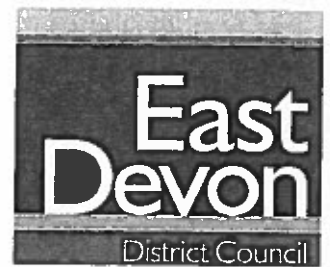


Date 15 November 2011
Contact number: 01395 517544
E-mail: clane@eastdevon.gov.uk
Our Ref: Chris Lane



To:
Members of the Licensing & Enforcement Committee
(Councillors David Atkins, Roger Boote, Peter Burrows, Bob Buxton,
Madeleine Chapman, Steve Gazzard, Pat Graham, Steve Hall,
John Jeffery, Jim Knight, Ken Potter, Philip Skinner, Pauline Stott,
Tom Wright, Mark Williamson)

Corporate Legal & Democratic Services Manager
Assistant Solicitor
Licensing Manager
Licensing Officer

East Devon District
Council
Knowle
Sidmouth
Devon
EX10 8HL
DX 48705 Sidmouth
Tel: 01395 516551
Fax: 01395 517507

**Meeting of the Licensing & Enforcement Committee
Tuesday 22 November 2011 at 9.30am in the Council Chamber, Knowle, Sidmouth**

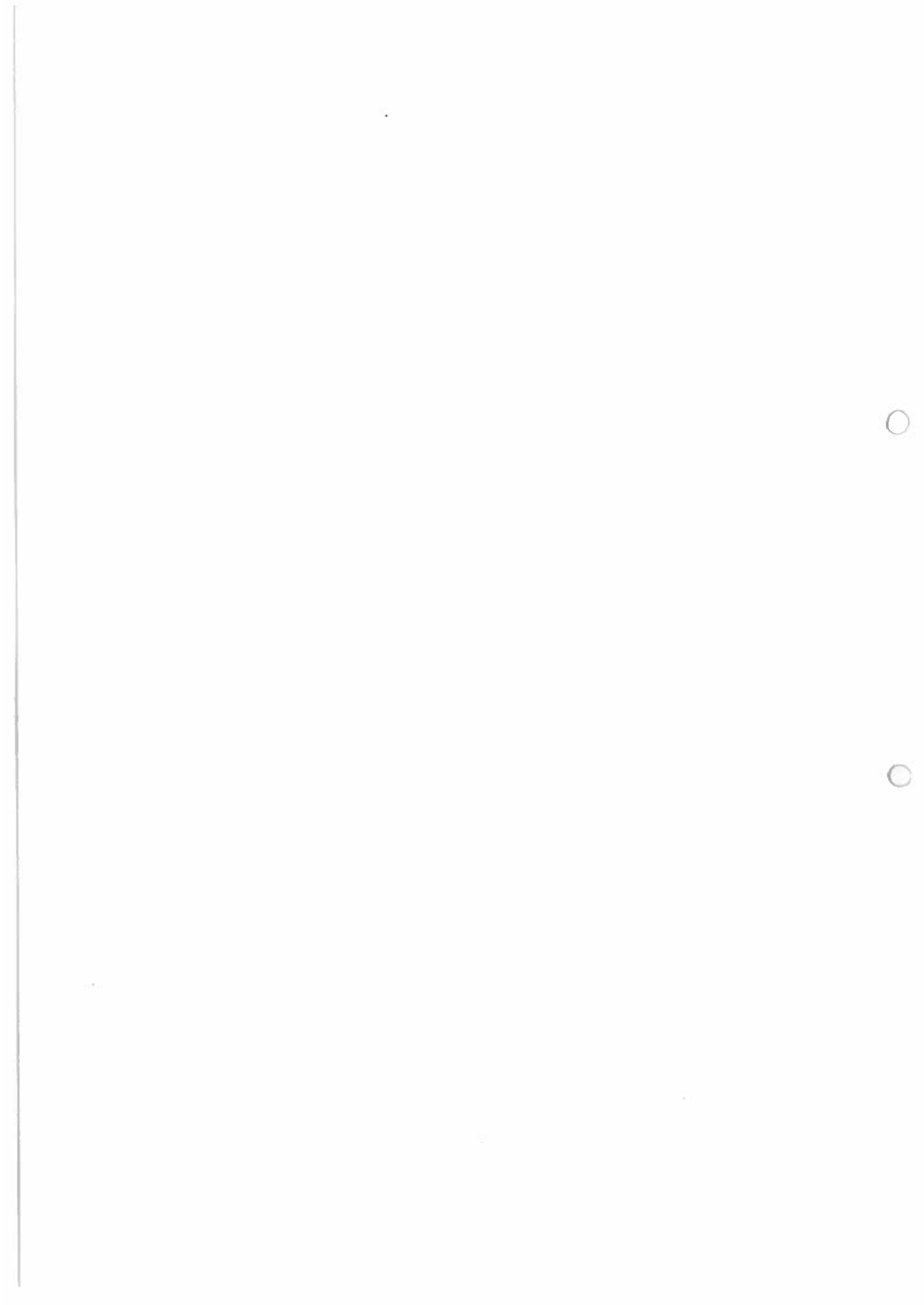
Members of the public are welcome to attend this meeting when items listed under Part A of the agenda are being considered. For the benefit of Councillors and members of the public a hearing loop system will be in use in the Council Chamber.

Councillors and members of the public are reminded to switch off mobile phones during the meeting. If this is not practical due to particular circumstances, please advise the Chairman in advance of the meeting.

A G E N D A

- | | Page/s |
|---|--------|
| 1 To confirm the minutes of the meeting held on 30 August 2011. | 4 - 6 |
| 2 To receive any apologies for absence. | |
| 3 To receive any declarations of interests relating to items on the agenda. | |
| 4 To consider any items which, in the opinion of the Chairman, should be dealt with as matters of urgency because of special circumstances.

(Note: Such circumstances need to be specified in the minutes; any Member wishing to raise a matter under this item is requested to notify the Chief Executive in advance of the meeting). | |
| 5 To agree any items to be dealt with after the public (including the press) have been excluded. (There are no items which the Officers recommend should be dealt with in this way). | |
| 6 Committee Update - Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing. | 7 - 17 |

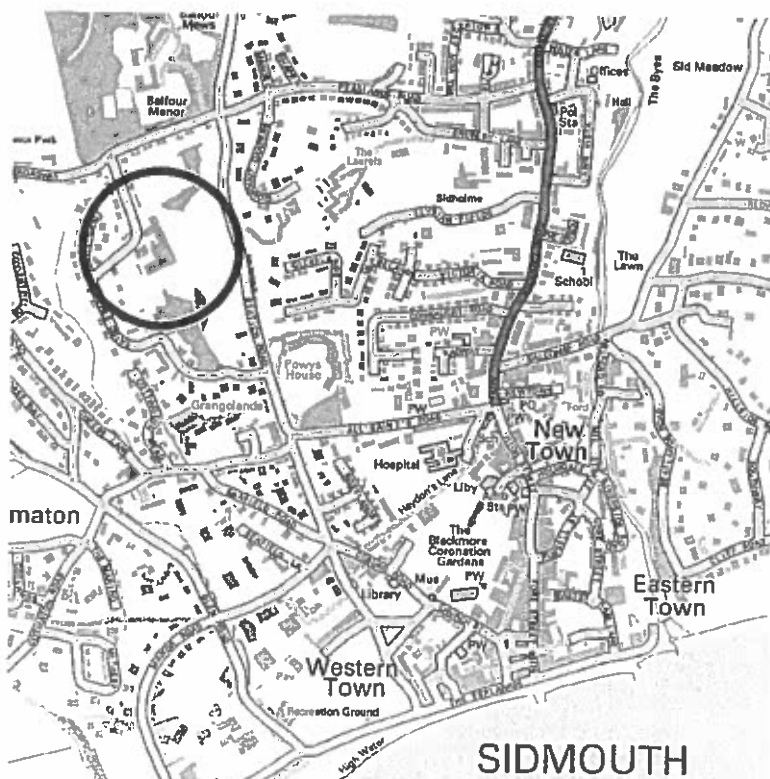


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|----|--|---------|
| 7. | An Explanation of the implications for Licensing in the District following Parliament's Approval of the Police Reform and Social Responsibility Act 2011 | 18 - 29 |
| 8. | A Consultation on proposals relating to the deregulation of Schedule One of the Licensing Act 2003 | 30 - 41 |

Members remember!

- You must declare the nature of any personal or prejudicial interests in an item whenever it becomes apparent that you have an interest in the business being considered.
- Where you have a personal interest because the business relates to or is likely to affect a body of which you are a member or manager as an EDDC nominee or appointee, then you need only disclose that interest when (and if) you speak on the item. The same rule applies if you have a personal interest in relation to a body exercising functions of a public nature.
- Make sure you say the reason for your interest as this has to be included in the minutes.
- If your interest is prejudicial you must leave the room unless
 - a) you have obtained a dispensation from the Council's Standards Committee or
 - b) where Para 12(2) of the member Code of Conduct applies. [Para 12(2) allows a Member with a prejudicial interest to stay for the purpose of making representations, answering questions or giving evidence relating to the business but only at meetings where the public are also allowed to make representations. If you do remain for these purposes, you must not exercise decision-making functions or seek to improperly influence the decision; you must leave the meeting room once you have made your representation.]
- The Code states that any member of the Executive Board or other decision-making committee or joint committee or sub-committee attending Overview and Scrutiny committees has a prejudicial interest in any business where that member was a member of the committee at the relevant time and present when the decision was made or other action was taken (whether or not implemented). Members with prejudicial interests should declare them and are allowed to remain in the meeting for the limited purposes set out in the Code para 12(2) – see previous paragraph. You also need to declare when you are subject to the party whip before the matter is discussed.

