns about conditions which cannot be met by licensees due to planning restrictions, should such a situation arise.

When dealing with a premises licence application for finished buildings, this licensing authority will not take into account whether those buildings have to comply with the necessary planning or buildings consents. Fire or health and safety risks will not be taken into account, as these matters are dealt with under relevant planning control, buildings and other regulations and must not form part of the consideration for the premises licence.

- 1.14 Licensing objectives** - Premises licences granted must be reasonably consistent with the licensing objectives. With regard to these objectives, this licensing authority has considered the Gambling Commission's Guidance to licensing authorities and further comment on the objectives is made below.

- 1.15 Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime** - This licensing authority is aware that the Gambling Commission takes a leading role in preventing gambling from being a source of crime. The Gambling Commission's Guidance does however envisage that licensing authorities should pay attention to the proposed location of gambling premises in terms of this licensing objective. Thus, where an area has known high levels of organised crime this authority will consider carefully whether gambling premises are suitable to be located there and whether conditions may be suitable such as the provision of door supervisors. This licensing authority is aware of the distinction between disorder and nuisance and will consider factors (for example

whether police assistance was required and how threatening the behaviour was to those who could see it) so as to make that distinction.

- 1.16 **Ensuring that gambling is conducted in a fair and open way** - This licensing authority has noted that the Gambling Commission states that it generally does not expect licensing authorities to be concerned with ensuring that gambling is conducted in a fair and open way as this will be addressed via operating and personal licences. There is however more of a role with regarding to tracks which is explained in more detail in the tracks section later.
- 1.17 **Protecting children and other vulnerable persons from being harmed or exploited by gambling** - This licensing authority has noted the Gambling Commission's Guidance to licensing authorities states that this objective means preventing children from taking part in gambling (as well as restriction of advertising so that gambling products are not aimed at or are, particularly attractive to children). This licensing authority will therefore consider, as suggested in the Gambling Commission's Guidance, whether specific measures are required at particular premises, with regard to this licensing objective. Appropriate measures may include supervision of entrances/machines, segregation of areas etc.
- 1.18 This licensing authority is also aware of the Gambling Commission's Codes of Practice regarding this licensing objective, in relation to specific premises.
- 1.19 It is noted that the Gambling Commission is not seeking to offer a definition of the term "vulnerable persons" but states that "it will for regulatory purposes assume that this group includes people who gamble more than they want to; people who gamble beyond their means; and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs." This licensing authority will consider the licensing objective on a case-by-case basis.
- 1.20 **Conditions** - Any conditions attached to licences will be proportionate and will be:
- relevant to the need to make the proposed building suitable as a gambling facility;
 - directly related to the premises and the type of licence applied for;
 - fairly and reasonably related to the scale and type of premises;
 - reasonable in all other respects; and
 - enforceable
- 1.21 Decisions upon individual conditions will be made on a case by case basis, although there will be a number of measures this licensing authority will consider utilising should there be a perceived need, such as the use of supervisors, appropriate signage for adult only areas etc. There are specific comments made in this regard under some of the licence types below. This licensing authority will also expect the licence applicant to offer his/her own suggestions on the way in which the licensing objectives can be met effectively when making their application.
- 1.22 This licensing authority will also consider specific measures which may be required for buildings which are subject to multiple premises licences. Such measures may include the supervision of entrances; segregation of gambling from non-gambling areas frequented by children; and the supervision of gaming machines in non-adult gambling specific premises in order to pursue the licensing objectives. These matters are in accordance with the Gambling Commission's Guidance.
- 1.23 This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:
- all such machines are located in an area of the premises which is separated from

the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;

- only adults are admitted to the area where these machines are located;
- access to the area where the machines are located is supervised;
- the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
- at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.

These considerations will apply to premises including buildings where multiple premises licences are applicable.

- 1.24 This licensing authority is aware that tracks may be subject to more than one premises licence, provided each licence relates to a specified area of the track. In line with the Gambling Commission's Guidance, this licensing authority will consider the impact upon the third licensing objective and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.
- 1.25 It is noted that there are conditions which the licensing authority cannot attach to premises licences which are:
- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
 - conditions relating to gaming machine categories, numbers, or method of operation;
 - conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
 - conditions in relation to stakes, fees, winnings or prizes.
- 1.26 **Door Supervisors** - The Gambling Commission advises in its Guidance that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence condition to this effect.

Where it is decided that supervision of entrances/machines is appropriate for particular cases, a consideration of whether these need to be SIA licensed or not will be necessary. It will not be automatically assumed that they need to be licensed, as the statutory requirements for different types of premises vary (in line with the Guidance, Part 33).

- 1.27 In deciding whether door staff are needed and the level of training required the licensing authority will take into account the particular circumstances of the premises and the Gambling Commissions guidance.

2 Adult Gaming Centres

- 2.1 This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the premises. Appropriate licence conditions may cover the following issues:
- CCTV
 - Door supervisors
 - Location of entry
 - Notices/signage
 - Physical separation of areas
 - Proof of age schemes
 - Provision information leaflets helpline numbers for organisations such as GamCare.
 - Self-exclusion schemes
 - Specific opening hours
 - Supervision of entrances/machine areas
- This list is not mandatory, nor exhaustive, and is merely indicative of example measures.
- 2.2 The question of sub-division of such premises has been the subject of further Gambling Commission Guidance. This Licensing Authority will have regard to any relevant additional guidance that may be issued by the Gambling Commission in respect to such applications any decision-making.
- 2.3 This Authority accepts that there must be no direct entry from one adult gaming centre into another and will have regard to any relevant guidance issued by the Gambling Commission in respect to such applications.

(Licensed) Family Entertainment Centres

- 3.1 This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.
- 3.2 This licensing authority may consider measures to meet the licensing objectives including those relating to:
- CCTV
 - Door supervisors
 - Location of entry
 - Measures/training for staff on how to deal with suspected truant school children on the premises
 - Notice/signage
 - Physical separation of areas
 - Proof of age schemes
 - Provision of information leaflets/helpline numbers for organisations such as GamCare.
 - Self-exclusion schemes
 - Specific opening hours
 - Supervision of entrances / machine areas
- This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

- 3.3 This licensing authority will, in line with the Gambling Commission's guidance, refer to the Commission's website to see any conditions that apply to operating licences covering the way in which the area containing the category C machines should be delineated.

Applicants for Permits for Adult or Family Entertainment Centres (licensed or unlicensed) (formerly known as 'Amusement Arcades') are advised to speak to the Planning Service of this Council before making a formal application to the Licensing Service.

The Planning Service can be contacted at Planning and Countryside Service, East Devon District Council, Council Offices, Knowle, Sidmouth, EX10 8HL – Tel. 01395 516551

4 Casinos

East Devon District Council has not passed a 'no casino' resolution under Section 166 of the Gambling Act 2005, but is aware that it has the power to do so. Should this licensing authority decide in the future to pass such a resolution, it will update this policy statement with details of that resolution. Any such decision will be made by the Full Council.

5 Bingo premises

- 5.1 This licensing authority notes that the Gambling Commission's Guidance states:

Paragraph 18.4 - Licensing authorities will need to satisfy themselves that bingo can be played in any bingo premises for which they issue a premises licence. This will be a relevant consideration where the operator of an existing bingo premises applies to vary their licence to exclude an area of the existing premises from its ambit and then applies for a new premises licence, or multiple licences, for that or those excluded areas.

This licensing authority also notes the Guidance at paragraph 18.8 regarding the unusual circumstances in which the **splitting of a pre-existing premises** into two adjacent premises might be permitted, and in particular that it is not permissible to locate sixteen category B3 gaming machines in one of the resulting premises, as the gaming machine entitlement for that premises would be exceeded. In these cases this Licensing Authority will have particular regard to the Gambling Commission Guidance on the 'meaning of premises' (7.12 – 7.20) and how it relates to the primary gambling activity.

Paragraph 18.7 - Children and young people are allowed into bingo premises, however they are not permitted to participate in the bingo and if category B or C machines are made available for use these must be separated from areas where children and young people are allowed.

6 Betting premises

Betting machines

This Licensing Authority will consider whether it is appropriate to restrict the number of betting machines, their nature and the circumstances in which they are made available by way of licence condition for betting or casino premises licence (where betting is permitted in the casino). When considering whether to impose a condition to restrict the number of betting machines in a particular premises, this Licensing Authority, amongst other things, will take into account the size of the premises, the number of counter positions available for person-to-person transactions, and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable persons.”

The Licensing Authority recognises that the design and layout of betting premises (or any other premises including tracks) will vary so will have particular regard to the sighting of age restricted gaming machines within each individual premises to ensure, so far as is reasonably practicable, that staff properly monitor the use of these machines by children and young persons. This Licensing Authority reserve the right to request that gaming machines are re-positioned where circumstances demonstrate that it is appropriate to do so.

Factors to be taken into consideration will include the following:

- CCTV
- Re-location of the machines
- Door buzzers
- Remote cut off switches
- Training provision
- Any other factor considered relevant

7 Tracks

7.1 This licensing authority is aware that tracks may be subject to more than one premises licence, provided each licence relates to a specified area of the track. In line with the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (that is the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

7.2 This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.

7.3 This licensing authority may consider measures to meet the licensing objectives including those relating to:

- CCTV
- Location of entry
- Notices/signage
- Physical separation of areas
- Proof of age schemes

- Provision of information leaflets/helpline numbers for organisations such as GamCare
- Self-exclusion schemes
- Specific opening hours
- Supervision of entrances / machine areas

This list is not mandatory, nor exhaustive, and is merely indicative of example measures.

7.4 **Gaming Machines**

Where the applicant holds a pool betting operating licence and is going to use the entitlement to four gaming machines, machines (other than category D machines) should be located in areas from which children are excluded.

Applicants are advised to consult the Gambling Commission's Guidance on where gaming machines may be located on tracks and any special considerations that should apply in relation, for example, to supervision of the machines and preventing children from playing them. This Licensing Authority will take note of this guidance. This Licensing Authority will also, in line with the Gambling Commission's Guidance, consider the location of gaming machines at tracks.

7.5 **Betting Machines**

This licensing authority will, in line with part 19 of the Guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator proposes to offer.

On tracks where the potential space for such machines may be considerable, bringing with it significant problems in relation to the proliferation of such machines, the ability of track staff to supervise them if they are scattered around the track and the ability of the track operator to comply with the law and prevent children betting on the machines, this Licensing Authority will generally consider restricting the number and location of betting machines, in the light of the circumstances of each application for a track betting premises licence.

7.6 **Applications and plans**

Section 151 of the Gambling Act 2005 requires applicants to submit plans of the premises with their application, in order to ensure that this licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for this licensing authority to plan future premises inspection activity.

Plans for tracks do not need to be in a particular scale, but should be drawn to scale and should be sufficiently detailed to include the information required by regulations.

Some tracks may be situated on agricultural land where the perimeter is not defined by virtue of an outer wall or fence, such as point-to-point racetracks. In such instances, where an entry fee is levied, track premises licence holders may erect temporary structures to restrict access to premises.

