

Report to: Licensing and Enforcement Committee



Date of Meeting 7 December 2022

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## Committee Update - Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing

### Report summary:

The report provides an update on the activities of the Licensing Service under the Licensing Act 2003, Gambling Act 2005, Taxi legislation and General Licensing including Street Trading and Pavement Licences

Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

That the report be noted

### Reason for recommendation:

To keep the Council's statutory committee up to date with current arrangements relating to the Licensing Service

Officer: Steve Saunders, Licensing Manager (Governance and Licensing)

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

**Links to background information**

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

## **Report in full**

### **1 Licensing Act 2003**

#### **1.1 Applications Received, Licences Issued and Notices Given**

- 1.1.1 This report informs the Committee of work undertaken by the licensing team and also with regard to any strategic or national updates for each area of work that the team oversees. It covers the period from July to December 2022.
- 1.1.2 The depth and variety of Licensing Act applications previously reported to this Committee has continued over the summer as we approach the end of the year. The later phase of each year involves inspections and compliance visits for events that were licensed at an earlier stage. Licensed businesses continue to submit applications to change existing licences as business models change, along with applications received from new businesses seeking to sell alcohol. The move from traditional ‘wet’ pubs to businesses offering food has continued as the industry tries to meet financial challenges. The Lloyds Bank UK Recovery Tracker includes output in the hospitality sector which showed a decline at the fastest pace since February 2021, when the UK was last in lockdown. The challenge intensified in September being driven by rising energy prices and inflation.
- 1.1.3 Increasing numbers of Temporary Event Notices (TENs) submitted over the summer months (indoor and outdoor events) has continued and will do through to the Christmas period.
- 1.1.4 Officers continue the necessary work of authorities collecting annual licence fees that are payable by licensed businesses on the anniversary of being issued. The Act is prescriptive in that a premises licence must be suspended for those failing to pay an annual fee and suspension cannot be lifted until payment is made. A licensee would commit an offence if he/she carried on licensable activities from the premises otherwise.
- 1.1.5 In October officers completed the work for classifying a film, usually being the responsibility of the British Board of Film Classification (BBFC). Where a premises seeks to show films, that venue must be covered by a Premises Licence, Club Premises Certificate or Temporary Event Notice under the Licensing Act. The public exhibition of all films on licensed premises must either be classified by the BBFC or authorised by the relevant Licensing Authority under the powers of the Licensing Act 2003 to classify a film not been classified by the BBFC. In accordance with this Council’s Licensing Act Policy, two officers viewed the entire film to assess it against the BBFC guidelines and determined a classification certificate of ‘U’ as suitable for audiences aged 4 years and over.

#### **1.2 Hearings**

- 1.2.1 Licensing officers arrange mediation if appropriate when representations are received for new licensing applications and there has been no requirement for a licensing sub-committee for contested applications over the previous period.
- 1.2.2 A hearing was held on 24 August regarding the holder of a Personal Alcohol Licence who had received a conviction for a relevant offence. The Act sets out that where a holder of a personal licence is charged with a relevant offence they must produce their personal licence to the court or notify the court of the personal licence. Officers became aware when the court matter was highlighted in the media and subsequently conducted enquires to bring the holder before a licensing sub-committee with the decision taken to revoke the licence.
- 1.2.3 Although hearings of this nature are rare, the licensing authority takes such matters very seriously as licence holders are required to promote the ‘licensing objectives,’ including

maintaining public safety and preventing crime and disorder. The revocation was considered necessary to ensure that the public remain safe where alcohol is being served.

### 1.3 Compliance and Enforcement

- 1.3.1 During summer months, officers completed compliance visits to a number of licensed premises and to outdoor events licensed by the team. One event that provides a series of bars amongst other activities, identified the need for organisers to review their procedures and supervision concerning sales of alcohol, particularly regarding staff training, 'Challenge 25' requirements, refusal of sales and a requirement for security staff. The procedures that will need to be in place in 2023 were reinforced through a later meeting with organisers joining the police and licensing staff, with all findings and expectations being provided in writing.
- 1.3.2 Officers attend the EDDC Safety Advisory Group meetings held quarterly to provide guidance and assistance to event organisers. Over the previous period, officers had need to work in conjunction with other agencies to address events receiving complaints from the public.

