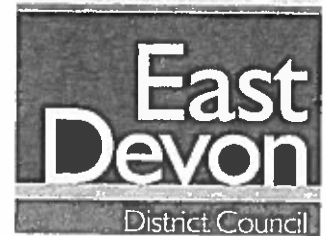


Date 12 November 2012
Contact number: 01395 517544
E-mail: clane@eastdevon.gov.uk
Our Ref: Chris Lane



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

East Devon District
Council
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DX 48705 Sidmouth
Tel: 01395 516551
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Corporate Legal & Democratic Services Manager
Solicitor
Licensing Manager
Licensing Officer

**Meeting of the Licensing & Enforcement Committee
Tuesday 20 November 2012 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 28 August 2012.	4 - 7
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.	8 - 18
7 Hackney Carriage Fares – Committee to Consider Objections to the Approved Fare Table	19 - 26
8 Gambling Act 2005 – Tri-annual Review of the Council's Licensing Policy and Policy Adoption	27 - 69

- (1) Police Reform and Social Responsibility Act 2011 – Late Night Levy/Early Morning Restriction Orders
- (2) The Live Music Act 2012

Decision making and equality duties

The Council will give due regard under the Equality Act 2010 to the equality impact of its decisions.

An appropriate level of analysis of equality issues, assessment of equalities impact and any mitigation and/or monitoring of impact will be addressed in committee reports.

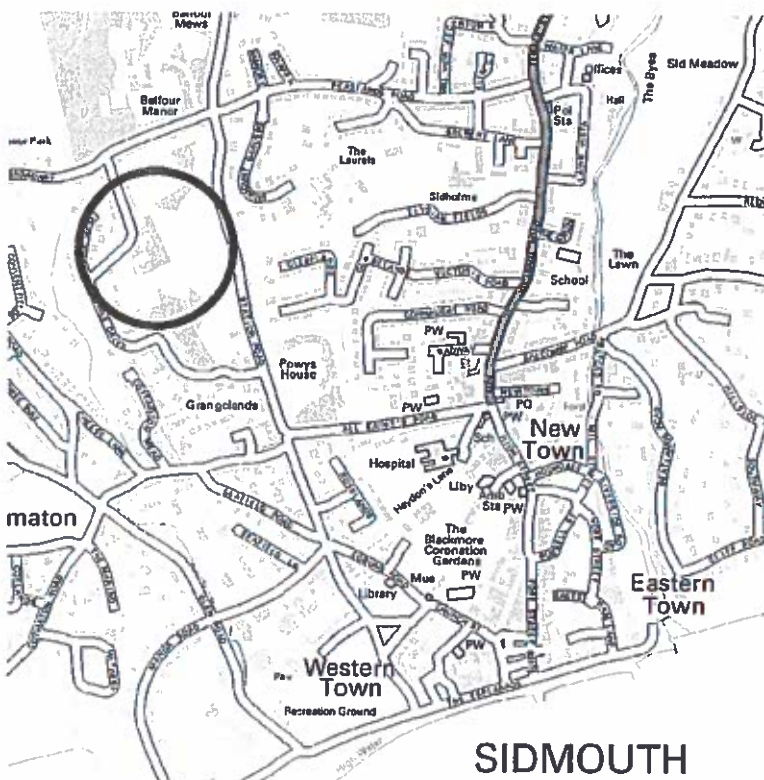
Consultation on major policy changes will take place in line with any legal requirements and with what is appropriate and fair for the decisions being taken.

Members will be expected to give reasons for decisions which demonstrate they have addressed equality issues

Members and co-opted members remember!

- You must declare the nature of any disclosable pecuniary interests. [Under the Localism Act 2011, this means the interests of your spouse, or civil partner, a person with whom you are living with as husband and wife or a person with whom you are living as if you are civil partners]. You must also disclose any personal interest.
- You must disclose your interest in an item whenever it becomes apparent that you have an interest in the business being considered. Make sure you say what your interest is as this has to be included in the minutes. [For example, 'I have a disclosable pecuniary interest because this planning application is made by my husband's employer'.]
- If your interest is a disclosable pecuniary interest you cannot participate in the discussion, cannot vote and must leave the room unless you have obtained a dispensation from the Council's Monitoring Officer or Standards Committee.