In the rare cases where the outer perimeter cannot be defined, it is likely that the track in question will not be specifically designed for the frequent holding of sporting events or races. In such cases betting facilities may be better provided through occasional use notices where the boundary premises do not need to be defined.

This licensing authority appreciates that it is sometimes difficult to define the precise location of betting areas on tracks. The precise location of where betting facilities are provided is not required to be shown on track plans, both by virtue of the fact that betting is permitted anywhere on the premises and because of the difficulties associated with pinpointing exact locations for some types of track. Applicants should provide sufficient information that this licensing authority can satisfy itself that the plan indicates the main areas where betting might take place. For racecourses in particular, any betting areas subject to the “five times rule” (commonly known as betting rings) must be indicated on the plan. (See Guidance to Licensing Authorities, paragraph 20.33).

Only one premises licence may be issued for any particular establishment at any time. There is one exception to this rule, namely a track (that is a horse race course, dog track or other premises where races or sporting events take place), which may be subject to more than one premises licence, provided each licence relates to a specified area of the track. The Act sets out that there will be a main (betting premises) licence for the track, and in addition subsidiary premises licences for other gambling activities may be issued. In principle there is no reason why all types of gambling should not co-exist upon a track, however this licensing authority will want to think about how the third licensing objective is delivered by the co-location of premises. As with the granting of multiple licences in a single building, this licensing authority will need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.

Premises licences in relation to tracks are unusual in that, because the track operator does not need to have an operating licence (although may have one), the premises licence will need to contain requirements on the premises licence holder about his responsibilities in relation to the proper conduct of betting. The conduct of the betting on tracks will be regulated primarily through the operating licences that the persons offering betting on the track will need to hold (whether a general betting operating licence or a pool betting operating licence). But the track operator will have a role to play in ensuring, for example, that the betting areas are properly administered, and licensing authorities will have an important role in regulating tracks, because of the particular rules surrounding on-course betting, and the sub-division of the track into different areas.

8 Travelling Fairs

- 8.1 Where category D machines and/or equal chance prize gaming without a permit is to be made available for use at travelling fairs it will be this Licensing Authority's responsibility to decide whether the statutory requirement is met, that the facilities for gambling amounts to no more than an ancillary amusement at the fair.
- 8.2 The licensing authority will also consider whether the applicant falls within the statutory definition of a travelling fair.
- 8.3 It is been noted that the 27 day statutory maximum for the land being used as a fair applies on a per calendar year basis, and that it applies to the piece of land on which the fairs are held, regardless of whether it is the same or different travelling fairs occupying the land. This licensing authority will work with its neighbouring authorities to ensure that land, which crosses our boundaries, is monitored so that the statutory limits are not exceeded.

9 Provisional Statements

- 9.1 Developers may wish to apply to this licensing authority for provisional statements before entering into a contract to buy or lease property or land to judge whether a development is worth taking forward in light of the need to obtain a premises licence. There is no need for the applicant to hold an operating licence in order to apply for a provisional statement.
- 9.2 Section 204 of the Act provides for a person to make an application to this licensing authority for a provisional statement in respect of premises that he or she:
- expects to be constructed;
 - expects to be altered; or
 - expects to acquire a right to occupy.
- 9.3 The process for considering an application for a provisional statement is the same as that for a premises licence application. The applicant is obliged to give notice of the application in the same way as applying for a premises licence. Responsible authorities and interested parties may make representations and there are rights of appeal.
- 9.4 In contrast to the premises licence application, the applicant does not have to hold or have applied for an operating licence from the Gambling Commission (except in the case of a track) and they do not have to have a right to occupy the premises in respect of which their provisional application is made.
- 9.5 The holder of a provisional statement may then apply for a premises licence once the premises are constructed, altered or acquired. This licensing authority will be constrained in the matters it can consider when determining the premises licence application, and in terms of representations about premises licence applications that follow the grant of a provisional statement, no further representations from relevant authorities or interested parties can be taken into account unless:
- they concern matters which could not have been addressed at the provisional statement stage, or
 - they reflect a change in the applicant's circumstances.

In addition, this licensing authority may refuse the premises licence (or grant it on terms different to those attached to the provisional statement) only by reference to matters:

- which could not have been raised by objectors at the provisional statement stage;
- which in this licensing authority's opinion reflect a change in the operator's circumstances; or
- where the premises has not been constructed in accordance with the plan submitted with the application. This must be a substantial change to the plan and this licensing authority notes that it can discuss any concerns it has with the applicant before making a decision.

10 Reviews

- 10.1 Requests for a review of a premises licence can be made by interested parties or responsible authorities; however, it is for the licensing authority to decide whether the review is to be carried out. This will be on the basis of whether the request for the review is relevant to the matters listed below.
- in accordance with any relevant code of practice issued by the Gambling Commission;
 - in accordance with any relevant guidance issued by the Gambling Commission;
 - reasonably consistent with the licensing objectives;
 - in accordance with the authority's Gambling Licensing Policy
- 10.2 The Licensing Authority will also consider whether the request is frivolous, vexatious, whether the request will certainly not cause this authority to wish to alter/revoke/suspend the licence, or whether the request is substantially the same as previous representations or requests for review;
- 10.3 The licensing authority can also initiate a review of a particular premises licence, or a particular class of premises on the basis of any reason which it thinks is appropriate.
- 10.4 Once a valid application for a review has been received by this licensing authority, representations can be made by responsible authorities and interested parties during a 28 day period. This period begins 7 days after the application was received by this licensing authority, who will publish notice of the application within 7 days of receipt.
- 10.5 This licensing authority must carry out the review as soon as possible after the 28-day period for making representations has passed.
- 10.6 The purpose of the review will be to determine whether this licensing authority should take any action in relation to the licence. If action is justified, the options open to this licensing authority are:-
- (a) add, remove or amend a licence condition imposed by this licensing authority;
 - (b) exclude a default condition imposed by the Secretary of State (e.g. opening hours) or remove or amend such an exclusion;
 - (c) suspend the premises licence for a period not exceeding three months; and
 - (d) revoke the premises licence.
- 10.7 In determining what action, if any, should be taken following a review, this licensing authority must have regard to the principles set out in section 153 of the Act, as well as any relevant representations.
- 10.8 In particular, this licensing authority may also initiate a review of a premises licence on the grounds that a premises licence holder has not provided facilities for gambling at the premises. This is to prevent people from applying for licences in a speculative manner without intending to use them.
- 10.9 Once the review has been completed, this licensing authority must, as soon as possible, notify its decision to:
- (i) the licence holder
 - (ii) the applicant for review (if any)
 - (iii) the Commission
 - (iv) any person who made representations
 - (v) the chief officer of police or chief constable; and
 - (vi) Her Majesty's Commissioners for Revenue and Customs

PART C

Permits / Temporary & Occasional Use Notice

1 Unlicensed Family Entertainment Centre - Gaming Machine Permits Statement of Principles – (Schedule 10 Paragraph 7)

- 1.1 Where an establishment does not hold a Premises Licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).
- 1.2 The Gambling Act 2005 states that a licensing authority may prepare a **statement of principles** that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25. The Gambling Commission's Guidance for local authorities also states: "In their three year Statement of Principles (Licensing Policy), licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits, licensing authorities will want to give weight to child protection issues." (Guidance Paragraph 24.6)
- 1.3 Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed Family Entertainment Centre, and if the chief officer of police has been consulted on the application . . ." This Licensing Authority will require the applicant to demonstrate:
- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed Family Entertainment Centres;
 - that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act; and
 - that staff are trained to have a full understanding of the maximum stakes and prizes. (Guidance Paragraph 24.7)
- 1.4 It should be noted that a licensing authority cannot attach conditions to this type of permit.
- 1.5 **Statement of Principles**
- 1.5.1 This licensing authority has adopted a Statement of Principles in accordance with Paragraph 7 of Schedule 10 of the Act and they are for the purposes of clarifying the measures that the council will expect applicants to demonstrate when applying for a permit for an unlicensed family entertainment centre. This will allow the council to better determine the suitability of the applicant and the premises for a permit.
- 1.5.2 Within this process the council will aim to grant the permit where the applicant is able to demonstrate that:
- they are a fit and proper person to hold the permit
 - they have considered and are proposing suitable measures to promote the licensing objectives, and
 - they have a legal right to occupy the premises to which the permit is sought.
- 1.5.3 The measures suggested in this document should be read as guidance only and the council will be happy for applicants to suggest measures above and beyond those listed in the document and or to substitute measures as appropriate.

1.6 **Unlicensed family entertainment centres**

- 1.6.1 The term ‘unlicensed family entertainment centre’ is one defined in the Act and refers to a premises which provides category D gaming machines along with various other amusements such as computer games and penny-pushers. The premises is ‘unlicensed’ in that it does not require a premises licence but does require a permit to be able to provide its category D gaming machines. It should not be confused with a ‘licensed family entertainment centre, which does require a premises licence because it contains both category C and D gaming machines.
- 1.6.2 Unlicensed family entertainment centres (uFECs) will be most commonly located at seaside resorts, in airports and at motorway style service centres, and will cater for families, including unaccompanied children and young persons.
- 1.6.3 The council will only grant an uFEC gaming machine permit where it is satisfied that the premises will be operated as a bonafide unlicensed family entertainment centre.
- 1.6.4 In line with the Act, while the council cannot attach conditions to this type of permit, the council can refuse applications if they are not satisfied that the issues raised in this “Statement of Principles” have been addressed through the application.

1.7 **Supporting documents**

- 1.7.1 The council will require the following supporting documents to be served with all uFEC gaming machine permit applications:
- proof of age (a certified copy or sight of an original birth certificate, a photo style driving licence, or passport – all applicants for these permits must be aged 18 or over)
 - proof that the applicant has the right to occupy the premises. Acceptable evidence would be a copy of any lease, a copy of the property’s deeds or a similar document
 - the result of a criminal records basic disclosure [criminal conviction certificate] (the disclosure must have been issued within the previous month). This will be used to check that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act.) – Basic Disclosures can be obtained from Disclosure Scotland. For further details call their helpline number 0870 609 6006, or visit the website <http://www.disclosurescotland.co.uk/>
 - In the case of applications for an uFEC gaming machine permit evidence that the machines to be provided are or were supplied by a legitimate gambling machine supplier or manufacturer who holds a valid gaming machine technical operating licence issued by the Gambling Commission
 - A plan of the premises for which the permit is sought showing the following items:
 - (i) the boundary of the building with any external or internal walls, entrances and exits to the building and any internal doorways
 - (ii) where any category D gaming machines are positioned and the particular type of machines to be provided (for example slot machines, penny-falls, cranes)
 - (iii) the positioning and types of any other amusement machines on the premises
 - (iv) the location of any fixed or semi-fixed counters, booths or offices on the premises whereby staff monitor the customer floor area
 - (v) the location of any ATM/cash machines or change machines
 - (vi) the location of any fixed or temporary structures such as columns or pillars

- (vii) the location and height of any stages in the premises; any steps, stairs, elevators, balconies or lifts in the premises
- (viii) the location of any public toilets in the building

Unless otherwise agreed with the council, the plan should be drawn to a standard scale with a key showing the items mentioned above. The standard scale is 1:100.