### 1.4 Legislation Updates and Emerging Developments

- 1.4.1 **Temporary Regulations:** officers previously reported that temporary regulations applied to England and Wales since 2020 allowed 'off-sales' of alcohol for licensed premises that do not have that permission under a licence, were due to expire. It can now be reported that the Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2022, came into effect on 29 September and again extend the off-sales provision until September 2023. It continues to provide automatic extensions of premises licences having "on-sales" to allow sales of alcohol for consumption off the premises. They also apply temporary conditions to licences where there is a pre-existing permission for off-sales, to enable them to operate in the same ways as those granted the permission.
- 1.4.2 This has been used by some licensed venues across this district over the last two years by having the benefit of 'off-sales' in contradiction of their current licence, or licence conditions. The long term situation after September 2023 is not clear although work is being undertaken nationally to review the Licensing Act.
- 1.4.3 **Review of the Licensing Act 2003:** in 2017 the House of Lords Liaison Committee publication 'The Licensing Act 2003: post-legislative scrutiny' outlined nearly 100 recommendations detailing a "radical comprehensive overhaul." In 2018 the Government response resulted in minor legislative change to the [Statutory Guidance](#). On 8<sup>th</sup> November, the long awaited [Government Response](#) was published on the progress and recommending 25 additional changes that include:
- a) No intention to revisit the question of air side licensing at airports
  - b) Delivering a national database of Personal Licence Holders
  - c) Further updates to Section 182 Guidance,
  - d) Licensing & Planning regimes
  - e) Councillor Training
  - f) Replacement of the gov.uk licensing application platform
- 1.4.4 It is anticipated that recommendations for change will continue through partnership working next year with the industry, LGA, lead authorities and the Institute of Licensing.
- 1.4.5 **Government response to drink spiking report:** officers briefly reported on the [Publication of Government response to spiking report - Committees - UK Parliament](#) issued shortly before the last meeting of this Committee in July. The report warned that spiking could remain an invisible crime unless more is done to improve awareness and to support victims. It found there was insufficient data to provide a clear picture of its true extent and the motives behind it and called on the Government to do more proposing creation of a specific criminal offence of spiking to help deter offenders. The Government has committed to working with police,

local authorities and night-time industries to produce a 'victim-first' approach to combatting spiking going forward.

- 1.4.6 The Home Office has begun work with cross government partners to ensure there is a joined-up and effective response to reports of drink and needle spiking across a range of settings, including festivals, events and the wider night-time economy. Reports related to needle spiking, first began to emerge in September 2021 in other areas of the UK, being understood to be connected to students returning to university after the summer break that year. The LGA and the Association of Police and Crime Commissioners urged young people to learn about the dangers of spiking and take precautions to stay safe. The LGA has also launched [guidance on drink spiking prevention](#) in a bid to tackle the issue.
- 1.4.7 Continuing partnership work and communication continues between Devon Licensing teams and Devon and Cornwall Police. In October, an officer attended a regional briefing provided by Devon and Cornwall Police that outlined work is continuing to aim at tackling perpetrators through investigation and with training and awareness offered for venues. As the lead authority that receives the reports and complaints of this nature, Devon and Cornwall Police continue in their work to enable better accuracy of the reported cases. It includes support for victims and establishing patterns and preventative solutions. It was reported that venues have previously been supplied with testing kits and police stations also equipped with urine kits to send to forensics with data from a previous trial being reviewed and with methods that have provided victims the reassurance that complaints were taken seriously. Licensing authorities need to manage co-ordination being delivered by the police so that reported incidents can be investigated from the outset and with victims being given the correct information, support and guidance, particularly in relation to evidence/testing for spiking when required.
- 1.4.8 **Protect Duty consultation:** known as 'Martyn's Law' and arising out of the Manchester Arena attack, the Government published its response earlier this year which would apply to public venues, with the aim of ensuring preparedness for/from terrorist attacks. The need for the legislation was highlighted in the Queen's Speech in May and before it becomes law, it will need to go through the House of Commons and then pass through the House of Lords. Although being a future consideration for Safety Advisory Groups, the legislation would apply to owners and operators of publicly accessible locations that may include festivals, music arenas and some licensed premises, the list by no means exhaustive.

## **2 Gambling Act 2005**

### **2.1 Applications Received, Licences Issued and Notices Given**

- 2.1.1 The Gambling Commission was set up under the Act in 2005 to regulate commercial gambling in partnership with licensing authorities and it has responsibility for licensing operators and for all online betting with a primary aim of preventing harm to the public. Local authorities oversee the gambling premises licensed in each district.
- 2.1.2 The Gambling Commission circulates a bulletin for licensing authorities outlining changes in legislation and any enforcement action taken. The last bulletin can be viewed online at [September LA Bulletin](#)
- 2.1.3 Government proposals to reform the Gambling Act 2005 are still due to be published along with a White Paper due last year and will be reported to this Committee upon publication.