Getting to the Meeting – for the benefit of visitors



The entrance to the Council Offices is located on Station Road, Sidmouth. **Parking** is limited during normal working hours but normally easily available for evening meetings.

The following **bus service** stops outside the Council Offices on Station Road:
From Exmouth, Budleigh, Otterton and Newton Poppleford – 157

The following buses all terminate at the Triangle in Sidmouth, From the Triangle, walk up Station Road until you reach the Council Offices (approximately ½ mile).
From Exeter – 52A, 52B
From Honiton – 52B
From Seaton – 52A
From Ottery St Mary – 379, 387
 Please check your local timetable for times.



Information for Visitors:

Please note that the doors to the civic suite (meeting rooms) will be opened ¼ hour before the start time of the meeting. Councillors are reminded to bring their key fobs if they wish to access the area prior to that time. The Committee Suite has a separate entrance to the main building, located at the end of the visitor and Councillor car park. The rooms are at ground level and easily accessible; there is also a toilet for disabled users.

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Licensing & Enforcement Committee Held at Knowle, Sidmouth on Tuesday, 30 August 2011

Present:

Councillors:

Steve Hall (Chairman)

Bob Buxton
Madeleine Chapman
Steve Gazzard
Pat Graham

Ken Potter
Pauline Stott
Tom Wright
Mark Williamson

Officers:

John Tippin, Licensing Manager
Chris Lane, Democratic Services
Officer
Neil McDonald – Licensing
Officer
Douglas Jackson – Licensing
Officer

Apologies:

Councillors:
David Atkins
Roger Boote
John Jeffery
Jim Knight
Philip Skinner

The meeting started at 9.35 am and ended at 11.00 am.

***5 Minutes**

The minutes of the meeting of the Licensing & Enforcement Committee held on 14 June 2011, were confirmed and signed as a true record.

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

Consideration was given to the report of the Licensing Manager, which provided Members with 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. Members noted that the risk rating system was in the process of being reviewed and consideration was being given to allowing a 'waiting' score to premises that have not had a complaint history during the past three years. Members were advised that the Police Licensing Section would be reduced and one licensing officer would be allocated to cover both the East and Mid Devon areas. This officer would probably be based at the Police Headquarters at Middlemoor, Exeter and would probably take effect from the end of October this year. This was likely to mean that more responsibility for enforcement was likely to have to fall on the District Council.



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

Members noted that the Folk Festival had run well this year with no problems for the licensing section. The usual licensing visits were carried out on the licensed venues. On the Thursday afternoon of the festival week both the Chairman and Vice Chairman of the Licensing Sub Committee went on a walk about visiting the seafront stalls and licensed venues meeting with the Folk Festival Event Production Manager.

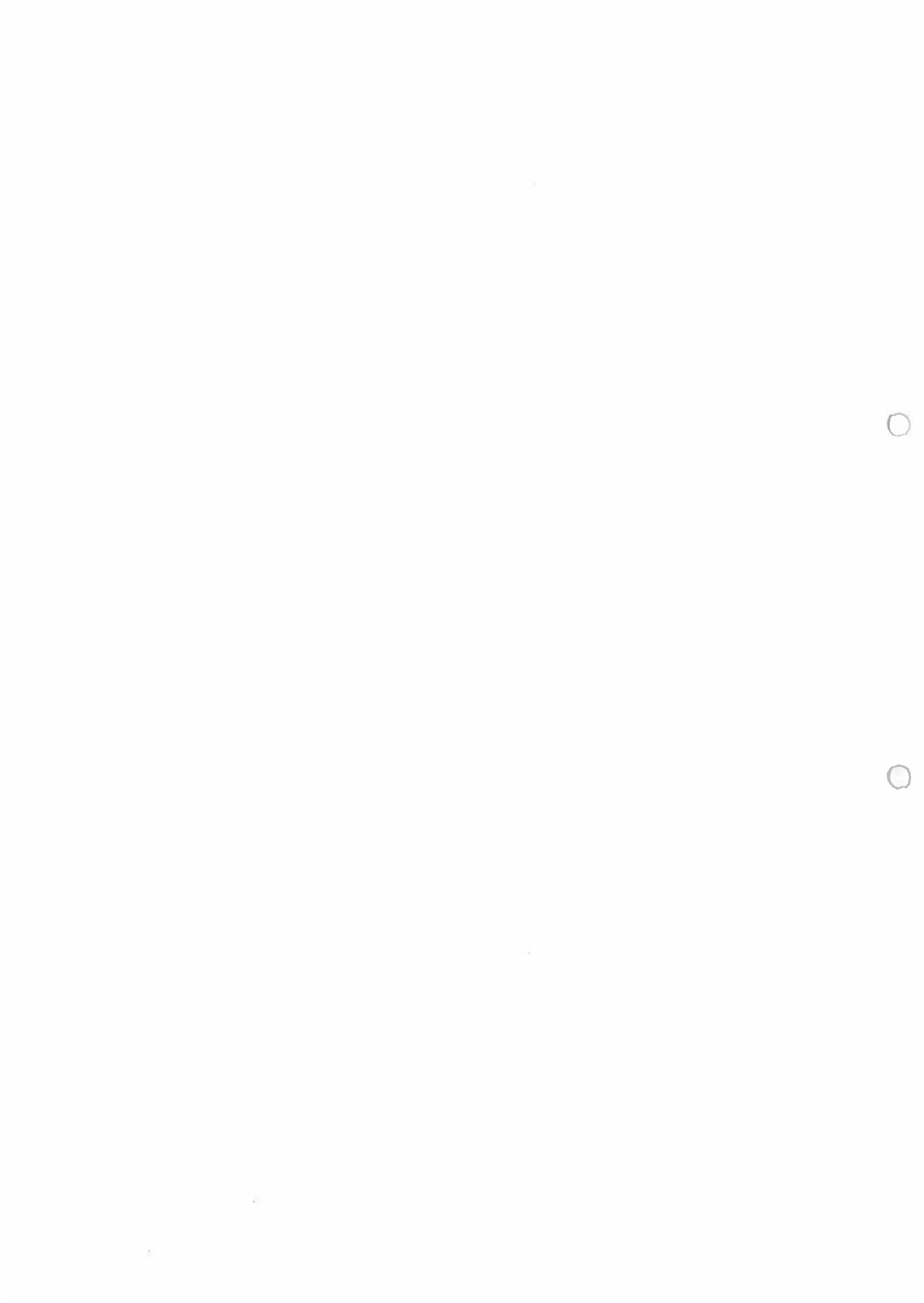
With regard to street trading at the Sidmouth Folk Festival members noted that there had been very few complaints received. Permits for all sixty pitches had been issued for all eight days. Two licensing officers were on duty from 7.30am on all eight days of the festival ensuring that all went smoothly. Members wished to thank Douglas Jackson and John Loveridge for the work they had carried out on the Council's behalf during the 8 days of the Folk Festival.

John Tippin, Licensing Manager reported on the application that had been made for a Premises Licence for The Strand, Exmouth. However, this application had not been properly prepared and had been rejected by the Licensing Authority. Fortunately there were no events associated with the Tour of Britain cycle race planned for the Strand and therefore the rejection of the application would not affect the event. Members noted that there had been press reports indicating that a licence had been issued for The Strand, but this was incorrect. Concern was also expressed over the fragmented nature of licensing arrangements on The Strand. It was suggested that EDDC should explore the possibility of adopting the pavement licences from DCC in the area and also the remainder of East Devon, to help ensure a more coordinated approach to licensing especially the relationship between street trading and pavement licenses.

The Licensing Team had continued the education based enforcement and monitoring approach to the Hackney Carriage and Private Hire Drivers and Vehicles as used with the Licensing Act. Close liaison was maintained with partner agencies and the taxi trade to ensure that the principles of consistency, transparency and proportionality were maintained. There was a limited multiagency check on Exmouth Community College Prom night in July when Police Officers and a Licensing Officer stopped three stretch limousines, after they had dropped off their passengers. All appeared to be in order with the vehicles and their drivers.

Members were informed that there were currently three zoo licences issued in the District and a further application had been received in March from Axe Valley Bird and Animal Park for a fourth licence. This application was currently going through the complicated application process set by the legislation but it was anticipated that a licence would be issued shortly after the Secretary of State's Zoo Inspector provided the Council with his report.

John Tippin, Licensing Manager reported it was planned that further training opportunities would be provided, following the next quarterly Committee meeting on 22 November. Devon wide training for members of Licensing Committees, involving Philip Kolvin, had been arranged on Monday 7 November in Plymouth and on Friday 18 November in the Council Chamber, Knowle, Sidmouth. All Licensing Members would be invited to attend one venue.



*6 **Committee update – Licensing Act 2003, Gambling Act 2005 and General Licensing (Cont)**

RESOLVED

1. that the report be noted;
2. that the Communications Officer issue a press release regarding the application for a Premises Licence for The Strand, Exmouth indicating that no licence had been issued and that the application had been rejected as it had been incorrectly made and could not go before a Licensing & Enforcement Sub Committee for decision as yet;
3. that the Chairman of the Committee and Licensing Manager approach Richard Cohen, Deputy Chief Executive with regard to providing direction on how to ensure a more coordinated approach to licensing in The Strand, Exmouth;
4. that Devon County Council be approached to explore the possibility of adopting the pavement licences issued by DCC in The Strand, Exmouth and also the remainder of East Devon, to help ensure a more coordinated approach to licensing.