1.8 **Child protection issues**

1.8.1 The council will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The council will assess these policies and procedures on their merits, and they should (depending on the particular permit being applied for) include appropriate measures / training for staff relating to the following:

- maintain contact details for any local schools and or the education authority so that any truant children can be reported
- employ policies to address the problems associated with truant children who may attempt to gain access to the premises and gamble when they should be at school
- employ policies to address any problems that may arise during seasonal periods where children may frequent the premises in greater numbers, such as half terms and summer holidays
- maintain information at the premises of the term times of any local schools in the vicinity of the premises and also consider policies to ensure sufficient staffing levels during these times
- display posters displaying the 'Child Line' phone number in discreet locations on the premises e.g. toilets
- maintain an incident register of any problems that arise on the premises related to children such as children gambling excessively, truant children, children being unruly or young unaccompanied children entering the premises. (The register should be used to detect any trends that require attention by the management of the premises.)
- ensure all young children are accompanied by a responsible adult.
- Maintain policies to deal with any young children who enter the premises unaccompanied
- The provision of satisfactory basic disclosure checks (criminal records checks) for all staff who will be working closely with children.

NB: Any supporting evidence of the above measures e.g. training manuals or other similar documents/written statements should be attached to the application.

1.9 **Protection of Vulnerable Persons Issues**

1.9.1 The council will expect the applicant to show that there are policies and procedures in place to protect vulnerable persons. Applicants should refer to the section in the council's 'Statement of Licensing Policy under the Gambling Act 2005' to familiarise themselves with who the council considers vulnerable. The council will assess these policies and procedures on their merits, however, they may (depending on the particular permit being applied for) include appropriate measures / training for staff relating to the following:

- display Gamcare helpline stickers on all gaming machines
- display Gamcare posters in prominent locations on the premises

- training for staff members which focuses on building an employee's ability to maintain a sense of awareness of how much (e.g. how long) customers are gambling, as part of measures to detect persons who may be vulnerable
- consider appropriate positioning of ATM and change machines. (including the display of Gamcare stickers on any such machines.)

NB: Any supporting evidence of the above measures e.g. training manuals or other similar documents/written statements should be attached to the application.

1.10 Other miscellaneous issues

1.10.1 The applicant should also be mindful of the following possible control measures (depending on the particular permit being applied for) to minimise crime and disorder and the possibility of public nuisance:

- maintain an effective CCTV system to monitor the interior and exterior of the premises
- keep the exterior of the premises clean and tidy
- ensure that external lighting is suitably positioned and operated so as not to cause nuisance to neighbouring or adjoining premises
- consider the design and layout of the outside of the premises to deter the congregation of children and youths.

NB: Any supporting evidence of the above measures e.g. training manuals or other similar documents/written statements should be attached to the application.

Applicants for Permits for Adult or Family Entertainment Centres (licensed or unlicensed) (formerly known as 'Amusement Arcades') are advised to speak to the Planning Service of this Council before making a formal application to the Licensing Service

The Planning Service can be contacted at Planning and Countryside Service, East Devon District Council, Council Offices, Knowle, Sidmouth, EX10 8HL – Tel. 01395 516551

2 Alcohol Licensed Premises Gaming Machine Permits – (Schedule 13 Paragraph 4(1))

2.1 Automatic Entitlement for two machines

There is provision in the Act for a premises licensed to sell alcohol for consumption on the premises, to automatically have 2 gaming machines, of categories C and/or D. The premises merely need to notify the licensing authority. The licensing authority can remove the automatic authorisation in respect of any premises if:

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises and that breaches a condition of section 282 of the Gambling Act has occurred (for example that written notice has not been provided to the licensing authority, that a fee has not been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has not been complied with);
- the premises are mainly used for gaming; or
- an offence under the Gambling Act has been committed on the premises

The Licensing Authority will use its discretion to remove permits where appropriate taking into account individual circumstances.

2.2 **Permit - three or more machines**

If a premises wishes to have more than 2 machines, then it needs to apply for a permit and the licensing authority must consider that application based upon the licensing objectives, any guidance issued by the Gambling Commission issued under Section 25 of the Gambling Act 2005, and “other such matters as the Authority think relevant.” This licensing authority considers that “such matters” will be decided on a case-by-case basis. However generally there will be regard to the size of the premises in comparison to the number of machines sought and to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machines. Measures which will satisfy the authority that there will be no access may include the adult machines being in sight of the bar, or in the sight of staff that will monitor that the machines are not being used by those under 18. Notices and signage may also be helpful. As regards the protection of vulnerable persons, applicants may wish to consider the provision of information leaflets/helpline numbers for organisations such as GamCare.

2.3 It is recognised that some alcohol-licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for, and dealt with as an Adult Gaming Centre premises licence.

2.4 It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.

2.5 It should also be noted that the holder of a permit to must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

Applicants should be aware that only those premises which have a ‘bar’ (servery) at which alcohol is sold for consumption on the premises will be eligible for gambling machines in the bar area of the premises. This means that premises such as restaurants which do not have a bar for serving drinks or can only sell alcoholic drinks as an ancillary to food can not automatically qualify for two machines.

3 **Prize Gaming Permits – Statement of Principles on Permits - (Schedule 14 Para 8 (3))**

3.1 The Gambling Act 2005 states that a licensing authority may “prepare a statement of principles that they propose to apply in exercising their functions under this Schedule” which “may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit”.

3.2 **Statement of Principles**

3.2.1 This licensing authority has adopted a Statement of Principles in accordance with paragraph 8 of Schedule 14 of the Act and they are for the purposes of clarifying the measures that the council will expect applicants to demonstrate when applying for a prize gaming permit. This will allow the council to better determine the suitability of the applicant and the premises for a permit.

- 3.2.2 Within this process the council will aim to grant the permit where the applicant is able to demonstrate that:
- they are a fit and proper person to hold the permit
 - they have considered and are proposing suitable measures to promote the licensing objectives, and
 - they have a legal right to occupy the premises to which the permit is sought.
- 3.2.3 This licensing authority will expect the applicant to set out the types of gaming that he or she is intending to offer and that the applicant should be able to demonstrate:
- that they understand the limits to stakes and prizes that are set out in Regulations;
 - and that the gaming offered is within the law.
 - clear policies that outline steps to be taken to protection children from harm.
- 3.2.4 In making its decision on an application for a prize gaming permit the licensing authority does not need to (but may) have regard to the licensing objectives but must have regard to any Gambling Commission guidance. (Gambling Act 2005, Schedule 14 paragraph 8(3)).
- 3.2.5 The measures suggested in this document should be read as guidance only and the council will be happy for applicants to suggest measures above and beyond those listed in the document and or to substitute measures as appropriate.

3.3 Prize gaming permits

- 3.3.1 Section 288 defines gaming as prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. The operator will determine the prizes before play commences. Prize gaming can often be seen at seaside resorts in amusement arcades where a form of bingo is offered and the prizes are displayed.
- 3.3.2 A prize gaming permit is a permit issued by the council to authorise the provision of facilities for gaming with prizes on specified premises.
- 3.3.3 Applicants should be aware of the conditions in the Gambling Act 2005 with which prize gaming permit holders must comply. The conditions in the Act are:
- the limits on participation fees, as set out in regulations, must be complied with;
 - all chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played;
 - the prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize); and
 - participation in the gaming must not entitle the player to take part in any other gambling.
- 3.3.4 In line with the Act, while the council cannot attach conditions to this type of permit, the council can refuse applications if they are not satisfied that the issues raised in this “Statement of Principles” have been addressed through the application.

3.4 Supporting documents

3.4.1 The council will require the following supporting documents to be served with all prize gaming permit applications:

- proof of age (a certified copy or sight of an original birth certificate, photo style driving licence, or passport – all applicants for these permits must be aged 18 or over)
- proof that the applicant has the right to occupy the premises. Acceptable evidence would be a copy of any lease, a copy of the property's deeds or a similar document
- the result of a criminal records basic disclosure [criminal conviction certificate] (the disclosure must have been issued within the previous month). This will be used to check that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act.) – Basic Disclosures can be obtained from Disclosure Scotland. For further details call their helpline number 0870 609 6006, or visit the website <http://www.disclosurescotland.co.uk/>.
- A plan of the premises for which the permit is sought showing the following items:
 - (i) the boundary of the building with any external or internal walls, entrances and exits to the building and any internal doorways
 - (iii) The location where any prize gaming will take place (including any seating and tables) and the area where any prizes will be displayed
 - (iv) the positioning and types of any other amusement machines on the premises
 - (v) the location of any fixed or semi-fixed counters, booths or offices on the premises whereby staff monitor the customer floor area
 - (vi) the location of any ATM/cash machines or change machines
 - (vii) the location of any fixed or temporary structures such as columns or pillars
 - (viii) the location and height of any stages in the premises; any steps, stairs, elevators, balconies or lifts in the premises
 - (ix) the location of any public toilets in the building

Unless otherwise agreed with the council, the plan should be drawn to a standard scale with a key showing the items mentioned above. The standard scale is 1:100.

3.5 Child protection issues

3.5.1 The council will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The council will assess these policies and procedures on their merits, and they should (depending on the particular permit being applied for) include appropriate measures / training for staff relating to the following:

- maintain contact details for any local schools and or the education authority so that any truant children can be reported
- employ policies to address the problems associated with truant children who may attempt to gain access to the premises and gamble when they should be at school
- employ policies to address any problems that may arise during seasonal periods where children may frequent the premises in greater numbers, such as half terms and summer holidays
- maintain information at the premises of the term times of any local schools in the vicinity of the premises and also consider policies to ensure sufficient staffing levels during these times

- display posters displaying the 'Child Line' phone number in discreet locations on the premises e.g. toilets
- maintain an incident register of any problems that arise on the premises related to children such as children gambling excessively, truant children, children being unruly or young unaccompanied children entering the premises. (The register should be used to detect any trends which require attention by the management of the premises.)
- ensure all young children are accompanied by a responsible adult.
- Maintain policies to deal with any young children who enter the premises unaccompanied
- The provision of satisfactory basic disclosure checks (criminal records checks) for all staff that will be working closely with children.

NB: Any supporting evidence of the above measures – for example training manuals or other similar documents/written statements should be attached to the application.

3.6 **Protection of Vulnerable Persons Issues**

3.6.1 The council will expect the applicant to show that there are policies and procedures in place to protect vulnerable persons. Applicants should refer to the section in the council's 'Statement of Licensing Policy under the Gambling Act 2005' to familiarise themselves with who the council considers vulnerable. The council will assess these policies and procedures on their merits, however, they may (depending on the particular permit being applied for) include appropriate measures / training for staff relating to the following:

- display Gamcare helpline stickers on all gaming machines
- display Gamcare posters in prominent locations on the premises
- training for staff members which focuses on building an employee's ability to maintain a sense of awareness of how much (for example how long) customers are gambling, as part of measures to detect persons who may be vulnerable
- consider appropriate positioning of ATM and change machines. (including the display of Gamcare stickers on any such machines.)