## **3 Taxis**

### **3.1 Applications Received and Licences Issued**

- 3.1.1 This Council ended its requirement in 2017 for all taxi licences to be renewed annually by 31<sup>st</sup> October and new drivers now submit applications throughout the year. The proportion of

licence holders still having to renew licences each October are reducing although the numbers present significant work for officers each autumn completing bulk licence renewals.

3.1.2 The bulk renewals were completed successfully over the last period by the licensing team with a number of staff rising to the challenge. The contribution made by officers, Martha Loak, Emily Westlake and Phillippa Norsworthy ensured delays in issuing licences by the deadline of 1<sup>st</sup> November were not a factor for this council.

3.1.3 Small numbers of licensees often decide to retire and not renew their licences each autumn. On 24 November 2022, figures showed an annual increase in most of the taxi and private hire licences managed by the licensing authority over the last year, other than for taxi driver licences which is attributed to those retiring:

Year	Taxi Driver Licences	Taxi Vehicle Licences	Private Hire Drivers	Private Hire Vehicles	Private Hire Operators
2016	206	170	22	18	15
2017	195	165	26	20	13
2018	179	161	30	24	16
2019	162	148	37	31	20
2020	155	126	40	32	18
2021	156	129	41	37	19
<b>2022</b> (Nov)	<b>153</b>	<b>135</b>	<b>52</b>	<b>40</b>	<b>22</b>

3.1.4 Officers have researched the age range of all currently licensed Hackney and Private Hire drivers in East Devon which range from 24 to 81 years of age. 37% of licensed drivers are aged 60 years or older. Ten of the most recently licensed driver ages ranged between the ages from 32 to 61 years and represented new driver applications across all ages. It remains encouraging that an upturn of licences continues in the district.

3.1.5 National statistics for England and Wales are collected by the Dept of Transport and published in July with an increase in driver licences being nationally reported. The average age of a driver was identified as 48 years, with 17% of drivers being aged under 40. Those aged 60 or over made up 16% of drivers nationally. The full report can be found here

[Taxi and private hire vehicle statistics, England: 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/taxi-and-private-hire-vehicle-statistics-england-2022)

3.1.6 The IT project requiring the involvement of Strata and Licensing staff has reached the point of delivering the first online application process being available for licensing a hackney carriage vehicle. It is a step forward that was requested by companies to allow submission online at unsociable hours. The delivery of further online procedures will follow with the next phase by officers being to raise awareness and support to those wishing the use the portal.

## 3.2 Enforcement

3.2.1 Complaints received from the public are recorded and investigated which is recognised as an effective procedure by the DoT. There were eight reported complaints over the previous period that were followed up by officers. Those relating to parking matters or failing to display a roof sign are managed in a manner of providing verbal, then written guidance to allow compliance as persistent breaches may lead to revocation. One licensed driver was subject of two reports regarding display of the plate and roof sign and confirmation and evidence from future reports may lead to appearing at a licensing sub-committee.

3.2.2 In July officers formally spoke to a licensed driver regarding reports of an inappropriate conversation during a journey reported by a customer. The behaviour had not previously been evident and following a full review, the driver has been notified of driver expectations in writing as any subsequent reports may lead to appearing before a licensing sub-committee.

- 3.2.3 A further complaint regarding inappropriate conversation by a different driver was also reported in August, firstly indirectly before officers were able to speak to the complainant. The route and location of the journey indicated that it may have been a unknown taxi provided in this or two neighbouring districts and it was not possible to identify the driver or company. However as it was potentially a breach of standards, a circulation email was sent to each East Devon licensed driver to remind all of the level of professionalism required and thanking those who continue to maintain high standards.
- 3.2.4 One report concerned potential over charging by a taxi which was reviewed. The licence holder accounted for the costs and was reminded in writing of the need to adhere to the fares set by the council.

### **3.3 Hearings**

- 3.3.1 It has not be necessary to convene a Licensing sub-committee hearing for taxi or private hire related matters over the previous period.

### **3.4 East Devon Taxi and Private Hire Policy**

- 3.4.1 The Committee will be aware that various changes and new regulations are proposed by the Government and DoT regarding vehicle licensing. It will be to include all changes in the Councils Taxi and PH policy as the policy is due to be reviewed. The implementation of other policies and the taxi fares review (twice this year) has taken priority and officers propose to begin work in the forthcoming period. It will then be necessary to consult with the licensees in conjunction with other authorities and the general public next spring.