Chairman Date



Agenda Item 6

Licensing & Enforcement Committee

22 November 2011

JT/NM/DJ/JL

Committee Update -

Licensing Act 2003, Gambling Act 2005, Taxis & General Licensing

Summary

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

a) Reasons for Recommendation

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

b) Alternative Options

Not Applicable

c) Risk Considerations

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

d) Policy and Budgetary Considerations

None

e) Date for Review of Decision

Not Applicable

1 Licensing Act 2003

1.1 Licences Issued and Notices Given

1.1.1 The numbers of 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 Visits to premises listed as high risk under our risk rating system continues. It is anticipated that officers will have more time available during January/February next year to complete the remaining visits as traditionally these are quieter months for the licensing section.

1.3 Enforcement

1.3.1 A co-ordinated multi agency approach to complaints received has secured swift resolutions without the need for formal enforcement action.

1.3.2 The Police Licensing Section has now been re-located to offices at the Police Headquarters at Middlemoor, Exeter. We now have one licensing officer, Barry Sleight who will cover both East and Mid Devon areas for the police. More on this at paragraph 5.2 later in this report.

1.4 Hearings

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

1.5 Applications Received and Notices Given

1.5.1 The numbers of applications received and notices given are set out in **Appendix A**.

1.5.2 On 13 September 2011 the Licensing Sub Committee dealt with a review of the premises licence of The Gerrard Arms, St Andrews Square, Colyton. The review was requested by the police following underage sales of alcohol at the premises and the subsequent fatality of one of the youngsters involved.

2 Gambling Act 2005

2.1 Licences Issued and Notices Given

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

2.2 Premises Inspections and Risk Ratings

2.2.1 A scheme of inspection, report and risk assessment has now been completed in consultation with the Gambling Commission and Partner Agencies. The final modification needed to run the report from LalPac (Council's licensing software) is all that is needed; otherwise the system works well from a Microsoft spreadsheet.

2.3 Enforcement

2.3.1 Following from the detection last year of unauthorised gaming machines at fun fairs and previously reported to this Committee Licensing Officers visited three fun-fairs during



this summer and autumn. One of these visits included the Anderton and Roland funfair operating in Ottery St Mary on the 5 November. I am pleased to report that no Gambling Act offences were detected during the visits, a result which is pleasing and confirms that regular inspections are a valuable tool to ensure compliance.

2.4 Hearings

2.4.1 The numbers of hearings held since the last update report to Committee are set out in **Appendix B**.

2.5 Applications & Notifications received

2.5.1 The numbers of applications and notifications received since the last update report to Committee are set out in **Appendix B**.

3 Taxis

3.1 Licences Issued

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

3.1.2 October is always a busy month for taxi licensing in the Council as all Hackney licences issued by East Devon expire on the 31 October and the applications for renewal of these licences need to be processed before they expire. It will be noted in **Appendix C** that there has been a reduction in the number of licensed hackney carriage vehicles and drivers since my previous report in August. A reduction in licence numbers is always expected at this time of year. This is because some operators/drivers take the opportunity of retiring or merely leaving the taxi trade when their licences expire. We then see a gradual increase in the licence numbers throughout the following twelve months until the next October when the cycle starts again.

3.1.3 The next very busy period is May as all the Private Hire licences expire on the 31 May.

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 Unfortunately there have been no combined operations specifically in relation to taxi and private hire enforcement since the last report. Officers are attempting to arrange a multi agency operation for the winter period.

3.3 Hearings

3.3.1 Since the last update report to Committee there have been no hearings in relation to hackney carriage and private hire issues.



3.4 Applications received

- 3.4.1 The number of applications received since the last update report to Committee is set out in **Appendix C**.

3.5 Taxi Rank Update

- 3.5.1 **Exmouth** – Members will recall that in my last report you were informed that some drivers were still not content with the new Strand rank. At the liaison meeting between Members, Taxi Proprietors and Officers on 2 June 2011 the taxi trade were asked to put their issues in writing together with their proposals for solving them. Regrettably no proposals were forthcoming and at a further liaison meeting with the taxi trade on 26 October 2011 the trade were again asked for their proposals. Since that meeting the taxi trade has come forward with some suggestions. These have been passed to Devon County Council with a request for a site meeting to solve the issues once and for all. It is hoped that the meeting will include the Chairman of this Committee, local District Councillors, Devon County Council officers and representatives of the Exmouth taxi trade. We are currently awaiting a response from Devon County Council.

- 3.5.2 The rank outside Capels fish and chip shop continues to be monitored by the civil enforcement officers to prevent illegal parking and the missing sign has been replaced.

- 3.5.3 **Honiton** – As previously reported the new taxi ranks for Honiton have all been put in place. These have been well received and the taxi trade in Honiton have indicated that they are very pleased with the results.

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 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 permits issued, the number of hearings held and the number of applications received.
- 4.2.2 Applications numbers for street trading permits at this time of year is traditionally low after the busy summer demand during the Sidmouth Folk Festival.



5. Consultations and Partnership Working

5.1 Meeting between Members, Taxi Proprietors and Officers

5.1.1 A very useful liaison meeting with the taxi trade was chaired by Councillor Hall on the 26 October 2011. This was one of the twice yearly meetings held between members, taxi proprietors and officers. A copy of the minutes of the meeting will be circulated before the meeting on the 22 November (**Appendix F**).

5.1.2 The next liaison meeting has been arranged for Wednesday 15 February 2012 (during the Spring half term) commencing at 1400 hour in the Council Chamber, Knowle, Sidmouth. The Committee's Chairman and Vice Chairman normally attend these meetings.

6.2 Police Staff Reductions

6.2.1 At your last meeting in August I reported on the police plans for reorganising their licensing department which included a reduction in staff and centralising their licensing administration for the force area at Exeter and Launceston. These plans came into effect on Tuesday 1 November 2011. It is too early to have a properly informed opinion on how this new set up is working however I can report that to date we have not encountered any serious difficulties.

7. Member Training

7.1 I reported at your last meeting that I was arranging Devon wide training for members of Licensing Committees for Monday 7 November at the Civic Centre, Plymouth and Monday 21 November in the Council Chamber, Knowle, Sidmouth. The training at both venues to be provided by Philip Kolvin, a leading licensing barrister and silk with London chambers. At the time of preparing this report the seminar at Plymouth has taken place. A total of 53 delegates were due to attend and reports suggest that the event was very successful. To quote the chair of the Exeter City Council Licensing Committee: "Councillors going to Sidmouth are in for a treat. The session is intense, crammed full of useful detail and very expertly delivered. Yesterday in Plymouth was extremely worthwhile." She went on to thank this Council for arranging the event and pointed out that this was an excellent example of Councils working together to keep down costs.

7.2 At the time of finalising this report we have 70 delegates booked to attend Philip's seminar at the Knowle on Monday 21 November. Whilst the majority of these are councillors who sit on Licensing Committees in their respective Councils we also have attending council solicitors, democratic services officers, licensing officers and one police officer.

Legal Implications

There are no legal implications contained within the report.

Financial Implications

The combined income budget for these services in the current year 2011/2012 is £246K of this £216K has already been collected. The proposed budget for 2012/2013 is £250K.



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 - Meeting between Members, Taxi Proprietors and Officers

John Tippin Ext. 2787
Licensing Manager

Licensing & Enforcement Committee
22 November 2011



Licensing Act 2003Licences Issued and Notices Given

	Oct-11	Jul-11	Changes
Premises Licences	584	588	-4
Club Premises Certificates	59	59	0
Personal Licences	1,583	1,557	26
Temporary Event Notices including sale or supply of alcohol	3,894	3,691	203
Temporary Event Notices Entertainment and/or Late Night Refreshment only	366	341	25

Hearings

	Aug-11	Sep-11	Oct-11
Hearings where no agreed position has been reached	0	1	1
Hearings held to approve an agreed position	0	3	2

Applications Received and Notices Given

	Aug-11	Sep-11	Oct-11
Grant of a Premises Licence	2	1	2
Variation of a Premises Licence	1	1	1
Transfer of a Premises Licence	6	4	4
Change of Designated Premises Supervisor	9	11	5
Minor Variations	4	0	0
Grant of a Personal Licences	6	11	9
Personal Licence Change of name or address	6	4	0
Temporary Event Notices given	100	66	89

Gambling Act 2005Licences Issued and Notices Given

	Oct-11	Jul-11	Changes
Premises Licences	13	13	0
Small Society Lotteries	180	174	6

Hearings

	Aug-11	Sep-11	Oct-11
Hearings held	0	0	0

Applications Received and Notices Given

	Aug-11	Sep-11	Oct-11
Applications for a Permit	0	1	0
Application for a Licence	0	0	0
Notification of Intent to have Gaming Machines	2	3	0
Occasional Use Notices (Point to Point Betting)	0	0	0
Small Society Lotteries	2	3	1

TaxisLicences Issued

	Oct-11	Jul-11	Changes
Hackney Carriages	134	165	-31
Private Hire Vehicles	20	21	-1
Hackney Carriage Drivers	192	219	-27
Private Hire Drivers	39	35	4
Private Hire Operators	19	12	7

Hearings

	Aug-11	Sep-11	Oct-11
Hearings	0	0	0

Applications Received

	Aug-11	Sep-11	Oct-11
Hackney Carriage Licence (including renewals, transfers & vehicle changes)	2	10	127
Hackney Carriage Drivers Licence (including renewals)	0	17	170
Private Hire Vehicle Licence	2	0	1
Private Hire Vehicle Drivers Licence	1	0	2
Private Hire Operators Licence	0	0	1