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, 28
August 2012

Present: Councillors:

Jim Knight (Vice Chairman in the Chair)

David Atkins	Christine Drew
Roger Boote	Pat Graham
Bob Buxton	Ken Potter
Madeleine Chapman	Pauline Stott

Officers: John Tippin, Licensing Manager
 Neil McDonald, Licensing Officer
 Diana Vernon, Democratic Services Manager

Apologies: Councillors:
 Steve Hall (Chairman)
 Steve Gazzard
 John Jeffery
 Mark Williamson
 Tom Wright

The meeting started at 9.30 am and ended at 10.40 am.

***5 Minutes**

The minutes of the meeting of the Licensing & Enforcement Committee held on 12 June 2012, were confirmed and signed as a true record.

***6 Declarations of interest**

Councillor/ Officer	Minute number	Type of interest	Nature of interest
Councillor Roger Boote	*6	Personal	Personal Licence Holder and owner of Licensed premises.
Councillor Jim Knight	*6	Personal	Devon County Councillor

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

The Licensing Manager presented his report and highlighted activities undertaken by the Licensing Service. Details of the work undertaken were included as appendices to the report.

Members raised and discussed a number of issues from the report:

*7 **Committee update – Licensing Act 2003, Gambling Act 2005 and General Licensing (continued) – issues raised**

1. Licensing Act 2003

The Licensing Team undertook a higher number of inspections of premises when rated 'high risk'. These included premises with a 24-hour licence which meant that large hotels were automatically categorised as high risk. A review of the list had addressed such anomalies. Categories were regularly monitored with the team being responsive to changes in activity, incidents and police and public feedback.

Following a question about 'private quarters' within a licensed property, the Committee was advised that these were not necessarily included on the licensed premises plan and were regarded as separate.

Members were advised that drinks purchased from licensed premises could be consumed outside. If tables and chairs were put outside on a patio or garden, these areas did not need to be licensed unless alcoholic drinks were actually sold there. Licensed premises could apply for a licence from Devon County Council to use a public pavement for tables and chairs subject to various conditions including that public access was not blocked as a result.

Members discussed specific issues of pavement licensing in Exmouth. Where a pavement licence had been issued, it was covered by the licensing restrictions. Councillor Pauline Stott said that she would raise this issue at the next meeting of the Exmouth Regeneration Programme Board.

Further to a question, the Licensing Manager advised that those drinking outside in the Strand at Exmouth (not within an area licensed for the sale of alcohol) could be committing an offence if those involved had disregarded a warning from the Police. This was because the whole of the Strand is subject to a Designated Public Places Order where it is an offence to drink alcohol after being required by a police officer not to do so.

Licensing Officers had attended the Ottery St Mary Football Club, as requested by the Club to give training and advice to staff on running the club bar.

The Licensing Manager had included reference to changes to the Licensing Act 2003 and invited Members to remain behind following the meeting when he would go through the detail of the Act, changes in legislation and particularly the issue of late night levies (likely to be in place in October 2012) and locally set licence fees (with effect from May 2013 at the earliest). These changes would be reflected in the Government's Alcohol Strategy.

2. Gambling Act 2005

The Council had gone out to consultation on the draft Gambling Act Policy to update the one which had now been in place for over 6 years.

Committee update – Licensing Act 2003, Gambling Act 2005 and General Licensing (continued) – issues raised

3. Taxis

The Licensing Manager outlined recent hearings and the action taken.

Taxi licensing fees had been agreed by Council on 25 July 2012 and would come into effect from Monday 3 September 2012 subject to no objections being received during the 28 day consultation period. Hackney Carriage fare increases were the subject of a further report which was considered later in the meeting.

The County Council was to make alterations to the taxi rank in the Strand, Exmouth. The taxi rank in Honiton High Street had been changed to address double parking of taxis but the new location on the opposite side appeared under-used.

4. General Licensing including Animal Licensing and skin piercing

The fees had been set following the recommendations of the Fees and Charges Task and Finish Forum (2006) and now needed to be reviewed and anomalies addressed. The Cabinet had considered the report of the Licensing Manager with recommended increases. Some of the proposed increases (which had been approved by Council at its meeting on 25 July 2012) were significant. The Licensing Manager gave the licensing fees for horse riding establishments as an example. The aim of the charges levied was to cover costs of the licensing service.