### **3.5 Meeting between Councillors, Taxi Proprietors and Officers**

- 3.5.1 The previous meeting took place in November 2019 at the council offices and the forum provides a means of communication with the taxi trade on key subjects. The forthcoming review and subsequent consultation for the Taxi and Private Hire Policy will require a meeting in April next year which officers will arrange over the next period.

### **3.6 Taxi Tariffs Fares**

- 3.6.1 A further report to this Committee refers to a recent request from some taxi proprietors seeking an increase to the fares tariff.

## **4. General Licensing – Street Trading Consents**

### **4.1 Applications Received Street Trading Consents Issued**

- 4.1.1. This council adopted policy in 2017 for the current street trading regime and a further report today refers to reviewing the policy.

## **5.1 Temporary Pavement Licences (Business & Planning Act 2020)**

- 5.1.1 The extension that allows business to apply to the Licensing Authority to place tables and chair on public highways has been extended for a further year until 30 September 2023 which means there are still two regimes that businesses can apply for, being the temporary 'fast track' arrangements that District Councils administer since 2020, alongside the continuing regime for pavement licences the County Council has held the responsibility for many years.
- 5.1.2 The take up by businesses applying to place tables and chair on highways has remained very low and despite some take up earlier this year, there remain two licences currently granted by this council. The repeated uncertainty caused by extending the temporary measures each

September since 2020 hasn't been helpful for businesses and most retain licences with Devon County Council.

5.1.3 The Government have tabled the Levelling-up and Regeneration Bill which is still progressing in draft before becoming law. The Bill still proposes to make amendments summarised broadly as being:

- a) Increasing the fee councils can charge applicants from £100,
- b) Extend the consultation period and determination period to 28 days,
- c) Extend the maximum duration of pavement licences to 2 years,
- d) Removing granting a tables and chairs licence under the Highways Act 1980 (the regime provided by the County Council)
- e) Providing enforcement powers to local authorities to remove furniture if a premise is not abiding by its pavement licence conditions and hours.

5.1.4 There are information gaps regarding the timing of the transition, the need for new guidance when the law changes, issues concerning smoke free zones and links to alcohol licensing and it is anticipated the changes will occur before September 2023. There are presently 28 [Current Pavement Licences with Devon County Council](#) for businesses across East Devon issued under the 1980 powers. Those businesses will require advanced and clear information prior to any changes in the issuing authority and procedures next year.

5.1.5 Officers will keep developments under review to update this Committee because of the likelihood of need to implement new policy, fee reviews and procedures needed next year.

## **6. Consultation and Partnership Working**

### **6.1. Safety Advisory Group (SAG) Meetings**

6.1.2 Quarterly meetings of this council's Safety Advisory Group (SAG) occur to consider advanced planning for outdoor events. Operating as a multi-agency, non-statutory group, it provides guidance to event organisers to support safely organised events licensed in the district. The prospective events occurring through to the end of this year have been finalised with a SAG meeting being planned for next spring for relevant 2023 events.

6.1.3 The retirement of the Head of Service and the lead manager in Environmental Health, both chairing of the forum resulted in the Licensing Manager temporarily adopting SAG responsibilities and chairing from March until October. That responsibility has returned for Environmental Health following recruitment of managers with administrative support still provided by Democratic Services.

### **6.2. Devon Licensing Officer Group (DLOG)**

6.2.1 It was reported at the last meeting that licensing authorities must accept online applications to comply with the EU Provision of Services Regulations being provided by the GOV.UK service and due to end next year. This authority is working in collaboration with the Devon licensing authorities to implement an alternative process and although the Government has recognised need to maintain it centrally, no other suitable system is proposed currently.

6.2.2 The three Strata licensing teams (EDDC, TDC, ECC) continue to collaborate and to adopt the same web based applications using the 'Firmstep' solution. The EDDC licensing team has led when introducing Firmstep processes for Pavement Licences and Personal Alcohol Licences by sharing programming that allowed Strata to introduce for the other two councils.

6.2.3 Other recent work involves the joint assessment of a suitable licensing database before the current system ceases functionality and with officers collaborating to identify suitable platforms in the future. The involvement of officers working with Strata on current and new IT

projects will be a key area of work next year in addition to the anticipated changes in legislation that are highlighted in the report today

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**Financial implications:**

There are no finance implications

**Legal implications:**

There are no legal implications requiring comment