EH LicensingTotal Number of Licences

	Oct-11	Jul-11	Changes
Animal Home Boarding	19	18	1
Kennels/Catteries	20	20	0
Pet Shops	14	14	0
Dangerous Wild Animals	2	2	0
Zoo	3	3	0
Ear-Piercing	14	14	0
Electrolysis	14	14	0
Riding Establishments	9	9	0
Tattooing	9	9	0
Motor Salvage Operators	5	4	1
<u>TOTAL</u>	109	107	2

Hearings

	Aug-11	Sep-11	Oct-11
Hearings	0	0	0

Applications Received

	Aug-11	Sep-11	Oct-11
	5	1	2

General LicensingPermits Issued

	Oct-11	Jul-11	Changes
Street Collections	210	192	18
Street Collection cancellations	21	20	1
House to House	12	9	3
Street Trading	113	102	11
Street Trading (Charitable)	6	5	1

Hearings

	Aug-11	Sep-11	Oct-11
Hearings	0	0	0

Applications Received

	Aug-11	Sep-11	Oct-11
	30	5	9

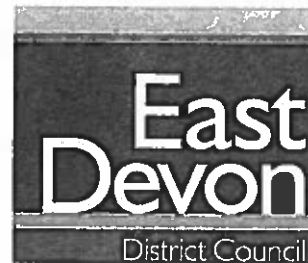


Agenda Item 7

Licensing & Enforcement Committee

22 November 2011

JT



An Explanation of the implications for Licensing in the District following Parliament's Approval of the Police Reform and Social Responsibility Act 2011

Summary

The report provides an explanation of the implications for licensing in the District following Parliament's approval of the Police Reform and Social Responsibility Act 2011

Recommendation

That the report be noted

a) Reasons for Recommendation

To keep the Council's statutory committee up to date with current legislation and the impact the legislation may have on the District and the Council's Licensing Service.

b) Alternative Options

Not Applicable

c) Risk Considerations

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

d) Policy and Budgetary Considerations

None in the short term but in the longer term there will be a budgetary consideration as the new legislation will make it easier for the Council to collect annual fees and there will be some sort of mechanism for the Council to set fees to locally to allow full cost recovery. The earliest that this could be available would be for the financial year 2012/2013.

e) Date for Review of Decision

Not Applicable

1 Background

- 1.1 As I reported at your last meeting of this Committee on the 30 August the Police Reform and Social Responsibility Bill which is intended to make fairly large changes to the Licensing Act 2005 was almost finished its passage through Parliament. I



can now report that the bill received Royal Assent on the 15 September. However the Act will not become an effective piece of legislation until a date has been appointed by the Secretary of State. At the time of writing this report no commencement date has been announced although there is speculation that the amendments concerning Temporary Event Notices will be commenced before the Olympics next year and the remaining provisions commencing either in the autumn of 2012 or early 2013.

- 1.2 The effect of these changes will be reviewed 5 years after the provisions come into effect with a view to assessing the effect of the amendments on the scheme established by the Licensing Act 2003.

2 The Changes

2.1 More local powers for licensing authorities and the police

- Licensing authorities are to become Responsible Authorities with the power to make representations on applications and call for reviews
- There will be a lower evidential hurdle, with licensing decisions to be 'appropriate' and no longer 'necessary'
- The vicinity test will be removed, which will allow any person, business or body to make a representation or launch a review to a premises licence. It is understood that the guidance will be altered to provide more clarification on what is relevant, frivolous and vexatious. It is also understood that there will be an increased requirement on licensing authorities to advertise applications, probably on their websites
- The local health body will become a responsible authority, although there will not be a licensing objective of the promotion of health. Guidance will be amended to say that licensing authorities must give significant weight to all reasonable representations from the police.

2.2 Interested Parties

The term 'interested parties' has been replaced by 'any other person'. This may well have the effect of increasing the number of representations (objections) that are received against licences and requests for Reviews of licences.

2.3 Advertising

The Secretary of State will be required to make regulations requiring the licensing authority to advertise applications 'in a manner which is prescribed and is likely to bring the application to the attention of the persons who are likely to be affected by it'.

2.4 Determination of applications

'Necessary' has been replaced with 'appropriate' in relation to the steps a licensing authority may take when determining applications / requests for review.

2.5 Temporary Event Notices (TENS)

Police and Environmental Health Officers will be able to object to TENS where they consider that the proposed activities are likely to undermine a licensing objective.

Conditions may be applied to TENS if the authority considers it appropriate for the promotion of the licensing objectives to do so, providing the conditions are also imposed on a



premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.

Provision has been made for 'Late TENS' which can be submitted up to 5 days in advance of the proposed event instead of the usual 10 working days.

Where a TEN is served electronically on the licensing authority, they will be required to forward to the Police and EHOs by no later than the end of the first working day after the day on which the original notice was given to the authority.

Time limits relating to TENS have been relaxed, including the duration of activities which will increase from 96 hours (4 days) to 168 hours (7 days).

2.6 Sanctions

The fine for persistently selling alcohol to children will be doubled from £10,000 to £20,000.

The effect of a closure notice for persistently selling alcohol to children will have effect for 'at least 48 hours but not more than 336 hours' (previously not exceeding 48 hours).

2.7 Early morning alcohol restriction order

Early morning alcohol restriction orders will be a new facility for licensing authorities providing the statutory process is followed, and may be applied to different types of premises, between the hours of midnight and 6am.

2.8 Licence Fee

One of the significant changes is the power for licensing authorities to set their fees. The House of Commons at committee stage debated this significantly, and there has been an amendment that will allow the Secretary of State to make regulations providing that licensing fee levels are set by the licensing authority based on cost recovery. The Government has suggested that the purpose of this is to ensure that licensing fees recover the costs of licensing authorities in discharging their functions under the Act. This will undoubtedly see fees rise. The Government has stated that fees have not risen even in inflation terms since the Act became effective in 2005 and on that basis are promoting this significant change. The Government will issue local authorities with guidance as to appropriate levels for fees but there will be an ability for these to be set on a local basis. There is to be consultation and more information released on this significant change in the fee structure.

Premises licences and club premises certificates will be suspended on failure to pay the annual licence fee, although exceptions are built in to allow for administrative error, disputes and a 'grace period'. This will be a great benefit as we have found chasing up late payers very time consuming and unsatisfactory. In the past if they still did not pay after being 'chased' the only way of obtaining the unpaid fee was to take court action.

2.9 Licensing Policy Statements

These will be reviewable every 5 years instead of every 3 years.

2.10 Late Night Levy

Provisions have been added to introduce a 'late night levy' which would be intended to cover the costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6 am. The only difficulty with this that



the legislation is very insistent that if a Council wishes to introduce the levy it must apply to the whole district. This might be fine for a city but much more difficult for an area like East Devon where it would be much more appropriate to apply a levy by zone – say the centre of certain towns where there is a history of late night disturbance etc. This is an adoptive levy and if adopted then the same levy would have to apply to similar type premises whether they be in a small village or in the centre of Exmouth or Honiton. Councils will have to consider carefully before deciding which route to take. Even if adopted at least 70% (after expenses) of the levy would have to be passed to the police so the amount left for the Council to make use of is not likely to amount a great deal as the levy would only apply to certain types of premises that have licences to stay open late.

2.11 Alcohol Disorder Zones

Alcohol Disorder Zones will be repealed. These never worked and believe none were ever designated.

3 Summary

- 3.1 Summary of the amendments and the new provisions and comment on how they are likely to affect the Council are set out in **Appendix A** to this report.
-

Legal Implications

The legal implications and changes to the statutory provisions within the Licensing Act are set out within the report and require no further comment at this time.

Financial Implications

The 2012/2013 income budget is expected to be £142,500. Any provision for full recovery of costs is welcome.

Appendices

Appendix A - Summary of principle amendments and the possible effects

Background Papers

- Police Reform and Social Responsibility Act 2011
-

John Tippin Ext. 2787
Licensing Manager

Licensing and Enforcement Committee
22 November 2011



Appendix A

LICENSING ACT 2003

Summary of principle amendments contained in the Policing Reform and Social Responsibility Act 2011

1.	The licensing authority itself becomes a responsible authority, able to make representations and apply for reviews in its own right.	It is anticipated that the authority will be delegated to officers to exercise in the council constitution. It is suggested that when officers consider representations are appropriate and when officers consider it is appropriate to withdraw those representations, the Chair is notified on an advisory basis in advance.
2.	Individual members of licensing authorities will no longer be interested parties.	Councillors will no longer be able to make representations unless they are fall within the definition of "other persons" living or working in the vicinity of the premises and who are likely to be affected by the application, unless they have been – as currently – been asked to make representations on a residents' behalf.
3.	The Primary Care Trust becomes a responsible authority, able to make representations and apply for reviews.	Information leaflets and website pages will need to be amended accordingly; need to identify who in the PCT should receive copies of applications; need to check that PCT receive copies of applications.
4.	Definition of "interested parties" deleted	
5.	Notices of applications are to be advertised in a prescribed manner to bring it to the attention of "other persons" - persons who live, or are involved in a business, in the licensing authority area and who are likely to be affected by the application.	This potentially increases the number of people who may make representations about licence applications, with the possibility of more representations leading to more contested applications. The current test of whether someone "lives or works in the vicinity of the premises" can usually be determined by officers, but whether someone under the new test "is likely to be affected by the application" may be better resolved at the Sub Committee hearing.