In answer to a question, the Committee was advised that the Council was responsible for registering scrap metal dealers. The Police was then responsible for overseeing scrap metal activities. In the current economic climate, the Council was now giving registration a higher profile and was actively searching out dealers and liaising with the Police in respect of this work.

Street trading during Folk Festival week in Sidmouth had been effectively controlled by the Licensing Service. A district-wide report on street trading would be referred to the next Committee meeting to reflect increased in street trading activity.

5. Consultations and Partnership Working

The Licensing Manager advised that the next meeting between Members, Taxi Proprietors and Officers would be held on Wednesday, 31 October 2012 (2pm start) in the Council Chamber at Knowle and that all members of the Committee were welcome to attend.

RESOLVED that the report be noted.

***8 Proposed Hackney Carriage Fare tariff changes**

The report set out proposed increases to the Hackney Carriage Fare Tariff. Details of the increase options were appended to the report together with the fares approved in November 2010 for information and the local fare tariff league table for comparison. Members considered the Hackney Carriage Fare increase options which included the Waiting Time and Extras changes and noted that feedback from interested parties recommended adoption of Option 1.

***8 Proposed Hackney Carriage Fare tariff changes (continued)**

Before any alteration to the tariff table can take effect the legislation requires that a public notice explaining the changes must be placed in a local newspaper. The public are then provided with a period of at least 14 days to make comment on the proposals. If no adverse comment/objection is received the changes approved by the Committee must take effect. If adverse comment/objection is received and not withdrawn the decision must be returned to allow the Committee to consider the representation(s).

RESOLVED

that the Hackney Carriage Fares Tariff be increased as proposed in Option 1 of Appendix D to the report including the changes to the Waiting Time and the extras with the approved tariff being adopted as the maximum fare tariff and used from a date to be fixed in December 2012 by Hackney Carriage vehicles licensed by East Devon District Council.

Chairman Date



Agenda Item 6

Licensing & Enforcement Committee

20 November 2012

JT/NM/DJ/JL/ES/AL

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 Licensing Officers continue to carry out a programme of routine visits to licensed premises in our area as well as visits to those premises identified as high risk.

1.3 Enforcement

1.3.1 During August this year the Licensing Team were again involved with enforcement of the Sidmouth Folk Festival both in 'policing' the stalls trading along Sidmouth seafront and checking on the various licensed venues connected to the festival. The event was very successful with very few minor problems with what is now a well organised and professionally run event. On the last Friday afternoon of the festival the Chairman and Vice Chair of the Licensing and Enforcement Committee carried out their usual walk through of the seafront stalls and the Ham and Blackmore Gardens entertainment marquees and bars.

1.3.2 Officers also visited the Blackdown Hills Beer Festival held at Cherryhayes Farm at Smeatharpe where an initial check of the site prior to the start of the event was made during the set up of the bars and stage. A late night visit was also made when the festival was running. As in previous years the event was well run and the organisers were very co-operative and enthusiastic.

1.3.3 During October the Licensing Authority suspended the premises licence of a public house in Exmouth for failing to pay the annual fee for the premises licence. This is the first licence that has been suspended following the introduction of the new legislation in April this year allowing the Licensing Authority to suspend licences for non payment of annual fees. The licence still stands suspended at the time of writing this report meaning that the business is unable to operate.

1.3.4 Two night clubs will be re-opening in our area, one in Exmouth and the other in Honiton. Both clubs have been closed for some time but will re-open using existing premises licences that have been kept 'live' by the owners of the premises.

1.3.5 Officers, by invitation, continue to attend licensees meetings across the district in order to support the meetings, give advice on current issues and answer any questions the licensees may have. These meetings are a very good forum for meeting the local licensees and for the exchange of information and ideas. Officer attendance is very much appreciated by all the licensees associations.

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**.

1.6 Temporary Event Notices for the Ottery St Mary Tar Barrels Event

1.6.1 Members may be aware of the large number of catering units selling hot food and drinks that attend the annual Ottery St



Mary Tar Barrels event. Many of the traders were unaware that selling hot food after 11.00pm was a licensable activity. I am pleased to report that as a result of successive enforcement visits by licensing officers and regular meetings with the Tar Barrels organising committee, the level of awareness of the requirement for many traders to submit a Temporary Event Notice has increased drastically. The aim of the licensing team has always been that the traders should achieve compliance with the Licensing Act 2003 through co-operation and education. Enforcement visits are planned to continue for the 2012 event. The following chart below shows the number of TENs received for the event in 2006, the first year of the Licensing Act regime, and TENs received in 2012. The result is an overall 400% increase in compliance.