NB: Any supporting evidence of the above measures – for example training manuals or other similar documents/written statements should be attached to the application.

3.7 **Other miscellaneous issues**

3.7.1 The applicant should also be mindful of the following possible control measures (depending on the particular permit being applied for) to minimise crime and disorder and the possibility of public nuisance:

- maintain an effective CCTV system to monitor the interior and exterior of the premises
- keep the exterior of the premises clean and tidy
- ensure that external lighting is suitably positioned and operated so as not to cause nuisance to neighbouring or adjoining premises
- consider the design and layout of the outside of the premises to deter the congregation of children and youths.

NB: Any supporting evidence of the above measures – for example training manuals or other similar documents/written statements should be attached to the application.

4 Club Gaming and Club Gaming Machine Permits

- 4.1 Members' clubs may apply for a Club Gaming Permit or a Club Gaming Machine Permit. The **Club Gaming Permit** will enable the premises to provide gaming machines (3 machines of categories B3A or B4, C or D), equal chance gaming and games of chance as prescribed in regulations, namely pontoon and chemin de fer. This is in addition to the exempt gaming authorised under section 269 of the Act. Alternatively a member's club (but not commercial clubs) can apply for a **Club Gaming Machine Permit** which will only enable the premises to provide gaming machines (3 machines of categories B3A or B4, C or D).
- 4.2 Commercial clubs are not permitted to provide non-machine gaming (other than exempt gaming under section 269 of the Act) which means that they should only apply for a **Club Gaming Machine Permit**. However they are not able to site category B3A gaming machines offering lottery games in their club.
- 4.3 Clubs which hold a club premises certificate under section 72 of the Licensing Act 2003 are exempt from the stricter vetting process that apply for the normal application for Club Gaming and Club Machine Permits. Under this fast-track procedure there is no opportunity for objections to be made by the Gambling Commission or the police, and the grounds upon which an authority can refuse a permit are reduced. This is because the club or institute will already have been through a licensing process in relation to its club premises certificate under the 2003 Act, and it is therefore unnecessary to impose the full requirements of Schedule 12. Commercial clubs cannot hold club premises certificates under the Licensing Act 2003 and so cannot use the fast-track procedure.
- 4.4 With the exception of clubs that hold club premises certificates under section 72 of the Licensing Act 2003 the Licensing Authority will need to satisfy itself that the club meets the requirements of the Gambling Act 2005 to hold a club gaming permit or a club gaming machine permit. In order to do this, it will require proof of additional information from the operator, for example:
- Is a list of committee members and evidence of their election by club members?
 - Are there minutes of previous meetings (where appropriate)?
 - Is the primary activity of the club something other than gaming?
 - Are the club's profits retained solely for the benefit of the club's members?
 - Are there 25 or more members?
 - Are the addresses of members of the club genuine domestic addresses and do most members live reasonably locally to the club?
 - Do members participate in the activities of the club via the internet?
 - Do guest arrangements link each guest to a member?
 - Is the 48 hour rule being applied for membership and being granted admission being adhered to?
 - Are there annual club accounts available for more than one year?
 - How is the club advertised and listed in directories and on the internet?
 - Are children permitted in the club?
 - Does the club have a constitution and can it provide evidence that the constitution was approved by members of the club?
 - Is there a list of Committee members and evidence of their election by the club members?

4.5 When examining the club's constitution, the Licensing Authority would expect to see evidence of the following:

- Who makes commercial decisions on behalf of the club?
- Are the aims of the club set out in the constitution?
- Are there shareholders or members? Shareholders indicate a business venture rather than a non-profit making club.
- Is the club permanently established? (Clubs cannot be temporary).
- Are there suitable rules as to the election and admission to the club of new members?
- What is the usual duration of membership?
- Can people join with a temporary membership? What is the usual duration of membership?
- Are there long term club membership benefits?
- Is there a provision for annual general meetings?
- Is there a provision for the election of officers?

4.6 Aside from bridge and whist clubs, clubs may not be established wholly or mainly for the purposes of gaming. The Licensing Authority will consider such factors as:

- How many nights a week gaming is provided;
- How the gaming is advertised;
- What stakes and prizes are offered;
- Whether there is evidence of leagues with weekly, monthly or annual winners;
- Whether there is evidence of members who do not participate in gaming;
- Whether there are teaching sessions to promote gaming such as poker;
- Where there is a tie-in with other clubs offering gaming through tournaments and leagues;
- Whether there is sponsorship by gaming organisations;
- Whether participation fees are within limits.

4.7 **Supporting documents**

4.7.1 In order for the Licensing Authority to satisfy itself that the club meets the requirements of the Gambling Act 2005 as described in paragraphs 4.4 to 4.6 to hold a club gaming permit or a club gaming machine permit the applicant/club will be expected to supply documentation that includes evidence that the club has elected officers, minutes of meetings and particularly those of annual general meetings. The documentation will include where appropriate:

- A copy of the club's constitution and a copy of the general/annual meeting that agreed the constitution.
- In the case of a club formed within the past two years a copy of the minutes of the inauguration meeting and minutes of any subsequent general or annual general meetings.
- Where the club has existed for more than two years a copy of the minutes of the last two annual general meetings and general meetings held during the previous two years.
- A full copy of the club's list of members including their addresses.
- A list of committee members and their positions within the club.
- A copy of the club's accounts for the last two years. Where a club is unable to provide this information because it has only recently been formed the Licensing Authority will expect an appropriate set of accounts for the time the club has been in operation.

- 4.7.2 The Licensing Authority will require a plan of the premises for which the permit is sought to be served with all club gaming and club gaming machine permit applications. The plan should show the following items:
- (i) the boundary of the building with any external or internal walls, entrances and exits to the building and any internal doorways
 - (ii) where any gaming machines are positioned and the particular type of machines to be provided
 - (iii) the positioning and types of any other amusement machines on the premises
 - (iv) the location of any ATM/cash machines or change machines
 - (v) the location of any fixed or temporary structures such as columns, pillars or serveries
 - (vi) the location and height of any stages in the premises; any steps, stairs, elevators, balconies or lifts in the premises
 - (vii) the location of any public toilets in the building

Unless otherwise agreed with the council, the plan should be drawn to a standard scale with a key showing the items mentioned above. The standard scale is 1:100.

- 4.8 Many applications are dealt with by delegated authority to officers however should it be necessary for an application for a permit to be determined by a Sub Committee of the Licensing and Enforcement Committee members will expect to be able to speak to and or question the club on aspects of its operation. To that end it will be expected that an officer of the club would attend and be prepared to answer questions at any meeting arranged to determine the application.
- 4.9 Licensing authorities may only refuse an application on the grounds that:
- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
 - (b) the applicant's premises are used wholly or mainly by children and/or young persons;
 - (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
 - (d) a permit held by the applicant has been cancelled in the previous ten years; or
 - (e) an objection has been lodged by the Commission or the police.
- 4.10 In the case of the 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10 and paragraph 25.43 of the GC Guidance) there is no opportunity for objections to be made by the Gambling Commission or the police, and the ground upon which an authority can refuse a permit are reduced:
- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
 - (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
 - (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."
- 4.11 The Licensing Authority will expect the holders of club gaming or club gaming machine permits when applying to vary them to comply with all the relevant requirements set out in this section as if the application was for a new permit.
- 4.12 There are statutory conditions on club gaming permits that no child uses a category B3A or B4 or C machine on the premises and that the holder complies with any

relevant provision of a code of practice about the location and operation of gaming machines.

5 Temporary Use Notices

- 5.1 Temporary use notices allow the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. Premises that might be suitable for a temporary use notice, according to the Gambling Commission, would include hotels, conference centres and sporting venues.
- 5.2 This licensing authority can only grant a temporary use notice to a person or company holding a relevant operating licence, i.e. a non-remote casino operating licence.
- 5.3 The Secretary of State has the power to determine what form of gambling can be authorised by temporary use notices, and at the time of writing this Statement the relevant regulations (SI no 3157: The Act (Temporary Use Notices) Regulations 2007) state that temporary use notices can only be used to permit the provision of facilities or equal chance gaming, where the gaming is intended to produce a single winner, which in practice means poker tournaments.
- 5.4 There are a number of statutory limits as regards temporary use notices. "The meaning of "premises" in part 8 of the Act is discussed in Part 7 of the Gambling Commissions Guidance to Licensing Authorities. As with "premises", the definition of "a set of premises" will be a question of fact in the particular circumstances of each notice that is given. In the Act "premises" is defined as including "any place".
- 5.5 In considering whether a place falls within the definition of "a set of premises", the licensing authority needs to look at, amongst other things, the ownership/occupation and control of the premises.
- 5.6 This licensing authorities expects to object to notices where it appears that their effect would be to permit regular gambling in a place that could be described as one set of premises, as recommended in the Gambling Commission's Guidance to Licensing Authorities.

6 Occasional Use Notices

- 6.1 Occasional use notices enable betting on a track for up to eight days a year without a premises licence
- 6.2 The licensing authority has very little discretion regarding these notices aside from ensuring that the statutory limit of 8 days in a calendar year is not exceeded. This licensing authority will consider the definition of a 'track' and whether the applicant is permitted to serve the notice.

7 Small Society Lotteries

- 7.1 Under the Act, a lottery is unlawful unless it runs with an operating licence or is an exempt lottery. The Licensing Authority will register and administer small society lotteries (as defined). Promoting or facilitating a lottery will fall within 2 categories:
 - licensed lotteries (requiring an operating licence from the Gambling Commission);
 - and

- exempt lotteries (including small society lotteries registered by the Licensing Authority)
- 7.2 Exempt lotteries are lotteries permitted to run without a licence from the Gambling Commission and these are:
- small society lotteries;
 - incidental non-commercial lotteries;
 - private lotteries;
 - private society lotteries;
 - work lotteries;
 - residents' lotteries;
 - customer lotteries;
- 7.3 East Devon District Council will register and administer small society lotteries as defined under the Act. Advice regarding small society lotteries and the definitions of the above exempt lotteries is available from the Gambling Commission website: <http://www.gamblingcommission.gov.uk/Gambling-sectors/Lotteries/About-the-lottery-industry/About-lotteries-raffles/About-lotteries-raffles.aspx>
- 7.4 This licensing authority will adopt a risk based approach towards its enforcement responsibilities for small society lotteries. This authority considers that the following list, although not exclusive, could affect the risk status of the operator:
- submission of late returns (returns must be submitted no later than three months after the date on which the lottery draw was held);
 - submission of incomplete or incorrect returns;
 - breaches of the limits for small society lotteries.

8 Vessels

- 8.1 The licensing authority when considering applications for premises licences in respect of vessels will give particular weight to the views of the Maritime and Coastguard Agency in respect of promoting the licensing objectives. Where in the opinion of the licensing authority any of the three objectives are undermined, and this cannot be resolved through the imposition of conditions, the application will be refused.