6.	Regulations must require the licensing authority to advertise applications including reviews in a prescribed form to bring it to the attention of persons who live, or are involved in a business, in the licensing authority area and who are likely to be affected by the application.	This will increase officer costs and times in advertising the applications. However it is anticipated at this time that the regulations will only require the Licensing Authority to advertise the applications only on the Council's website.
7.	When making decisions on applications licensing authorities are currently required under the legislation to demonstrate that their decisions are 'necessary' for the promotion of the licensing objectives. The changes lower the evidential hurdle by permitting LAs to make decisions which are 'appropriate' rather than necessary for the promotion of the licensing	"Necessity" suggests that there is a pressing requirement for a decision to be taken that furthers the objectives. "Appropriate" applies a lower threshold which may be harder to challenge on appeal. Will need to amend information leaflets.
8.	EHOs will be able to object to temporary event notices. Currently only the police can object and only on crime and disorder grounds	Officers will have to ensure EHOs are notified of (or have received copies of) TENs. Will have to amend information leaflets.
9.	Objections to TENs may be made if they would undermine a licensing objective and not just the crime and disorder objective.	This is an extension from the current position where the police can only object if they feel the TEN would undermine the crime prevention objective. It may potentially increase EHO workload and the number of Sub Committee hearings. Will have to amend information leaflets.
10.	Counter notices where permitted levels exceeded for the number of TENs allowed in a calendar year must also be sent to EHOs.	Slight increase in licensing officer work.
11.	<p>A Sub Committees may impose conditions on a TEN following a hearing where</p> <ul style="list-style-type: none"> (a) it is appropriate to do so and (b) that those conditions are already included on a premises licence/club premises certificate for those premises and (c) it would not be inconsistent with carrying out the licensable activities under the TEN. <p>For example, a licence condition to use door supervisors can be extended to include the period covered by the TEN.</p>	May require more compliance checks to ensure conditions on TENs have been met. Will require slightly more time in preparing reports for Sub Committees as the relationship between the TEN and the premises licence/club premises certificate will have to be included as well.

12.	A separate statement of conditions applicable to the TEN must be given to the premises user, police and EHOs.	There will be a small increase in officer time to produce these.
13.	<p>There will be different routes to give a TEN:</p> <p>(a) electronically or in writing no later than 10 working days before the event begins or</p> <p>(b) electronically to the licensing authority, no earlier than 9 working days before the event and no later than 5 working days before the event begins ("a late TEN") or</p> <p>(c) in writing to the licensing authority, police and EHO no later than five working days before the event begins and to at least one of those no earlier than nine working days before the event begins ("a late TEN").</p>	Late TENs are probably going to become the norm, which makes it easier for premises users but may put more pressure on officers and the police. This will be quite complicated and information leaflets etc will need amending.
14.	Officers must give a counter notice where an objection notice has been received from the police or EHO in respect of a late TEN.	This is likely to increase the workload on officers.
15.	In addition to the current 50 standard TENs that a personal licence holder can give a year, and the five standard TENs a non-personal licence holder can give a year, they will also be able to give a further ten and two late TENs respectively.	This may lead to an increase in the number of TENs received.
16.	TENs will be able to last for a maximum of 168 hours (1 week), rather than the existing 96 hours (4 days), and premises can be used for up to 21 days a year (rather than the existing 15 days).	Most TENs only apply for a few hours, so extending them to 168 hours is only likely to be of assistance at Christmas when premises may want to have a whole week of extended time or perhaps for theatrical events that may run longer than 4 days.
17.	The police and EHOs will have three working days in which to object to a TEN as opposed to the current two working days for the police.	

18.	Fines for persistently selling alcohol to children will increase from £10,000 to £20,000. The period that offenders can be ordered to cease selling alcohol by a constable or trading standards officers in those circumstances is varied from a maximum 48 hours to a minimum of 48 hours and a maximum of 336 hours (14 days).	It is well-documented nationally that courts do not give out anywhere near the current maximum penalties, and the closure notices are seldom used and to date never in East Devon.
19.	Where it is appropriate for the promotion of the licensing objectives, a licensing authority may make an early morning alcohol restriction order to prohibit the sale or supply of alcohol between midnight and 6 am as specified in the order. The order can specify the days, times, or parts of the authority's areas to which it applies, and may be on a temporary basis. They may be varied or revoked, and may contain exemptions in prescribed cases or circumstances.	An order may not be made unless the proposal has first been duly advertised and representations considered in accordance with statutory regulations. There is a need for considerable public consultation before an order can be made.
20	Premises licences and club premises certificates must be suspended no less than two working days after the annual fee not being paid within 21 days of it being due. Receipts for fees paid after a licence has been suspended must be issued within two working days.	There will need to be compliance checks where the fee remains unpaid. Need to ensure the invoicing and income process remains efficient (we already have an efficient system). There will be an increase in work in July, August and September when most fees become due.
21.	Subject to ministerial approval, the licensing authority will have the power to set certain fees on a cost-recovery basis. The costs may also include the costs of acting as other responsible authorities under the Act, e.g. planning authority.	Currently this authority is very close to cost recovery for the Licensing Service. If, as has been suggested the regulations permit the Council to recover the Responsible Authority costs for Environmental Health and Planning there is potential for the fee levels to rise.
22.	Licensing policy statements can now be reviewed every five years instead of every three years, such period starting from a date of the licensing authority's choosing which must be stated within the policy statement. A five year period means subsequent periods ending 6 January 2016.	This will represent a saving in not having to review policies as frequently, providing the risk of ensuring policies are relevant and up-to-date is managed. The Act allows existing policies determined and published for the three year period starting 7 January 2011 to last for five years if the policy states it should last for five years.

23.	<p>Further relevant offences have been added to those that may potentially disqualify people from holding personal licences:</p> <ul style="list-style-type: none"> <input type="checkbox"/> failing to co-operate with preliminary breath tests for drink-driving <input type="checkbox"/> attempting to commit any relevant offence <input type="checkbox"/> conspiracy to commit any relevant offence <input type="checkbox"/> common law offence of conspiracy to defraud. <p>Once the section is commenced, this applies to personal licences granted or renewed before, on or after that date, and to offences committed before, on or after the commencement date.</p>	
24.	<p>The Secretary of State must carry out a review of the amending provisions contained in the Act, and set out the conclusions in a report to Parliament, as soon as reasonably practicable five years after all the amendments have been brought into force.</p>	

NEW PROVISIONS INTRODUCED IN POLICING REFORM AND SOCIAL RESPONSIBILITY ACT 2011

1.	<p>Licensing authorities may decide that a late night levy is to apply in its area, after considering:</p> <ul style="list-style-type: none"> (a) policing and other costs for reducing or preventing alcohol-related crime and disorder between midnight and 6 am (b) and the desirability of raising revenue in accordance with regulation, of which not less than 70 per cent must be applied to the local policing body. 	<p>Whilst the imposition of this levy will probably be welcomed by the police the decision to impose it will be the Council's. This will need to be a carefully considered decision as the levy must be applied across the whole district. It can not be imposed on just part of East Devon.</p>
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2.	The late night levy must apply to the whole of the licensing area, subject to any time restrictions of premises liable to pay for it; any "permitted exemption categories" (if any), and "permitted reduction categories" (if any).	
3.	The licensing authority may determine the time of day between midnight and 6 am during which the late-night levy may apply, which must be the same throughout a "payment year".	"Payment years" in relation to premises licences and club premises certificates are to be determined in regulations. This may either be linked to the annual fees under ss55(2) and 92(2), LA03 or may be potentially be determined at the same time as the authority decides a levy is to apply within its area.
4.	The licensing authority may decide upon "applicable exemption categories" that apply in its area from the levy for the levy year.	This suggests licensing authorities can change the premises exempt from the levy from year to year. The applicable exemption categories will be set out in regulations for the licensing authority to decide whether any particular category applies in its area.
5.	The licensing authority may decide upon "applicable reduction categories" that apply in its area from the levy for the levy year.	The levy is the amount prescribed by, or the amount calculated in accordance with, regulations to be made. The applicable reduction categories will be set out in regulations for the licensing authority to decide whether any particular category applies in its area.
6.	Regulations will specify how payments are collected, administered and enforced, including times for payment. They may also set out how to deal with cases where relevant late-night premises cease or become liable to pay the levy during the payment year, including where an early morning alcohol restriction order has been implemented during that year.	This may inhibit licensing authority flexibility to organise its own affairs in the collection of the levy payments.
7.	Failure to pay the levy may be recovered as a civil debt and lead to suspension of the premises licence/club premises certificate under the new provisions dealing with non-payment of the annual fee.	

8.	Regulations will specify the relevant expenses that may be deducted in calculating the "net amount" of levy payments, may determine the amounts to be taken into account in calculating the net amount, and may determine the periods to which payments or deductions should be attributable. Not less than 70 per cent of the "net amount" must be paid to the local policing body and the remainder applied in accordance with regulations. (Other regulations may amend the specified 70 per cent).	If a levy is imposed at least 70% of the levy (after administration costs) must be paid to the police although there is nothing in the legislation to make the police spend that money on policing the late night economy or even spending it in East Devon. If imposed the cost to the Licensing Authority in administering the levy is likely to be high given the administration the legislation is expected to require.
9.	"Relevant expenses" to calculate the "net amount" means licensing authority administration expenses, particularly the costs of deciding whether to implement, end or amend the levy, and in collecting and enforcing levy payments.	Regulations will also specify the times at which payments are to be made by the licensing authority to the local policing body.
10.	Licensing authorities must publish before the beginning of the levy year a statement of its estimated permitted deductions, and after the end of the levy year a statement of the net amount.	Licensing authorities can decide how to publish those statements.
11.	The licensing authority may decide the date on which the levy is to start; the time period to which it applies; any permitted exemption or reduction categories; and the proportion of the net amount of levy payments to be paid to the relevant local policing body.	
12.	Decisions on the introduction, variation or revocation of a levy will be subject to regulations that in particular must require consultation with the local policing body and chief officer of police; holders of relevant late night authorisations; and other prescribed persons. Notices of such decisions must be published.	