TENs for Sat 04.11. 2006 – Ottery St Mary Tar Barrels	
TEWA - TEN with alcohol	6
TENA - TEN no Alcohol	0
Total	6
TENs for Mon 04.11. 2012 – Ottery St Mary Tar Barrels	
TEWA - TEN with alcohol (includes 1 Late TEN)	8
TENA - TEN no Alcohol (includes 5 Late TENs)	22
Total	30

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 Enforcement

2.2.1 A programme of visits to licensed premises and other premises where gaming is permitted continues. I am pleased to report that no Gambling Act offences have been detected, a result which is pleasing and confirms that regular inspections are a valuable tool to ensure compliance.

2.3 Hearings

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

2.4 Applications & Notifications received

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

2.5 Gambling Act Policy Consultation

2.5.1 The legislation requires the Council to review its Licensing Policy under the Gambling Act 2005 at least every three years. The Committee received a report on this from the Licensing Manager at your June meeting when he sought your approval to start the public review process. The policy



was last reviewed in 2009 and the current three year policy will expire on the 30 January 2013. The revised draft policy was prepared and distributed to responsible authorities, a wide range of stakeholders and other interested parties for consultation. The draft policy was available for viewing on the council website. The last day for receipt of comments was 17 September 2012. A separate report explaining the result of the consultation and seeking adoption of the revised policy will be presented to the Committee's November meeting.

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 a busy month for taxi licensing in the Council as all Hackney Carriage 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. This is reflected in the high number of Hackney Carriage vehicle and driver licences issued in the last quarter. These figures are included in **Appendix C**. However the overall number of Hackney Carriage licences held in East Devon at this time of year is always expected. 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 begins again.

3.1.3 The next busy period for relicensing 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 There has been one combined operation involving licensing officers, the police and the EDDC benefits fraud team in relation to taxi and private hire enforcement. This was carried out on the night of Friday 12 October 2012, at the Strand taxi rank in Exmouth when there were 27 vehicles stopped and checked by the police, licensing officers and the local fraud/benefit team. There were three minor defects on three separate vehicles, all of which were dealt with at the time. There were also checks by the fraud benefits team which has resulted in a number of leads to be followed up by that department.

3.2.3 The Devon and Cornwall Constabulary are keen to complete at least two joint multi agency taxi checks a year, and another operation is to be planned for the near future.

3.3 Hearings

3.3.1 There have been no Sub Committee hearings during the past quarter.



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 Licensing Fees

3.5.1 The East Devon District Council has the power, under the Local Government (Misc. Provisions) Act 1976 to increase taxi fees and fares

3.5.2 With the intention of recovering the costs of issue, administration, control and enforcement of the Private Hire and Hackney Carriage licensing process the fees have been increased by 6% effective from 3 September 2012.

3.6 Taxis Fares

3.6.1 The District Council as the Licensing Authority has responsibility for setting the maximum fare tariff for all Hackney Carriages licensed by this Council. The last time this was set was in November 2010. As a result of a report prepared by the Licensing Manager and presented to this Committee at its last meeting in August you agreed changes to the fare tariff. Following that decision the law required that proposals be advertised. This has resulted in four objections to the increase which has necessitated a further report being prepared to enable this Committee the opportunity to reconsider its decision in the light of the objections.

3.7 Taxi Rank Update

3.7.1 Exmouth – As the Committee has been aware the Taxi Association and some taxi drivers from the Exmouth area have been unhappy with the new Strand rank provided as a result of the regeneration scheme in the town. The latest update (25 October) in relation to the rank from the Highways authority states that there has been significant demands on the authority, but an order has been raised to lower the kerb stones at this location. It is hoped this work will be completed as quickly as possible although we have been unable to confirm a date.

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 Following increasing interest in street trading across the District the Licensing Manager is currently in the process of



preparing a report for this Committee. It was planned that the report would be brought to this meeting however its preparation has proved a little more time consuming than expected and with other developments relating to the Licensing Act taking precedence it is now hoped to bring the report to you early in the New Year. The report will propose changes including modernisation of the Council's approach to the whole street trading issue whilst still retaining robust controls.