Where a premises licence is sought in connection with a vessel which will be navigated whilst licensable activities take place, the licensing authority will be concerned following the receipt of relevant representations, with the promotion of the licensing objectives on-board the vessel. The licensing authority will not focus on matters relating to safe navigation or operation of the vessel, the general safety of passengers or emergency provisions, all of which are subject to regulations which must be met before the vessel is issued with a Passenger Certificate and Safety Management Certificate. It is expected that if the Maritime and Coastguard Agency is satisfied that the vessel complies with Merchant Shipping standards for a passenger ship, the premises will normally be accepted as meeting the public safety objectives. In respect of other public safety aspects, representations made to the licensing authority by the Maritime and Coastguard Agency will be given particular weight.

Relevant Authorities' Contact Details

Responsible Authority Contacts -

The list of Responsible Authorities and their contact details may change where additional responsible authorities are designated by regulations from the Secretary of State or existing Responsible Authorities change their address.

An up to date list of Responsible Authorities relating to East Devon with their contact details can be obtained by accessing the East Devon District Council's Licensing pages on the Council's website or by request to the Council's Licensing Office by emailing licensing@eastdevon.gov.uk or telephoning 01395 517410.

East Devon Licensing Authority

The Licensing Manger
East Devon District Council
Knowle
Sidmouth
EX10 8HL
Email: licensing@eastdevon.gov.uk
Website: http://www.eastdevon.gov.uk/licensing_info
Tel: 01395 517410
Fax: 01395 517507

The Gambling Commission

Victoria Square House
Victoria Square
Birmingham
B2 4BP
Email: info@gamblingcommission.gov.uk
Tel: 0121 233 1058

Devon & Cornwall Constabulary

Licensing Department (East)
Devon & Cornwall Police HQ
Middlemoor
EXETER
EX2 7HQ
Non-Urgent Calls: 01392 452225
Fax: 01392 452447
Email: licensingeast@devonandcornwall.pnn.police.uk
Web site: <http://www.devon-cornwall.police.uk/Pages/Default.aspx>

Devon and Somerset Fire & Rescue Service

Central Command (East)
Middlemoor Fire Station
Sidmouth Road
EXETER
EX2 7AP
<http://www.dsfire.gov.uk/index.cfm?siteCategoryId=1>
Tel: 01392 872200
Fax: 01392 266839

Area Child Protection Committee and Local Safeguarding Children Board

CP Checks
MASH
PO BOX 723
Exeter
EX1 9QS

Environmental Health (Environmental Health and Parking Services Manager)

(Nuisance, Public Health & Health & Safety)
East Devon District Council
Environmental Health Service
Council Offices
Knowle
SIDMOUTH
EX10 8HL
Tel: 01395 517467
Email: environmentalhealth@eastdevon.gov.uk
www.eastdevon.gov.uk

Head of Planning

East Devon District Council
Planning & Countryside Service
Council Offices
Knowle
SIDMOUTH
EX10 8HL
www.eastdevon.gov.uk
Tel: 01395 516551

HM Customs and Excise

HM Revenue and Customs
National Registration Unit
Portcullis House
21 India Street
Glasgow
G2 4PZ
Tel: 0141 555 3633
Email: nru.betting&gaming@hmrc.gsi.gov.uk

**Additional Responsible Authority Contacts for vessels –
Maritime and Coastguard Agency**

(For attention of Mr Tony Heslop)
Plymouth Marine Office
Western Region
New Fish Market,
Fish Quay
PLYMOUTH
PL4 0LH
<http://www.mcga.gov.uk/c4mca/mcga07-home>
Tel: (01752) 266 211

Appendix A- Glossary of Terms

DCMS - Department of Culture, Media, and Sport

An Interested Party – is a person, in the opinion of the Licensing Authority who:

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b).

Responsible Authority –

- (i) The Licensing Authority
- (ii) The Gambling Commissioner
- (iii) Devon & Cornwall Police
- (iv) The Devon and Somerset Fire & Rescue Service
- (v) The local planning authority within the meaning given by the Town and Country Planning act 1990 (c.8) for any area in which the premises are wholly or partly situated
- (vi) The local authority by which statutory functions are exercisable in any area in which the premises are wholly or partly situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health
- (vi) A body which is designated in writing for the purpose of this paragraph, by the licensing authority for an area in which the premises are wholly or partly situated , as competent to advise the authority about the protection of children from harm:
- (vii) And any other person prescribed by regulations by the Secretary of State.

The following comprises a glossary of terminology used within the statement of licensing principles. Terms defined within the statement itself, or at length in the Gambling Act 2005, have not been included.

Adult Gaming Centre

A premises where the provision of Category B, C and D gaming machine facilities for adult customers is authorised by the Licensing Authority.

(Alcohol) Licensed Premises Gaming Machine Permit

Permit issued by Licensing Authority allowing more than two Category C or D gaming machines to be used on Alcohol-licensed premises

Betting Machine

A machine that accepts bets on live events, such as horse racing, as a substitute for placing bets over the counter.

Betting Premises

Premises where the provision of betting facilities is authorised by the Licensing Authority.

Bingo Premises

Premises authorised by the Licensing Authority where bingo, either cash or prize bingo, may take place.

Casino Premises

Premises authorised by the Licensing Authority where persons are given an opportunity to participate in casino games i.e. games of chance, which are not equal chance gaming.

- Children**
Means individuals who are less than 16 years old.
- Club Gaming Permit**
Permit issued by the Licensing Authority that authorises the provision of games of chance and gaming machines on premises from which a members club operates.
- Club Machine Permit**
Permit issued by the Licensing Authority which authorises a club to have up to three gaming machines on the premises.
- Family Entertainment Centre**
Premises where the provision of Category C and D gaming machines is authorised by the Licensing Authority.
- Gambling Commission**
The newly-created body which will regulate all commercial gambling in Great Britain when the 2005 Act is fully in force.
- Gaming Machine**
A machine that is designed or adapted for use by people to gamble. Such machines are classified in 4 categories, A, B, C and D. Category D has the lowest level of charge and prizes, whilst the other categories increase in value up to Category A, which has no limits to charges or prizes.
- Gaming Machine Permit**
Permit issued by the Licensing Authority regulating the operation of gambling machines.
- Licensing Committee**
The committee that has been established by the Licensing Authority to discharge its licensing functions under the Gambling Act 2005.
- Licensing Manager**
The Officer appointed by the Licensing Authority to carry out functions and duties delegated by the Licensing Authority.
- Personal Licence**
A licence issued to an individual by the Gambling Commission, authorising the holder to perform a specified management office or specified operational function in connection with the provision of facilities for gambling.
- Premises Licence**
A licence issued by the Licensing Authority that authorises the provision of gambling facilities on specified premises.
- Prize Gaming**
Gaming is prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming.
- Prize Gaming Permit**
A permit issued by the Licensing Authority to authorise the provision of facilities for gaming with prizes on specified premises.

Provisional Statement

An authorisation issued by the Licensing Authority where the applicant expects premises to be constructed or altered in accordance with plans submitted, or expects to acquire a right to occupy the premises.

Regulatory Compliance Code

Code of practice issued by the Government to ensure that regulatory best practice is adopted and carried out by regulators.

Relevant Representation

A representation received from a responsible authority or an interested party that relates to the licensing objectives, or that raises issues under this statement, the Gambling Commission's Guidance or codes of practice.

Review

The process by which a Licensing Authority may, either of its own volition or on the request of a third party, determine whether any action should be taken in relation to the operation of a premises licence.

Temporary Use Notice

A notice which permits the use of premises for gambling where there is no premises licence but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling.

Track

Sites (such as a horse racecourse or dog track) where races or other sporting events take place.

Young Person

Means individuals who are aged less than 18 years old and 16 years and over

Relevant Authorities' Contact Details

Responsible Authority Contacts -

The list of Responsible Authorities and their contact details may change where additional responsible authorities are designated by regulations from the Secretary of State or existing Responsible Authorities change their address.

An up to date list of Responsible Authorities relating to East Devon with their contact details can be obtained by accessing the East Devon District Council's Licensing pages on the Council's website or by request to the Council's Licensing Office by emailing licensing@eastdevon.gov.uk or telephoning 01395 517410.

East Devon Licensing Authority

The Licensing Manger
East Devon District Council
Knowle
Sidmouth
EX10 8HL
Email: licensing@eastdevon.gov.uk
Website: http://www.eastdevon.gov.uk/licensing_info
Tel: 01395 517410
Fax: 01395 517507

The Gambling Commission

Victoria Square House
Victoria Square
Birmingham
B2 4BP
Email: info@gamblingcommission.gov.uk
Tel: 0121 233 1058

Devon & Cornwall Police

Licensing Department (East)
Devon & Cornwall Police HQ
Middlemoor
EXETER
EX2 7HQ
Non-Urgent Calls: 01392 452225
Fax: 01392 452447
Email: licensingeast@devonandcornwall.pnn.police.uk
Web site: <http://www.devon-cornwall.police.uk/Pages/Default.aspx>

Devon and Somerset Fire & Rescue Service

Central Command (East)
Middlemoor Fire Station
Sidmouth Road
EXETER
EX2 7AP

<http://www.dsfire.gov.uk/index.cfm?siteCategoryId=1>

Tel: 01392 872200

Fax: 01392 266839

Area Child Protection Committee and Local Safeguarding Children Board

CP Checks

MASH

PO BOX 723

Exeter

EX1 9QS

Environmental Health (Environmental Health and Parking Services Manager)

(Nuisance, Public Health & Health & Safety)

East Devon District Council

Environmental Health Service

Council Offices

Knowle

SIDMOUTH

EX10 8HL

Tel: 01395 517467

Email: environmentalhealth@eastdevon.gov.uk

www.eastdevon.gov.uk

Head of Planning

East Devon District Council

Planning & Countryside Service

Council Offices

Knowle

SIDMOUTH

EX10 8HL

www.eastdevon.gov.uk

Tel: 01395 516551

HM Customs and Excise

HM Revenue and Customs

National Registration Unit

Portcullis House

21 India Street

Glasgow

G2 4PZ

Tel: 0141 555 3633

Email: nrubetting&gaming@hmrc.gsi.gov.uk

Additional Responsible Authority Contacts for vessels –

Maritime and Coastguard Agency

(For attention of Mr Tony Heslop)

Plymouth Marine Office

Western Region

New Fish Market,

Fish Quay

PLYMOUTH

PL4 0LH

<http://www.mcga.gov.uk/c4mca/mcga07-home>

Tel: (01752) 266 211

Report to: **Licensing and Enforcement Committee**



Date of Meeting: 26 August 2015

Public Document: Yes

Exemption: None

Review date for release: None

Agenda item: 9

Subject: Street Trading – Designation of Streets Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 – Consultation Document

Purpose of report: The report sets out the background to the current Street Trading arrangements within East Devon and the proposal to provide for more flexibility whilst allowing the Council to retain its control on the issue of Street Trading Consent. It also explains the Cabinet's instruction for the Town and Parish councils within the district to be consulted on the proposals before the Licensing and Enforcement Committee consider them.

Recommendation: **That the report be noted**

Reason for recommendation: To allow public consultation to be undertaken to ascertain the level of support to designate all streets in East Devon as 'Consent Streets'.