13.	Regulations may also set out the matters of which the licensing authority must be satisfied before deciding that a levy is to apply in its area.	This suggests the link between alcohol and crime and disorder may not be the only consideration, or that crime and disorder has to trigger specific levels before a levy could be introduced.
14.	Late night authorisations may be varied before the start of the levy year without any fee, so as to exempt them from having to pay the levy.	Premises subject to a levy may amend their licence/certificate for free prior to the levy year coming into force. There is no guidance at this stage as to how far in advance such applications may be made, the cost to the licensing authority in the (unlikely) event of a contested application, and if the applicant seeks to take advantage of amending the licence (such as adding licensable activities to it) at the same time as reducing the hours to avoid the levy.
15.	The regulations listing "permitted exemption" and "permitted reduction" categories may relate to taking part in particular arrangements such as taking part in Pubwatch or Best Bar None schemes, or particular descriptions of premises, such as hotels or casinos.	There may be complexities around any individual premises that for example fall within the permitted reduction category
16.	Regulations must specify what the amount of reduction to be enjoyed by those in the permitted reduction categories, or how the reduced amount is to be calculated, which must be the same for all holders of late night authorisations in that category for a levy year.	
17.	The arrangements relating to levies apply to licensed premises on Crown land, and that owned by the Duchies of Cornwall and Lancaster.	

Other amendments

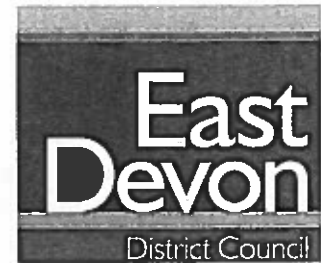
1.	The power to designate an alcohol disorder zone under the Violent Crime Reduction Act 2006 is repealed.	
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Agenda Item 8

Licensing & Enforcement Committee

22 November 2011

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A Consultation on proposals relating to the deregulation of Schedule 1 of the Licensing Act 2003

Summary

The report provides an explanation of the Department for Culture, Media and Sport's consultation on their proposals to deregulate Schedule 1 of the Licensing Act 2003. In effect their proposal is to deregulate the majority entertainment provided in this country unless the event is for more than 5,000 persons.

Recommendation

That the report is noted and the Committee agree the District Council's response to the consultation.

a) Reasons for Recommendation

To keep the Council's statutory committee up to date with current legislation and the impact the changes may have on the District and the Council's Licensing Service.

b) Alternative Options

Not Applicable

c) Risk Considerations

Failure to provide an efficient licensing service may result in complaints or legal challenges being made against the Licensing Authority.

d) Policy and Budgetary Considerations

None in the short term but in the longer term there will be a budgetary consideration if the proposals were to go through in full as there is likely to be a small reduction in income from licence fees. This is not likely to be too significant as many of the premises that are likely to be affected are community premises and therefore already do not pay a fee for their licence. In any case, as explained in my report on the effects of the Police Reform and Social Responsibility Act 2011, the Council will have some sort of mechanism to set fees locally to allow full cost recovery. Meaning that the Council should have the mechanism in place by 2012 if necessary to make up any shortfall in fees relating to the Licensing Act 2003 licensing regime.

e) Date for Review of Decision

Not Applicable

1 Background

- 1.1 The Department for Culture, Media & Sport (DCMS) has published a consultation on the 'deregulation' of regulated entertainment under the Licensing Act 2003. The proposals are very radical and if implemented would see a dramatic change in the licensing regulation of pubs, clubs and other entertainment venues in England and Wales.

2 The Government's Proposal

- 2.1 The DCM's proposal is that the performance of live music, dance, recorded music, plays, indoor sport or exhibition of film and provision of entertainment facilities for an audience of **less than 5,000 people** should no longer be classified as 'regulated entertainment' and, subject to certain safeguards, should not require a licence or permission under the Licensing Act 2003.

2.2 Exemptions

The DCMS has outlined some proposed exemptions. In particular, boxing and wrestling events will still be licensable (which may be extended to include martial arts) as will be the irregular performance of dance that may be classified as sexual entertainment (which is exempt from the separate sexual entertainment venue regulations).

- 2.3 It is important to mention that the proposals do not affect the requirements for premises selling alcohol to be licensed. This is a key element of the Government's thinking behind the deregulation proposals noting that the vast majority of premises providing forms of entertainment are also licensed to sell alcohol.

2.4 Rationale

The DCMS's aim is to: "improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries." However will these proposals really improve the quality of life for residents living near unregulated venues providing entertainment?

- 2.5 The DCMS considers that the regulation of entertainment within the Licensing Act 2003 is over-bureaucratic and places an unnecessary and heavy administrative burden on the voluntary sector, local communities and businesses which should be reduced.
- 2.6 John Penrose, Minister for Tourism and Heritage, cites many examples of 'unusual' circumstances in which a licence is required under the present regime: for instance, a licence is required to put on an opera but not to organise a stock car race; a folk duo performing in the corner of a village pub needs permission but a big screen broadcasting of an England football match in a large city centre pub would not. The anomalies are various and demonstrate inconsistent or illogical regulation. However it does not seem logical to use the anomalies excuse to deregulate. A more responsible approach would seem to be to sort out the anomalies. For example it does seem strange that a stock car circuit or a fireworks display is not licensed.

- 2.7 Other examples provided by the DCMS of activities which, in future, may fall outside the 'costly and bureaucratic' licensing process are:
- Private events where a charge is made to raise money for charity
 - School plays and productions
 - Children's films shown to toddler groups
 - Music performances to hospital patients
 - Brass bands playing in the local park
 - Exhibitions of dancing by pupils at school fetes
 - Pianists in restaurants
 - Even performances by quayside barber shop quartets

By providing these examples the DCMS are playing down the significance of their proposal as depending on the circumstances some of the activities listed above wouldn't need licensing under the current regime. The DCMS's proposals are clearly wider than the above, and would effectively de-licence regulated entertainment in most pubs, restaurants and night clubs. It would also deregulate outdoor events with under 5,000 capacity. The police have already commented that if adopted the proposals would legalise 'raves'.

- 2.8 The DCMS's case is that in most cases, adequate protections against potential problems are already provided by existing legislation such as the Environmental Protection Act 1990; Anti-Social Behaviour Act 2003 and the Noise Act 1996.
- 2.9 In seeking to reduce the overall burden of regulation faced by smaller organisations, the Government (DCMS) also wishes to encourage the performance of music, dance and sport and encourage community creativity and expression.

2.10 Savings to Organisations and Individuals

The Government is concerned that too many smaller organisations are not organising live music or dance because of the costs of making applications. In the Impact Assessment which forms part of the consultation, their best estimate is that the proposals if implemented would produce a total economic benefit of **£43.2 million** annually, although the consultation asks for views on these projections. There will also be an administrative benefit to local authorities which the Government believes will off-set the loss of revenue from licence fees.

- 2.11 Our experience in East Devon does not bear out the DCMS's views. This area has plenty of licensed venues including village halls (who do not pay a licensing fee) and the majority of public houses that are licensed for entertainment. The music industry has been claiming and lobbying for many years that one of the reasons for its decline is the difficulty of finding suitable licensed venues to perform however that is certainly not the full story as licensees have claimed that the fees demanded by entertainers means that they are pricing themselves out and many venues can not afford their fees. Without detailed analysis of the figures quoted in the Impact Assessment, it is very difficult to answer this issue. Reducing the number of licence applications/TENs will produce a small cost savings to local authorities. However, distributed across the 355 local authorities in England and Wales, the DCMS's estimate of net savings between £248,000 and £617,000 equate to £699 to £1,728 per authority. These savings are negligible and, given the margin for error in their estimates, open to doubt. Against this local authorities will have to fall back on the other forms of reactive control as described in paragraph 2.8 above which will incur additional costs to the



LA which they are unable to recover as they currently are through licence fees.