5. Consultations and Partnership Working

5.1 Meeting between Members, Taxi Proprietors and Officers

5.1.2 The next liaison meeting with the taxi trade has been arranged for Wednesday 3 April 2013 (during the Easter Holidays) commencing at 1400 hour in the Council Chamber, Knowle, Sidmouth. The Committee's Chairman and Vice Chairman normally attend these meetings.

Legal Implications

There are no legal implications contained within the report.

Financial Implications

Any financial implications are contained in the report.

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

John Tippin Ext. 2787
Licensing Manager

Licensing & Enforcement Committee
20 November 2012



Licensing Act 2003

Number of Issued Licences and Notices Given

	Oct-12	Jul-12	Changes
Premises Licences	594	604	-10
Club Premises Certificates	58	58	0
Personal Licences	1,680	1,654	26
Temporary Event Notices including sale or supply of alcohol - includes late TENS	4,699	4,522	177
Temporary Event Notices Entertainment and/or Late Night Refreshment only - includes late TENS	442	418	24

Hearings

	Aug-12	Sep-12	Oct-12
Hearings where no agreed position has been reached	1	0	0
Hearings held to approve an agreed position	1	0	2

Applications Received and Notices Given

	Aug-12	Sep-12	Oct-12
Grant of a Premises Licence	3	1	1
Variation of a Premises Licence	0	2	0
Transfer of a Premises Licence	7	7	3
Change of Designated Premises Supervisor	11	10	9
Minor Variations	1	2	0
Grant of a Personal Licences	6	0	16
Personal Licence Change of name or address	2	6	1
Temporary Event Notices given	80	50	94

Gambling Act 2005Number of Issued Licences and Notices Given

	Oct-12	Jul-12	Changes
Premises Licences	13	13	0
Small Society Lotteries	166	172	-6

Hearings

	Aug-12	Sep-12	Oct-12
Hearings held	0	0	0

Applications Received and Notices Given

	Aug-12	Sep-12	Oct-12
Applications for a Permit	0	0	0
Application for a Licence	0	0	1
Notification of Intent to have Gaming Machines	0	1	1
Occasional Use Notices (Point to Point Betting)	0	0	0
Small Society Lotteries	3	2	1

TaxisNumber of Issued Licences

	Oct-12	Jul-12	Changes
Hackney Carriages	117	6	111
Private Hire Vehicles	1	0	1
Hackney Carriage Drivers	153	6	147
Private Hire Drivers	1	1	0
Private Hire Operators	1	0	1

Hearings

	Aug-12	Sep-12	Oct-12
Hearings	0	0	0

Applications Received

	Aug-12	Sep-12	Oct-12
Hackney Carriage Licence (including renewals, transfers & vehicle changes)	6	22	117
Hackney Carriage Drivers Licence (including renewals)	4	27	153
Private Hire Vehicle Licence	2	0	0
Private Hire Vehicle Drivers Licence	1	1	0
Private Hire Operators Licence	0	0	0

EH LicensingNumber of Issued Licences

	Oct-12	Jul-12	Changes
Animal Home Boarding	18	17	1
Kennels/Catteries	20	20	0
Pet Shops	13	13	0
Dangerous Wild Animals	1	1	0
Zoo	4	4	0
Ear-Piercing	16	16	0
Electrolysis	14	14	0
Riding Establishments	11	10	1
Tattooing	11	11	0
Motor Salvage Operators	6	5	1
Scrap Metal Dealers	8	7	1
<u>TOTAL</u>	122	118	4

Hearings

	Aug-12	Sep-12	Oct-12
Hearings	0	0	0

Applications Received

	Aug-12	Sep-12	Oct-12
	3	3	4

General LicensingPermits Issued

Between	Oct-12	Jul-12	Changes
Street Collections	72	26	46
Street Collection cancellations	0	3	-3
House to House	4	3	1
Street Trading	79	46	33
Street Trading (Charitable)	1	3	-2

Hearings

	Aug-12	Sep-12	Oct-12
Hearings	0	0	0

Agenda Item

Licensing and Enforcement Committee

20 November 2012

JT



Hackney Carriage Fares – Committee to Consider Objections to the Approved Fare Table

Summary

The Licensing and Enforcement Committee is asked to consider the objections made against the Hackney Carriage Fare Table approved by this Committee on the 28 August 2012 and to decide whether to modify the tariff or retain it in the existing form.