Officer: John Tippin, Licensing Manager, jtippin@eastdevon.gov.uk, 01395 517587

Financial implications: If the consultation is undertaken, there are initial costs of the local press public notices of the proposal to change the Street Trading scheme. If the proposal is eventually implemented, there will be additional resources required both for the initial implementation and for on-going officer time. These costs are detailed in Appendix 1 Resources 2.5 and 2.6. Some of these costs may be recovered through consent fees. A final notice must also be placed in the local press for two consecutive weeks to give notice of the Council's decision.

Legal implications: The legal framework and implications are set out within the report.

Equalities impact: Low Impact

Risk: Medium Risk

In the longer term the increased resource requirements to administer and enforce the street trading powers will not be available to accommodate the public's expectations. There is the possibility of recovering some or all costs through licence fees.

Links to background information: **Appendices:**
Appendix 1 - Draft report intended for the Licensing & Enforcement Committee (26.08.2015) to seek authorisation to consult on a proposal to change the Street Trading controls currently in place for the District

Appendix 2 - Draft Street Trading Consultation Document

Background Papers:

- ❑ [Minutes of the Cabinet meeting held at Knowle, Sidmouth on 15 July 2015](#)
- ❑ [Minutes of a Meeting of the Overview Committee held at Knowle, Sidmouth on 30 June 2015](#)
- ❑ [Local Government \(Miscellaneous Provisions\) Act 1982 Sec. 3 & Schedule 4](#)
- ❑ Minutes of the Council's Policy Committee dated 6 October 1982
- ❑ Minutes of the Council's Public Health Committee dated 13 June 1983
- ❑ Minutes of the Council's Public Health Committee dated 27 May 1998
- ❑ Council Minutes dated 27 April 1983

Link to Council Plan: Living in, working in, enjoying and funding this outstanding place

1 Background

- 1.1 The Licensing and Enforcement Committee is the council committee with responsibility for Street Trading within the District. Under the Constitution it currently has the authority to decide the Council's policy on Street Trading.
- 1.2 The ability to control street trading within the district is an adoptive power and this Council adopted the legislation in 1982. Using these powers to control street trading, the Council has since designated many streets in the District as 'Prohibited' and a small number as 'Consent' streets. The majority of the listed streets were designated in 1983/84 with further changes being made in 1998. More recently the Sidmouth Esplanade and Promenade and parts of Seaton's Esplanade and Square were re-designated as 'Consent Streets' – they were previously 'Prohibited Streets'.
- 1.3 The effect of the prohibitions means that almost all the centres of the towns in East Devon and esplanades are prohibited so far as street trading is concerned. This means that even if the Council wishes to permit street trading it is prevented from doing so except for those areas designated as 'consent streets'.
- 1.4 We now live in different times and over recent years the number of enquires to street trade has increased as it seems has the public support for these ventures although not in all areas of the district. In particular the advent of Farmers, French and Christmas Markets has shown how popular street trading has become. In 2013 the Licensing Manager was granted approval by the Licensing and Enforcement Committee to consult on a proposal to in effect designate the whole of the district as a 'consent street'. This would still permit the council to control street trading but would give it flexibility to decide if and where such trading should take place.
- 1.5 Unfortunately this approval coincided with an announcement by the then coalition government that they intended reviewing the street trading legislation. The proposals were far reaching. In view of the strong possibility of fairly major changes within a few years coupled with concerns over the Council resourcing the administration and enforcement of street trading the consultation was not progressed. However the government's proposed changes were largely shelved and with the change of government there appears to be no further appetite to take this matter further.
- 1.6 Since 2013 pressure for changes to the Council's street trading regime has continued to grow with a number of sites currently in prohibited areas being identified as suitable for street trading including some in areas owned by the District Council. As a result the Licensing Manager intended bringing this matter back to the Licensing and Enforcement

Committee on the 24 June to seek renewed approval to consult on his original proposal to designate the whole of the district as a 'consent street'.

- 1.7 In late May however the Licensing Manager had a meeting with the Deputy Chief Executive and the Strategic Lead – Legal, Licensing and Democratic Services over an area which had been identified as suitable for street trading but had been designated as a 'prohibited street'. As a result of that meeting the idea of revisiting the street trading regime was discussed at Senior Management Team level and the Chief Executive instructed that he wished the Overview Committee to have the opportunity to consider the whole issue of street trading and make recommendations as appropriate regarding the proposals. A copy of the Licensing Manager's report forms part of this document and appears at **Appendix 1**. It had been the Licensing Manager's intention that this report would be considered by the Licensing and Enforcement Committee on the 26 August 2015.
 - 1.8 Following the SMT instruction the matter was referred to the Overview Committee on the 30 June 2015 when it was resolved to recommend to Cabinet that before the matter was considered by the Licensing and Enforcement Committee the Town and Parish Councils within the district should be consulted on the proposals.
 - 1.9 Cabinet considered the matter at its meeting on the 15 July and agreed the Overview Committee's recommendation. As a result the Licensing Manager is preparing a consultation document and is working with Robert Murray, the council's Economic Development Manager and Jamie Buckley, the council's Engagement & Funding Officer to finalise a suitable document and consultation process. The Licensing Manager's initial draft consultation document forms part of this report at **Appendix 2** however changes will be made to include Robert Murray's work and any recommendations made by Jamie Buckley. Following suggestions from other council officers it is the current intention to widen the consultation to a larger audience enabling other interested parties to be consulted.
 - 1.10 The results of this consultation will then be brought back to the Overview Committee which after considering the consultation results will be invited to make a recommendation to Cabinet on the proposal to:
 - a. Rescinding the Council's past resolutions to designate streets as "Prohibited Streets";
 - b. To replace all previous resolutions designating 'Consent Street' with a new resolution to designate all 'streets' in East Devon as 'Consent Streets' as defined in schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. Meaning all roads, footways, service areas (as defined by section 329 of the Highways Act 1980), beaches or other areas to which the public have access without payment in East Devon would be designated as 'Consent Streets' for the purposes of Street Trading.
 - 1.11 Whilst Cabinet is able to consider the Overview Committee's recommendation, if it is minded to support the proposal set out in the previous paragraph the Cabinet is only able to make recommendation to the Licensing and Enforcement Committee. This is because under the Council's Constitution it is only that committee which has the authority to decide the Council's policy on Street Trading. However if the proposal is to be implemented then the resourcing of it would need to be considered and that would need Cabinet approval.
 - 1.12 Currently the proposal is to bring the results of this consultation back to the Overview Committee's meeting on the 17 November 2015 however due to time constraints that may not be possible meaning it would be delayed until the next Overview Committee meeting on the 26 January 2015.
- 2 Resources
- 2.1 Currently ownership of Street Trading lies with the council's Environmental Health Service. The Licensing services only became involved in 2008 because during the Sidmouth Folk Week each year a number of traders had set up along the Promenade in contravention of the street trading prohibition. This led to a concentration of stalls and pedlars obstructing

the Promenade for pedestrians and performers. In 2007 it became particularly bad and prompted a number of complaints to both the Council and the Folk Festival.

- 2.2 In response to these complaints and calls for action the Licensing Service liaised informally with the Folk Week, local Police and Sidmouth Town Council. It promoted the current regime that applies on the Esplanade during Folk Week each year and gained approval for the Sidmouth Esplanade to be re-designated as a 'Consent Street'.
- 2.3 It was always the intention that the Licensing Service would retain responsibility for the Folk Week trading but the responsibility for street trading generally was never transferred to the Licensing Service. However over the last 6 years there seems to have been a defacto transfer of the responsibility to the Licensing Service but without any additional resources.

Report to: **Licensing and Enforcement Committee**

Date of Meeting: 26 August 2015

Public Document: Yes

Exemption: None



Agenda item: To be completed by Democratic Services.

Subject: Street Trading – Designation of Streets Under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982

Purpose of report: The report sets out the background to and the request for authority for public consultation to be undertaken on changing the current Street Trading arrangements within East Devon so as to provide for more flexibility whilst allowing the Council to retain its control on the issue of Street Trading Consents.

Recommendation: **That the Committee authorise public consultation on a proposal to:**

- (a) Rescind the Council’s passed resolutions to designate streets as ‘Prohibited Streets’ and**
- (b) To replace all previous resolutions designating ‘Consent Streets’ with a new resolution to designate all ‘streets’ in East Devon as ‘Consent Streets’ as defined in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. Meaning all roads, footways, service areas (as defined by section 329 of the Highways Act 1980), beaches or other areas to which the public have access without payment in East Devon would be designated as ‘Consent Streets’ for the purposes of Street Trading.**

The consultation to include publication of a newspaper notice (to conform to Section 2 Local Government (Miscellaneous Provisions) Act 1982) of the proposal to pass a resolution changing the current Street Trading scheme within the District.

Reason for recommendation: To allow public consultation to be undertaken to ascertain the level of support to designate all streets in East Devon as ‘Consent Streets’.

Officer: John Tippin, Licensing Manager, Ext. 2787, jtippin@eastdevon.gov.uk

Financial implications: Initially there is the cost of newspaper public notices of the intension to make changes to the designation of the street trading status in the district – a legislation requirement.

Longer term there is the increased resource requirements to administer and enforce the street trading powers. There is the possibility of recovering some or all costs through licence fees.

Legal implications: To be completed by Legal.

Equalities impact: Low Impact

Risk: Low Risk

Appendices:

Appendix A - The District Council's current Street Trading Policy

Appendix B - List of Designated Streets in East Devon on 1 June 2015

Appendix C - Proposed replacement Street Trading Policy

Background Papers:

- Local Government (Miscellaneous Provisions) Act 1982
- Minutes of the Council's Policy Committee dated 6 October 1982
- Minutes of the Council's Public Health Committee dated 13 June 1983
- Minutes of the Council's Public Health Committee dated 27 May 1998
- Council Minutes dated 27 April 1983

Link to Council Plan: Living in, working in, enjoying and funding this outstanding place

Background and consultation

- 1.1 The Licensing and Enforcement Committee is the council committee with responsibility for Street Trading within the District. Street Trading is defined as "the selling or exposing or offering for sale of any article (including any living thing) in a street". "Street" is defined as "including:
 - (a) any road, footway, beach or other area to which the public have access without payment; and
 - (b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street".It should be noted that the area covered by this legislation can extend to land to which the public have access without payment including for example lay-bys and privately owned car parks used by the public.
- 1.2 The Council adopted section 3 and schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, relating to consent and prohibited streets, with effect from 1 December 1982 (decision 06.10.1982). A copy of the Council's current street trading policy adopted in February 2009 can be found at **Appendix A**.
- 1.3 Using these powers to control street trading, the Council has since designated a number of streets in the District as either 'Prohibited' or 'Consent' streets. The current list of Prohibited and Consent Streets are listed at **Appendix B** to this report. The majority of the streets appearing in the appendix were designated in 1983/84 with further changes being made in 1998. More recently the Sidmouth Esplanade and Promenade and parts of Seaton's Esplanade and Square were re-designated as 'Consent Streets' – they were previously 'Prohibited Streets'.
- 1.4 Where the Council has designated a street as 'Prohibited' it means that no trading can be permitted even if the Council considers that permission/consent should be granted. In the case of those streets that are designated as 'Consent Streets' then it is unlawful to trade in those streets unless the Council has granted a 'Consent'. Where a street is neither a 'Prohibited' nor a 'Consent' street trading is uncontrolled.