3 Commentary on the proposals

- 3.1 There is no doubt that this is a very radical deregulatory proposal and if implemented will have a significant effect on the licensing control of entertainment in England and Wales. It is worth noting that there are likely to be many voices urging a more cautious approach in responses to the Consultation, particularly from representative bodies of Residents Associations. Following the end of the Consultation, the Government will assess these responses and produce a Deregulatory Order with a view to implementation probably around summer 2012 (perhaps to coincide with the Olympics!). Interestingly we are advised that the majority if not all these far reaching proposals do not require changes to the Licensing Act 2003 itself and therefore the proposed changes can be brought in with the mere signature of a minister without the need to seek Parliament's approval.
- 3.2 The Government seems to be sending out mixed messages. For example in the Police Reform and Social Responsibility Act 2011 which was sponsored by the Home Office and recently gained Royal Assent an anomaly relating to Temporary Event Notices was corrected to enable Environmental Health Officers to object to Temporary Event Notices. Until this change was made only the police could object to a TEN and only on crime and disorder issues. This change means that Environmental Health Officers can now object to TENs on all four licensing objectives but most importantly the prevention of public nuisance and public safety objectives that was seen as a serious omission in the original legislation. Now comes along a different government department (DCMS) which seeks to abolish the majority of licensing controls on entertainment and although the EHOs will now have the right to object to TENs the proposed changes will in effect leave EHOs redundant as far as entertainment is concerned as there would be no requirement for anyone to serve a TEN for entertainment.
- 3.3 There are some other key points to make on the proposals and how they could affect the entertainment industry.
- The proposal is that deregulation would apply 24 hours every day although views are sought on whether entertainment after 11 pm should remain regulated.
 - The consultation seeks views on the proposed deregulation for capacity less than 5,000 and mentions the police preferred view for a 499 limit.
 - Views are sought on whether there should be an unrestricted capacity for unamplified music on the basis that the music noise would be self-limiting due to acoustic reach. This is a bold proposal and would allow acoustic bands and singers to perform before an unrestricted audience at any time of the day and night but is certain to receive unfavourable responses from local organisations.
 - Premises Licence conditions (many of which will include 'noise conditions' and limitations on opening hours) will remain on existing licence unless they are varied by a minor variation application. However there is opinion that where certain conditions were placed on a licence specifically because the entertainment was licensed then once the entertainment is deregulated it will become impossible to enforce those conditions. There is other opinion that existing premises will be forced to comply with these restrictions unless and until they are removed and these



applications may be contentious. However if the entertainment for which specific conditions were put on the licence, for example a requirement for a noise limiter, has been deregulated it seems to follow that a Licensing Authority would have no power to retain the condition or even enforce it. Even if all the existing conditions on current licences were enforceable after deregulation all new Premises licences issued after deregulation would only have on them conditions that relate to the sale of alcohol activity and not entertainment.

- The DCMS suggests a Code of Conduct may be considered for premises wishing to provide entertainment although it is recognised this will not have the force of law. If the code is not mandatory and enforceable some may well comply but human nature is such that experience shows that many will not.
- The deregulation of films will result in some benefit but probably only the saving of the fee where a charge would have been made (community halls for example do not pay licensing fees) and, for example, cinemas would not require a premises licence unless they also wish to sell alcohol.
- The Government is aware of the possibility of unintended consequences and ask for views on this. There will in fact be many, but one that stands out is the risk that new entertainment venues could become unregulated by simply not selling alcohol. Technically, they would still be able to charge for entry and in fact allow customers to bring in their own alcohol.

3.4 The consultation document seeks to show that large gatherings of people at certain events do not impact on the licensing objectives, but 170 people were hurt; 22 hospitalised and 15 people arrested at the Lewes Bonfire this year – an unlicensed event. Two recent tragedies (in the Northampton nightclub and the M5 motorway/Taunton Rugby Club crash) show that – despite modern safeguards – serious incidents can take place at licensed or unlicensed events.

3.5 Major incidents at public events can be caused by factors including:

- fire (including indoor pyrotechnics, as shown by a Chinese nightclub fire in 2008 that killed 43 people and – in 1990 – 87 people killed in an unlicensed New York nightclub);
- terrorist activity;
- structural collapse (such as at the Indiana State Fair and in New Jersey in the US in August 2011) ; or
- crowd movement or panic (such as the appearance by pop group JLS in Birmingham City Centre in November 2009).

3.6 Entertainment licensing has been a feature of regulation in this country for centuries, and the DCMS does not seem to have produced any evidence to justify removing the controls other than that too much red tape hampers creativity. A better approach to applying for and implementing permissions is needed.

3.7 The fact that relatively few major incidents occur in the UK is testament to the current systems of control in place. With the economic situation making it likely that event managers will seek to maximise profits by cutting back spending on safety, is now the right time to rush headlong into deregulation?

3.8 The DCMS argues that there are many other controls that can be applied to places of entertainment making the need for licensing redundant (see paragraph 2.8). However licensing is a proactive control whereas the others are



reactive. Licensing provides the opportunity to ensure preventative options are in place and premises are safe, for example noise limiters and during event inspections. Without this proactive approach residents and those at events will only be able to rely on reactive controls. For example reporting excessive noise after it has happened and waiting for the Council to take action. If those responsible are uncooperative this process is known to provide very slow results. The government's approach is further flawed because if these proposals are adopted it will add a great deal of extra unplanned work for those organisations responsible for the none licensing controls at a time when they are having to make economies due to the financial situation. For example many Councils including our own have had to either curtail their out of hours noise service or have stopped it altogether. An additional advantage of the presence of a licence to permit entertainment is that it has the effect of concentrating the mind on control and safety issues relating to the entertainment. Without the continued presence of a licence those responsible for providing the entertainment, particularly in the voluntary sector, will I believe become complacent and standards will drop in time.

- 3.9 The government's stance seems flawed as the question is not whether the regulated entertainment itself poses a risk to the licensing objectives. Rather, all of the circumstances (the scale, duration, location, audience profile, profile of performers, competency of the organisers/management, resources available to the organisers/management etc) of each entertainment ought properly to be assessed. Once that approach has been adopted, licensing authorities ought to either have the power to require particular activities, premises or events to be licensed (from a default deregulatory position of not requiring licences) or exempt them from requiring a licence (from a default regulatory position where licences are required).
- 3.10 Should the DCMS remain determined to implement some form of deregulation a simple online notification process could be developed to provide the information to the licensing authority using existing systems. The Licensing Authorities could then consult responsible authorities in the same way they do under the minor variations procedure. The guidance under section 182 of the Licensing Act could be amended to indicate to local authorities the factors to take into account which would tend towards licensing or not. This approach would also allow the ability to require licensing of those premises or activities where concerns have been raised. It will allow for licensing powers to be used more sensitively at a local level, and could allow a deregulatory approach to be introduced without putting the licensing objectives at risk. This approach would be in the spirit of localism as supported by the government. A decision whether to deregulate a particular event or premises would be taken locally with local knowledge of the venue, locality, operator etc.

4 Who might the 'real' winners be?

- 4.1 The government believes that the 'real winners' of these proposals will be schools, village halls and church groups etc that want to put on relatively small events for the benefit of the community but might have been put off taking such action beforehand because of the administrative burden in making the necessary applications. However from experience locally many of these venues have held licences for many years, some since the 1980s, and whilst deregulation might benefit a very few it's doubtful the benefit will be anything like that envisaged by the DCMS. On the other hand pubs and bars not currently licensed for live music will also benefit as they will be able to provide this



entertainment without the restrictions that are likely to apply to premises which already have this permission. However contrary to what the DCMS seems to believe many pubs and clubs took the opportunity in 2005 during the transition stage to the Licensing Act 2003, at no extra cost, to put live and recorded music on their licences.

5 Responding

- 5.1 The DCMS is seeking a response to their proposals by way of a consultation questionnaire. A blank copy of the questionnaire appears at **Appendix A**. Unfortunately many of the consultation questions are phrased in a manner that suggests that this is not so much a consultation but more an avenue to seek supporting evidence for deregulation. The consultation ends on the 3 December 2011.
- 5.2 The Licensing Manager is currently preparing a draft consultation response on behalf of the Council. A copy of this draft will be circulated to members by email/post before the meeting on the 22 November.
- 5.3 Running parallel to the consultation is a private members bill passing through Parliament seeking to deregulate live music in small venues including public houses. The consultation document makes clear that the Government will continue to support Lord Clement-Jones' Live Music Bill, which does not form part of the consultation.

Legal Implications

The legal changes highlighted by the consultation document are set out within the report and require no further comment at this stage.

Financial Implications

Any potential reduction in income would need to be quantified when the final actual reforms are defined in detail. At this stage, indications are that it will be minimal on EDDC.