Recommendation

1. That the Committee:
 - (a) Consider the four objections to the Hackney Carriage Fare Tariff agreed by this Committee on the 28 August 2012 and set out in Appendix D and decide whether to retain it in the form previously approved or to modify it after considering the objections and
 - (b) Set a date on which the table of fares with or without modification will come into force. That date to be 5 December 2012.

a) Reasons for Recommendation

To enable the Hackney Carriage trade within the District to continue to operate economically whilst still maintaining an efficient, safe and cost effective service for those residents of and visitors to East Devon who need to use the services of a Hackney Carriage.

b) Alternative Options

There is no alternative option as the legislation requires that following an objection to the setting of a new fare tariff the District Council must consider the objection and then set a date on which the table of fares shall come into force with or without modification.

c) Risk Considerations

If the Council fails to carry out its role under the legislation it could face legal challenge.

d) Policy and Budgetary Considerations

No direct financial implications

e) Date for Review of Decision

N/A



1 Background Information

- 1.1 Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 permits District Councils to set the fares tariff for Hackney Carriages licensed in the District. This Council, in common with most other Councils, have used this power for many years. On 28 August this Committee approved a new fare tariff that appears at **Appendix D** to this report. The intention was for this new fare table to come into use on the 5 December 2012.
- 1.2 However the legislation requires that before any alteration to the tariff table can take effect a public notice explaining the changes must be placed in a local newspaper. The public and the taxi trade are then provided with a period of at least 14 days to make comment on the proposals. If no adverse comment/objection is received the approved changes must take effect. Alternatively if adverse comment/objection is received then the matter must be returned to allow the Committee to consider the representation(s).
- 1.3 A public notice was placed in newspapers circulating in the area setting out the approved new table of charges and explaining the procedure should anyone wish to make representations relating to the increases. As a result the District Council has received four objections to the new table. All four objections are from the taxi trade (all from the Exmouth area). These objections are contained in letters at Appendices A to C. The identity of the writers has been removed from the letters however should the Committee need this information it can be provided.
- 1.4 Two of the objections are a combined objection from two different owner drivers who operate in the Exmouth area, they object to the fare table agreed by the Committee on the 28 August 2012 and do not want to see any increase. This is on the grounds of the current poor economic climate. The text of these objections are available in **Appendix A** to this report.
- 1.5 The third objection is also made by an Exmouth owner driver who objects to the current proposal and also believes that it is not a 'good time of year' to introduce the change. He believes its introduction will be of more benefit to the larger operators. A copy of this objection appears at **Appendix B**.
- 1.6 The fourth objection is also made by an Exmouth owner driver. A copy of the objection appears at **Appendix C**. It is quite long and makes a number of points including the planned 'increase is more than the average increase of private and public sectors which will lead to a down turn in our trade'. Another objection relates to the fact that the proposals will mean that the meter goes up in 5 pennies rather than in 10 pennies making difficulties over change. The objector also claims that at the Members, Taxi Operators, Drivers and Officers liaison meeting on the 15 February it was agreed that the only changes to the tariff would be a 20 pence increase on the 'flag'. Other issues include that the special meeting offered to the trade to discuss the fare increase was called during the Folk Festival. Like the objection outlined in paragraph 1.5 this objector also appears to see the increase as more of a benefit for the larger operators.