- 1.5 Due to legal requirements, particularly relating to the notice requirements, the process of changing the designation of a street is time consuming and expensive. For example each time a designation is made or changed there is a requirement to place three different public notices in a newspaper circulating in the district. The whole process would take in excess of two months.
 - 1.6 Over recent years the number of enquires to street trade has increased as it seems has the public support for these ventures although not in all areas of the district. In particular the advent of Farmers, French and Christmas Markets has shown how popular street trading has become. Members will note from **Appendix B** that there are a great many streets designated as 'Prohibited'. This means that even if the Council wishes to permit trading on them this cannot be accomplished quickly or easily.
 - 1.7 East Devon is unusual in having so many 'Prohibited Streets'. The modern thinking is to greatly reduce the number of 'Prohibited Streets' but retain control of street trading by ensuring that all streets are designated 'Consent Streets'. A number of West Country Councils have developed this approach over the past 5 to 6 years. These include North and South Somerset, South Gloucestershire and Taunton Deane. They all report excellent results.
- 2 Resources
 - 2.1 Currently ownership of Street Trading lies with the council's Environmental Health Service. The Licensing services only became involved in 2008 because during the Sidmouth Folk Week each year a number of traders had set up along the Promenade in contravention of the street trading prohibition. This led to a concentration of stalls and pedlars obstructing the Promenade for pedestrians and performers. In 2007 it became particularly bad and prompted a number of complaints to both the Council and the Folk Festival.
 - 2.2 In response to these complaints and calls for action the Licensing Service liaised informally with the Folk Week, local Police and Sidmouth Town Council. It promoted the current regime that applies today on the Esplanade during Folk Week each year and gained approval for the Sidmouth Esplanade to be re-designated as a 'Consent Street'.
 - 2.3 It was always the intention that the Licensing Service would retain responsibility for the Folk Week trading but the responsibility for street trading generally was never transferred to the Licensing Service. However over the last 6 years there seems to have been a defacto transfer of the responsibility to the Licensing Service but without the addition of any additional resources.
 - 2.4 Street Trading has had a very low priority in the council with no resources made available for administration or enforcement. Whilst the stalls on the Esplanade during Sidmouth Folk Week are very resource demanding the demand is over a very short period and the Licensing Service has been able to cope by drawing staff from their normal work for this short time.
 - 2.5 It is difficult to assess what resources will be required to administer and enforce the proposal suggested in this report as there is no way of accessing what the demand for consents will be if the regime was more flexible. However a neighbouring council to East Devon several years ago adopted a similar street trading regime to the one proposed in this report. A recent check with that council revealed that there was an initial large resource implication to bring in the changes. This was partly for enforcement which included two prosecutions. Now that the regime has bedded in less officer time is required and they estimate that now this amounts to 10% to 15% of a full time officer. If this was mirrored in East Devon and based on current salaries the additional cost would equate to approximately £4,533 per year. However because of the demographic of this district's residents, our proximity to the coast generating additional seasonal demands and the heavy

demands for Folk Week it is expected that a larger amount of resources would be necessary, for example 30% to 35% of a full time officer equating to £9,066 to £10,577.

- 2.6 In order to cover the additional resources required during the introduction period a solution could be to employ a suitable member of staff on a short term 12 month contract of around £30,222. Similar solutions have been adopted in the past, for example when the smoking ban was first introduced.
- 2.7 Even if the proposal is not adopted the pressure for street trading in the district is not likely to diminish meaning the resources to enforce the legislation including the large number of prohibited streets will need to increase if the council is to meet the public's expectations to even enforce the current restrictions in the district. In effect the prohibited streets are a milestone.
- 2.8 The legislation permits the council to recover its costs in running the licensing scheme from the fees charged for consents. In the case of the council referred to in paragraph 2.5 that council now has 9 permanent consent pitches and numerous other short term pitches meaning that they should be adequately covering their operating costs. However no licensing regime is permitted to make a profit. Recent case law has reinforced this.
- 2.9 The ability to recover costs could be further enhanced by the council itself organising markets round the district instead of leaving it to adhoc organisers including marketing companies. This would also ensure the markets meet the council's own standards. For example there have been recent complaints about the way the markets held in the Strand at Exmouth is laid out to the detriment of the remainder of the town centre businesses.

3 The Proposal

- 3.1 The intention of this report is to seek the Committees approval to undertake public consultation on the Licensing Manager's recommending:
 - (a) That the Council rescind previous resolutions to designate streets as 'Prohibited Streets' and
 - (b) That all previous resolutions designating 'Consent Streets' be replaced by a completely new resolution to designate all 'streets' as defined in Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982. This means all roads, footways, service areas (as defined by section 329 of the Highways Act 1980), beaches or other areas to which the public have access without payment in East Devon to be designated as Consent Streets.
- 3.2 If approval is granted full consultation will be undertaken with all town and parish councils within the District. Public comment will also be invited. Before any changes to the street designation can be done the legislation requires a notice to be placed in a local newspaper explaining the Council's intention and inviting residents' comments. If approval to consult is given it is intended that this notice be published.
- 3.3 A consent, unlike a licence is simply a permission to do something which would otherwise be unlawful and so Members can be reassured that the designation does not confer blanket approval for street trading in these streets. The applicant must obtain the express consent of the Council (and any landowner) in each case. A consent fee is payable on grant of the consent and is given subject to appropriate conditions. The legislation allows a 'consent' to be revoked at any time in certain circumstances.
- 3.4 Consents can be issued for various periods of time from a few hours to 12 months. So far the consents issued in the district have ranged from half a day to 8 days for Folk Week. However where someone wishes to establish a more permanent trading opportunity they may seek a consent for longer periods. The fees would be set to cater for any eventuality.

4 The Scheme

4.1 If the proposed changes to the Street Trading regime in the District are approved it is further proposed that before a new Street Trading Consent is granted for a new location/area the Council would carry out a consultation process with various persons and organisations. In particular we would consult:

- The Highways Authority (Devon County Council)
- Devon and Cornwall Constabulary
- East Devon District Council Food/ Health and Safety and Pollution Teams
- The relevant Ward Members
- The appropriate Parish or Town Council
- Where considered relevant local residents and businesses who may be affected by the Consent
- The land owner of the proposed trading site if it is on private land

This process would work well with the current national localism agenda.

4.2 The Street Trading legislation automatically exempts certain activities which include:

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by an enactment or order. (This would include Honiton Street Market).
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980.
- (d) trading as a news vendor – for example the sale, exposure or offer for sale of newspapers or periodicals, except from a stall or receptacle that exceeds the dimensions set out in schedule 4 of the Act.
- (e) trading which:
 - (i) is carried on at premises used as a petrol filling station; or
 - (ii) is carried on at premises used as a shop or in a street adjoining premises so used as part of the business of the shop.
- (f) selling things, or offering or exposing them for sale, as a roundsman.
- (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, or in or over a highway.
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- (i) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

Note – it has been established in law that mobile ice cream sales normally will not be deemed to be exempt from street trading controls on the grounds that they are not roundsmen.

4.3 As is already included in the Council's current Street Trading policy it would be possible within a new policy to provide for special treatment for certain types of activities. For example the organisers of the Seaton Charity Markets pay a special reduced fee for a block consent and a similar arrangement could be agreed for genuine Farmers Markets and similar. Travelling fairs is another activity where special arrangements would need to be made. These proposed arrangements are set out in the draft Street Trading Policy – **Appendix C**.

- 4.4 Activities that would require consent could include:
- (a) car boot sales (one consent granted to the organiser could cover all traders)
 - (b) markets (unless exempted by virtue of a grant, enactment or order – for example Honiton Market)
 - (c) sales from ‘pitches’ in a car park where the public have access without payment
 - (d) burger vans both on the highway and on private property to which the public have access without payment
- 4.5 The suggested changes would provide additional ability to
- ensure road safety considerations are met;
 - ensure that the district is not adversely affected by large numbers of street traders;
 - help to ensure that businesses/consent holders do not have an unfair advantage over fixed premises businesses.
- 4.7 The changes proposed in this report would permit a far greater amount of flexibility without the delays and high cost that the Council has to bear each time the designation of a street needs to be changed. For example each time a street designation is changed there is a need to publish three separate public notices. In 2008 when the Council changed the designation of the Sidmouth Esplanade the cost of placing the public notices in the Sidmouth Herald was around £500.
- 4.8 Other Councils who have adopted similar schemes report that they have had a positive impact by helping to increase the economic vitality and prosperity of the area. Certainly it would provide a flexibility which currently cannot be accommodated to help future developments whilst maintaining a control of Street Trading.
- 5 The Next Step
- 5.1 If the Committee resolves to propose the re-designation of streets as proposed in the recommendation a public notice will be placed in a local newspaper inviting residents’ views.
- 5.2 Consultation will also be widely undertaken to include all Town and Parish Councils within the District, the Highways Authority, Devon and Cornwall Constabulary, East Devon District Council Food/Health and Safety and Pollution Teams and Street Scene.
- 5.3 All comments will be collated and the intention is to report back to this Committee at its next meeting. It is anticipated there may need to be some changes to the Council’s existing consent conditions to accommodate different circumstances however the special conditions that currently apply to street consents on the Seaton Esplanade are unlikely to need changing.
- 5.4 Having considered the responses to the public notice and the rest of the consultation if the Committee resolves to confirm their decision to change the Street Trading scheme as recommended a further final advertisement process is required to take place. A notice must be placed in the local press for two consecutive weeks to give notice of the Council’s decision and of the date it comes into force.

Draft Street Trading Consultation Document

The Local Government (Miscellaneous Provisions) Act 1982 provides the ability for councils to control street trading within their districts. This is a power that all district councils can adopt and East Devon District Council adopted it with effect from 1 December 1982 (decision 06.10.1982).

Using these powers to control street trading, the Council has since designated a number of streets in the District as either 'Prohibited' or 'Consent' streets. The current list of Prohibited and Consent Streets are listed in **Appendix 2A** to this document. The majority of the streets appearing in the appendix were designated in 1983/84 with further changes being made in 1998. More recently the Sidmouth Esplanade and Promenade and parts of Seaton's Esplanade and Square were re-designated as 'Consent Streets' – they were previously 'Prohibited Streets'. The effect of controls put in place in the past is that almost all the centres of the larger towns in East Devon and the esplanades are prohibited so far as street trading is concerned.

Street Trading is defined as "the selling or exposing or offering for sale of any article (including any living thing) in a street". "Street" is defined as "including:

- (a) any road, footway, beach or other area to which the public have access without payment; and
- (b) a service area as defined in section 329 of the Highways Act 1980, and also includes any part of a street".

The area covered by this legislation can extend to land to which the public have access without payment including for example lay-bys and privately owned car parks used by the public including super store car parks wherever they are.