Appendices

Appendix A - DCMS Consultation Questionnaire

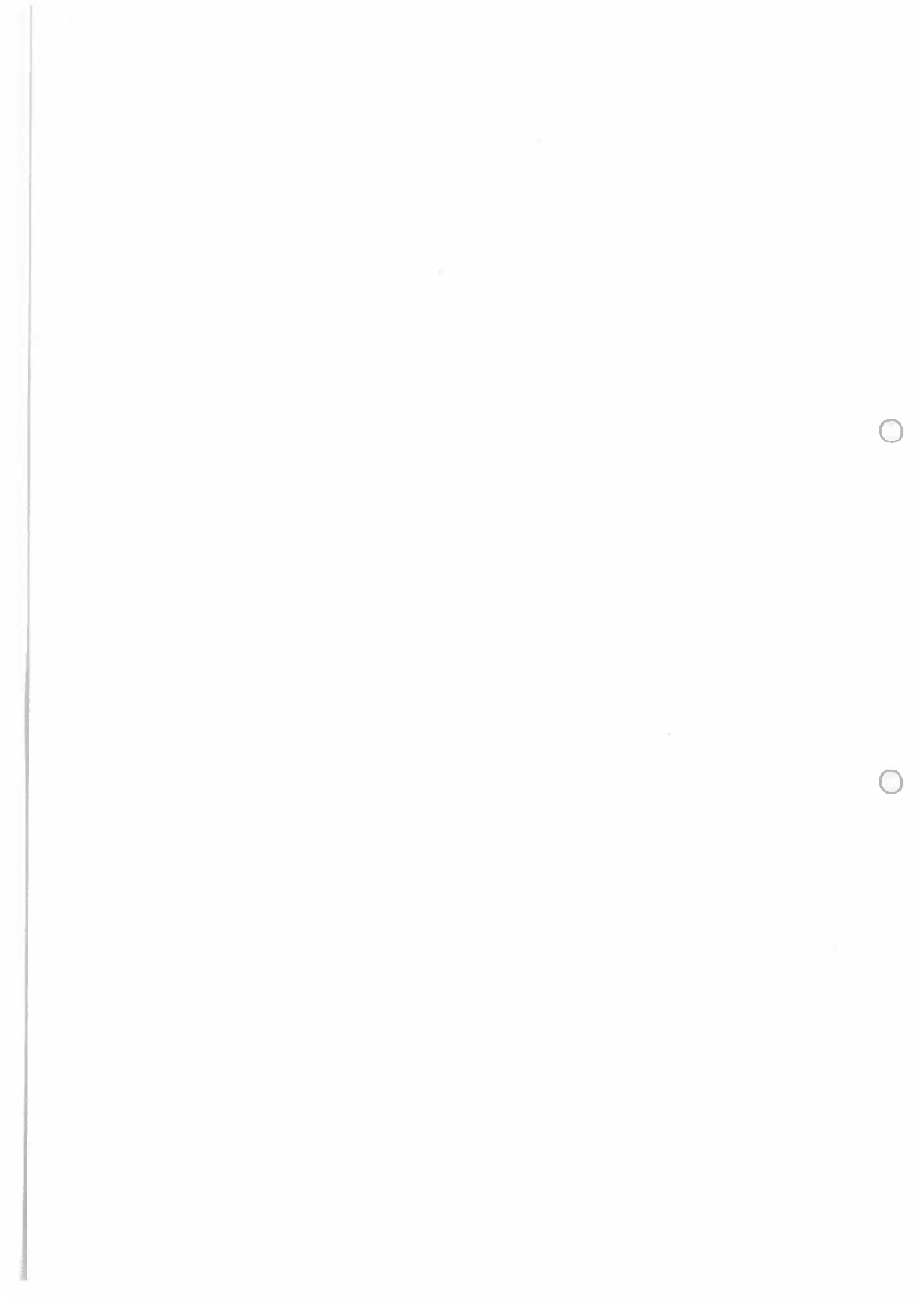
Background Papers

- Schedule 1 of the Licensing Act 2003
- DCMS's Consultation document

John Tippin Ext. 2787
Licensing Manager

Licensing and Enforcement Committee
22 November 2011





**DCMS CONSULTATION ON PROPOSAL TO
DE-REGULATE SCHEDULE 1 OF THE LICENSING ACT 2003**

Proposal Impacts	
Q1. Do you agree that the proposals outlined in this consultation will lead to more performances and would benefit community and voluntary organisations? If Yes, please can you estimate the amount of extra events that you or your organisation or that you think others would put on.	
Q2: If you are replying as an individual, do you think this proposal would help you participate in, or attend, extra community or voluntary performance?	
Q3. Do you agree with our estimates of savings to businesses, charitable and voluntary organisations as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures that you think need to be taken into account.	
Q.4 Do you agree with our estimates of potential savings and costs to local authorities, police and others as outlined in the impact assessment? If you do not, please outline the areas of difference and any figures that you think need to be taken into account.	
Q5. Would you expect any change in the number of noise complaints as a result of these proposals? If you do, please provide a rationale and evidence, taking into account the continuation of licensing authority controls on alcohol licensed premises and for late night refreshment.	
Q6: The Impact Assessment for these proposals makes a number of assumptions around the number of extra events, and likely attendance that would arise, if the deregulation proposals are implemented. If you disagree with the assumptions, as per paragraphs 79 and 80 of the Impact Assessment, please provide estimates of what you think the correct ranges should be and explain how those figures have been estimated.	
Q7: Can you provide any additional evidence to inform the Impact Assessment, in particular in respect of the impacts that have not been monetised?	
Q8: Are there any impacts that have not been identified in the Impact Assessment?	
Q9: Would any of the different options explored in this consultation have noticeable implications for costs, burdens and savings set out in the impact assessment? If so, please give figures and details of evidence behind your assumptions.	
Q10: Do you agree that premises that continue to hold a licence after the reforms would be able to host entertainment activities that were formerly regulated without the need to go through a Minor or Full Variation process?	

Role of Licensing Controls	
Q11: Do you agree that events for under 5,000 people should be deregulated across all of the activities listed in Schedule One of the Licensing Act 2003?	
Q12: If you believe there should be a different limit – either under or over 5,000, what do you think the limit should be? Please explain why you feel a different limit should apply and what evidence supports your view.	
Q13: Do you think there should be different audience limits for different activities listed in Schedule One? If so, please could you outline why you think this is the case. Please could you also suggest the limits you feel should apply to the specific activity in question.	
Q14: Do you believe that premises that would no longer have a licence, due to the entertainment deregulation, would pose a significant risk to any of the four original licensing objectives? If so please provide details of the scenario in question.	
Q15: Do you think that outdoor events should be treated differently to those held indoors with regard to audience sizes? If so, please could you explain why, and what would this mean in practice.	
Q16: Do you think that events held after a certain time should not be deregulated? If so, please could you explain what time you think would be an appropriate cut-off point, and why this should apply.	
Q17: Should there be a different cut off time for different types of entertainment and/or for outdoor and indoor events? If so please explain why.	
Q18: Are there alternative approaches to a licensing regime that could help tackle any potential risks around the timing of events?	
Q19: Do you think that a code of practice would be a good way to mitigate potential risks from noise? If so, what do think such a code should contain and how should it operate?	
Q20: Do you agree that laws covering issues such as noise, public safety, fire safety and disorder, can deal with potential risks at deregulated entertainment events? If not, how can those risks be managed in the absence of a licensing regime?	
Q21: How do you think the timing / duration of events might change as a result of these proposals? Please provide reasoning and evidence for any your view.	
Q22: Are there any other aspects that need to be taken into account when considering the deregulation of Schedule One in respect of the four licensing objectives of the Licensing Act 2003?	

Live Music	
Q23: Are there any public protection issues specific to the deregulation of the performance of live music that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?	
Q24: Do you think that unamplified music should be fully deregulated with no limits on numbers and time of day/night? If not, please explain why and any evidence of harm.	
Q25: Any there any other benefits or problems associated specifically with the proposal to deregulate live music?	
Performance of Plays	
Q26: Are there any public protection issues specific to the deregulation of the performance of plays that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?	
Q27: Are there any health and safety considerations that are unique to outdoor or site specific theatre that are different to indoor theatre that need to be taken into account?	
Q28: Licensing authorities often include conditions regarding pyrotechnics and similar HAZMAT handling conditions in their licences. Can this type of restriction only be handled through the licensing regime?	
Q29: Any there any other benefits or problems associated specifically with the proposal to deregulate theatre?	
Performance of Dance	
Q30: Are there any public protection issues specific to the deregulation of the performance of dance that are not covered in chapter 3 of this consultation? If so, how could they be addressed in a proportionate and targeted way?	
Q31: Any there any other benefits or problems associated the proposal to deregulate the performance of dance?	
Exhibition of Film	
Q32: Do you agree with the Government's position that it should only remove film exhibition from the list of regulated activities if an appropriate age classification system remains in place?	
Q33: Do you have any views on how a classification system might work in the absence of a mandatory licence condition?	

<p>Q34: If the Government were unable to create the situation outlined in the proposal and above (for example, due to the availability of Parliamentary time) are there any changes to the definition of film that could be helpful to remove unintended consequences, as outlined earlier in this document - such as showing children's DVDs to pre-school nurseries, or to ensure more parity with live broadcasts?</p>	
<p>Q35: Are there any other issues that should be considered in relation to deregulating the exhibition of film from licensing requirements?</p>	
<p>Indoor Sport</p>	
<p>Q36: Are there any public protection issues specific to the deregulation of the indoor sport that are not covered in chapter 3 of this consultation? If yes, please outline the specific nature of the sport and the risk involved and the extent to which other interventions can address those risks.</p>	
<p>Q37: Are there any other issues that should be considered in relation to deregulating the indoor sport from licensing requirements?</p>	
<p>Boxing and Wrestling</p>	
<p>Q38: Do you agree with our proposal that boxing and wrestling should continue to be regarded as "regulated entertainment", requiring a licence from a local licensing authority, as now?</p>	
<p>Q39: Do you think there is a case for deregulating boxing matches or wrestling entertainments that are governed by a recognised sport governing body? If so please list the instances that you suggest should be considered.</p>	
<p>Q40. Do you think that licensing requirements should be specifically extended to ensure that it covers public performance or exhibition of any other events of a similar nature, such as martial arts and cage fighting? If so, please outline the risks that are associated with these events, and explain why these cannot be dealt with via other interventions.</p>	
<p>Recorded Music & Entertainment Facilities</p>	
<p>Q41: Do you think that, using the protections outlined in Chapter 3, recorded music should be deregulated for audiences of fewer than 5,000 people? If not, please state reasons and evidence of harm.</p>	
<p>Q42: If you feel that a different audience limit should apply, please state the limit that you think suitable and the reasons why this limit is the right one.</p>	

Q43: Are there circumstances where you think recorded music should continue to require a licence? If so, please could you give specific details and the harm that could be caused by removing the requirement?	
Q44: Any there any other benefits or problems associated specifically with the proposal to deregulate recorded music?	
Q45: Are there any specific instances where Entertainment Facilities need to be regulated by the Licensing Act, as in the current licensing regime? If so, please provide details.	
Unintended Consequences	
Q46: Are there any definitions within Schedule One to the Act that are particularly difficult to interpret, or that are otherwise unclear, that you would like to see changed or clarified?	
Q47: Paragraph 1.5 outlines some of the representations that DCMS has received over problems with the regulated entertainment aspects of the Licensing Act 2003. Are you aware of any other issues that we need to take into account?	
Adult Entertainment	
Q48: Do you agree with our proposal that deregulation of dance should <u>not</u> extend to sex entertainment? Please provide details.	