Where a street has been designated as 'Prohibited' it means that no trading can be permitted even if the Council considers that permission/consent should be granted. In the case of those streets that are designated as 'Consent Streets' then it is unlawful to trade in those streets unless the Council has granted a 'Consent'. Where a street is neither a 'Prohibited' nor a 'Consent' street trading is uncontrolled.

Due to legal requirements, particularly relating to the notice and consultation requirements, the process of changing the designation of a street is time consuming and expensive. For example each time a designation is made or changed there is a requirement to place three different public notices in a newspaper circulating in the district. The whole process would take months to implement any changes.

Over recent years the district council has seen the number of enquires to street trade increase as it seems has the public support for these ventures. In particular the advent of Farmers, French and Christmas Markets has shown how popular street trading has become.

East Devon is unusual in having so many 'Prohibited Streets' meaning that even if the Council wishes to permit trading on them this cannot be accomplished quickly or easily. The modern approach is to greatly reduce the number of 'Prohibited Streets' but retain control of street trading by ensuring that all streets/public spaces across the district are designated 'Consent Streets'. A number of West Country Councils have developed this approach over the past 5 to 6 years. These include North and South Somerset, South Gloucestershire and Taunton Deane. They all report excellent results.

A consent, unlike a licence is simply a permission to do something which would otherwise be unlawful. The 'consent' designation does not confer blanket approval for street trading in these streets/areas. Anyone wishing to trade would first have to obtain the express consent of the Council (and any landowner) in each case. A consent fee is payable on grant of the consent and

is given subject to appropriate conditions. The legislation allows a 'consent' to be revoked at any time in certain circumstances.

Consents can be issued for various periods of time from a few hours to 12 months. So far the consents issued in the district have ranged from half a day to 8 days for Folk Week. However where someone wishes to establish a more permanent trading opportunity they may seek a consent for longer periods. The fees would be set to cater for any eventuality.

As is already included in the Council's current Street Trading policy it would be possible within a new policy to provide for special treatment for certain types of activities. For example the organisers of the Seaton Charity Markets pay a special reduced fee for a block consent and a similar arrangement could be agreed for genuine Farmers Markets and similar. Travelling fairs is another activity where special arrangements would need to be made.

The Street Trading legislation automatically exempts certain activities from needing to obtain a consent to trade. A list of these is included in **Appendix 2B** to this document. The exemptions include the right to hold a market or fair which was acquired by virtue of a grant or acquired or established by an enactment or order. This would include Honiton Street Market and certain rights to hold markets in Axminster.

In view of the increased interest for street trading including markets and especially because of the benefits that can follow the district council is considering rescinding all previous resolutions to designate streets as 'Prohibited Streets' in the district and instead designating the whole of the district as a 'consent' area. This means all roads, footways, service areas (as defined by section 329 of the Highways Act 1980), beaches or other areas to which the public have access without payment in East Devon to be designated as Consent Streets. These changes would actually increase the amount of control over street trading across the district but would also introduce a great deal of flexibility to enable consents to be granted where appropriate. For example this proposal would provide the ability to control trading in lay-bys and most car parks across the district and not just in the main towns. It would also permit the district council to grant consents were appropriate following local consultation to include town and parish councils.

To ensure that local opinion is properly canvassed if this proposal is adopted then before granting a consent for a new location/area the district council would consult widely. In particular it is proposed that we would consult:

- The Highways Authority (Devon County Council)
- Devon and Cornwall Constabulary
- East Devon District Council Food/ Health and Safety and Pollution Teams
- The relevant Ward Members
- The appropriate Parish or Town Council
- Where considered relevant local residents and businesses who may be affected by the Consent
- The land owner of the proposed trading site if it is on private land

If this proposal is adopted it is intended that a new Street Trading Policy be approved by the Council. This would seek to up date the current policy to reflect the flexibility and improvements the current proposals would bring. Before agreeing a new policy there would be wide consultation on its content.

List of Designated Streets in East Devon
at the 1 June 2015

Within the East Devon District the following are designated as **Consent Streets**

Exmouth

- Bath Road

Honiton

- Northcote Lane (part only – see plan)

Axminster

- Trinity Square

Seaton

Esplanade from Fisherman's Gap to Beach Road

The Square

Sidmouth

- Esplanade & Promenade

Within the East Devon District the following are designated as **Prohibited Streets**

A **Prohibited Street** is a street where street trading is at all times forbidden by law.

Within East Devon District the following streets are currently designated as prohibited streets,

Exmouth

- Albert Place
- Albion Place
- Albion Street
- Alexandra Terrace
- Alston Terrace
- Ann Street (this is probably now under London Hotel car park)
- Beacon Place
- The Beacon
- Bickton Place
- Bickton Street – from its junction with Rolle Street to its junction with South Street
- Carlton Hill
- Chapel Hill
- Chapel Street
- Charles Street
- Church Road
- Church Street
- Churchill Road
- Clarence Road
- Clinton Square
- Cranford Avenue – from its junction with Littleham Rd, to its junction with Barnfield Ave.
- Crudge's Lane
- Dagmar Road
- Dinan Way
- Elm Grove

Exmouth Continued

- ❑ Esplanade and Queens Drive – from its junction with Victoria Rd to Orcombe Point.
- ❑ Exeter Road – from its junction with the Parade to its junction with Lyndhurst Road
- ❑ Fore Street – from its junction with King Street to its junction with Church Street.
- ❑ George Street
- ❑ Henrietta Road
- ❑ High Street
- ❑ Imperial Road
- ❑ King Street
- ❑ Littleham Road – from its junction with Salterton Road to the Broadway
- ❑ Louisa Place
- ❑ Louisa Terrace
- ❑ Little Bicton Place
- ❑ Lower Fore Street
- ❑ Maer Road – from its junction with Queen's Drive to its junction with Douglas Avenue.
- ❑ Manchester Road
- ❑ Manchester Street
- ❑ Margaret Street
- ❑ Magnolia Centre
- ❑ Marine Way
- ❑ Market Street
- ❑ Meadow Street
- ❑ Meeting Street
- ❑ Morton Crescent
- ❑ Morton Road
- ❑ New North road
- ❑ New Street
- ❑ North Street
- ❑ Palace Cottages
- ❑ Parade, The
- ❑ Pound Street
- ❑ Prince of Wales Drive
- ❑ Queen's Drive
- ❑ Queen Street
- ❑ Rolle Road
- ❑ Rolle Street
- ❑ Rolle Villas
- ❑ Sheppards Row
- ❑ St Andrew's Road
- ❑ South Street
- ❑ Staples Mews (formerly Buildings)
- ❑ Strand, The
- ❑ Tower Street
- ❑ Union Street
- ❑ Victoria Road
- ❑ Windsor Square

Honiton

- ❑ George Street
- ❑ King Street
- ❑ New Street
- ❑ Northcote Lane (part of – see plan))
- ❑ Queen Street
- ❑ School Lane
- ❑ Silver Street

Seaton

- ❑ Beer Road, - extending from Queen Street to Westcliff Terrace.
- ❑ Castle Hill
- ❑ Colyford Road, - as far as the cemetery
- ❑ Court Lane
- ❑ Cross Street
- ❑ Esplanade (except for that part of the Esplanade from Fisherman's Gap to Beach Road)
- ❑ Eyrecourt Road
- ❑ Fore Street - extending from Marine Place to its junction with Court Lane
- ❑ Harbour Road
- ❑ Harbour Road Car Park
- ❑ Harepath Road - extending from Queen Street to its junction with Homer Lane and including the triangle of grass contained within Harepath Road, Homer Lane and Barnards Hill Lane.
- ❑ Harepath Road as far as Harepath Hill
- ❑ Highwell Road
- ❑ Manor Road
- ❑ Marine Crescent
- ❑ Marine Place
- ❑ Meadow Road
- ❑ Orchard Car Park
- ❑ Queen Street
- ❑ Seafield Road
- ❑ Seahill
- ❑ Seaton Town Hall – Marsh Road Car Park
- ❑ Seaton Town Hall Reserved Car Park
- ❑ Seaton Down Road - extending from Harepath Road to Cherry Drive.
- ❑ Stock Lane
- ❑ The Burrow
- ❑ The Underfleet, - together with the roundabout which forms the junction with Underfleet Way and all its surrounding highway (up to and including its junction with Harbour Road Car Park).
- ❑ Trevelyan Road
- ❑ Underfleet Way
- ❑ Unnamed Road - extending from CRS (Pioneer) Supermarket to Seaton Town Hall Reserved Car Park
- ❑ York Road

Sidmouth

- ❑ All Saints Road
- ❑ Bedford Square and including the un-named street leading from Bedford Square to the Esplanade
- ❑ Blackmore View
- ❑ Chapel Road
- ❑ Chapel Street
- ❑ Church Street
- ❑ Coburg Road - between Coburg Terrace and Church Street
- ❑ Dove Lane - and the lane between Dove Lane & New Street
- ❑ Fore Street
- ❑ Fortfield Place
- ❑ Fortfield Terrace
- ❑ Glen Road, - south of Manor Road
- ❑ Ham Lane and East Street - from the Esplanade to Fore Street
- ❑ Ham Playing Field
- ❑ High Street
- ❑ King Street
- ❑ Manor Road
- ❑ Market Place
- ❑ Mill Street, - west of its junction with Russell Street
- ❑ Millford Road, - north of the ford
- ❑ New Street
- ❑ Old Fore Street
- ❑ Peak Hill Road – east from its junction with Cotmaton Road.
- ❑ Prospect Place
- ❑ Radway, - south of the Post Office
- ❑ Salcombe Road
- ❑ Sid Road, - south of Redwood Road
- ❑ Station Road - between Knowle Drive and The Esplanade
- ❑ Streets adjoining the Three Cornered Plot (Known as The Triangle)
- ❑ The Beach – from the mouth of the River Sid westwards to a point opposite Clifton Cottage.
- ❑ The un-named street between Elizabeth Hotel and Marlborough Hotel (now Dukes)
- ❑ Vicarage Road, - south of Connaught Road
- ❑ York Street
- ❑ Vicarage Road, - south of Connaught Road

Street Trading Exemptions

The Street Trading legislation automatically exempts certain activities from the requirement to obtain a consent to trade and include:

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871.
- (b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including presumed grant) or acquired or established by an enactment or order. (This would include Honiton Street Market).
- (c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the Highways Act 1980.
- (d) trading as a news vendor – for example the sale, exposure or offer for sale of newspapers or periodicals, except from a stall or receptacle that exceeds the dimensions set out in schedule 4 of the Act.
- (e) trading which:
 - (i) is carried on at premises used as a petrol filling station; or
 - (ii) is carried on at premises used as a shop or in a street adjoining premises so used as part of the business of the shop.
- (f) selling things, or offering or exposing them for sale, as a roundsman.
- (g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, or in or over a highway.
- (h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980.
- (i) the doing of anything authorised by regulations made under section 5 of the Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

Note – it has been established in law that mobile ice cream sales normally will not be deemed to be exempt from street trading controls on the grounds that they are not roundsmen.