2 Evaluation of the Objections

- 2.1 The Taxi trade have not received a fare increase for two years and it was the trade who asked the Council for an increase at their meeting with members and officers on the 5 February. At that meeting there was a general discussion on the available options for increasing the fares but no agreement was attempted. As was done with the rise in 2010 rather than prolong that meeting the Licensing Manager offered to arrange a special meeting for operators to prepare a proposal. Because of illness it was not possible to organise this immediately however a meeting was eventually arranged for the 3 August. Those who had attended the 15 February meeting were invited. The meeting was facilitated by the Licensing Manager however attendance was poor with only two operators attending although two others sent apologies and their comments on the type of increase they believed were necessary.
- 2.2 Two of the four objectors (**Appendices B & C**) were aware of this meeting and knew they were invited. One of the letters of objection implies that the writer did not attend as the meeting was called during Folk Festival week. This is puzzling as he does not work in Sidmouth and the Folk Festival has little effect on the Council Offices or parking at the Knowle.
- 2.3 The proposals that were brought to the Licensing and Enforcement Committee meeting on the 28 August were those that were discussed at the 3 August meeting and Option One which the Committee approved was the option preferred by the representatives of the taxi trade at the 3 August meeting. Council Officers merely facilitated this meeting. It was the members of the Hackney Carriage trade present that agreed Option One.
- 2.4 The objection letter **Appendix C** makes reference to an amended public notice. The circumstances are that an original public notice to explain the proposed tariff changes was published in the Express and Echo on 6 September 2012. Unfortunately this notice contained three errors. At the Council's request the newspaper published, free of charge, an amended correct notice on the 21 September (two weeks later). As explained in paragraph 1.2 above the public and the taxi trade must be provided with a period of at least 14 days to make comment on the proposals. The original notice published on the 6 September asked for any objections to be made by midday on the 21 September. As the amended notice was published two weeks later it was necessary to change the date for receipt of objections. The new date was fixed for midday on Monday 8 October 2012. This provided 17 clear days for receipt of objections.
- 2.5 Whilst four objections (**Appendices A, B & C**) have been received there is a large majority of the taxi trade who have not objected and it would be reasonable to assume support the fare rise given that costs have risen over the past two years. None of the objectors have provided strong evidence to support their objections. The fare rise agreed by the Council is set as the maximum that can be charged. Operators and drivers are free to charge less which would enable the four objectors to charge less than the maximum fare if they wish.
- 2.6 Members are reminded that following the Licensing Manager's research before the Committee's meeting on the 28 August he provided the following supporting evidence for a tariff increase:



- (i) The National Statistic's All Items Retail Price index shows that the index has risen in the first 7 months of 2012 by 3.4%, during 2011 by 5.2% and in the last 5 months of 2010 by 4.7%. Whilst this is a good guide to show how general costs have risen over the period since the last tariff increase this index may not relate directly to the increases experienced by the taxi trade.
- (ii) The National Statistic's RPI figures show that petrol costs rose by 16.8% in 2010 and 14.5% in 2011. The Consumer Price Index figures for all fuels for the past 12 months shows that their costs rose by 9.2%. It will be appreciated that the cost of fuel is a significant part of the trade's out goings.

3 Recommendation

- 3.1 The trade have not received a fare increase for two years and the current increase agreed on the 28 August 2012 is relatively modest. With this background and taking into account the current financial climate the recommendation to members is not to make any changes to the fare table agreed at your last meeting.
- 3.2 Should the Members wish to make changes to the fare table agreed on the 28 August 2012 there will be no need to re advertise the amendments.

Legal Implications

The legal context and statutory requirements on consultation are set out within the report and no further comments are required.

Financial Implications

There are no direct financial implications contained in this report.

Appendices

- Appendix A Objection (combined) letter from two Exmouth taxi owner/drivers
- Appendix B Objection letter from an Exmouth taxi owner/driver
- Appendix C Objection letter from an Exmouth taxi owner/driver
- Appendix D Fare Table approved by Committee on the 28 August 2012

Background Papers

- Licensing and Enforcement Committee papers dated 28 August 2012
- The Private Hire and Taxi Monthly magazine's national fare tariff league tables
- The National Statistic's All Items Retail Price and RPI indexes

John Tippin Ext. 2787
Licensing Manager

Licensing and Enforcement Committee
20 November 2012



Appendix A

Combined Objection from two Exmouth Taxi Owner/Drivers

5 October 2012

Dear Mr Williams

Proposed Taxi Tariff Increase

The undersigned would like to object to the proposed forthcoming increase in taxi fares. The reason for this objection is that given the current economic climate we do not feel that it would be appropriate at this time. We therefore request that it be deferred until 2013.

Yours faithfully

(Signed by the two objectors)

Objection from an Exmouth Taxi Operator and Driver

30th September 2012

Re:Fare Increase.

Dear Mr. Williams,

I am writing again to object to the proposed fare increase as advertised in the Express & Echo on the 20th September 2012. This is not what was agreed at the meeting on the 15th February 2012.

After we were informed of an increase in the licencing fees, Mr.Hill of AJ's Taxis called for an increase in metered fares. After some discussion it was agreed that the increase should be put on the starting price, rounding them all up to the nearest pound, and that there would be no change in the price thereafter. The committee also said that they would look at the possibility of increasing the cost of waiting time. There was to be another meeting held, it was suggested, in about a month. This meeting never happened.

We then move on to the meeting held at Sidmouth on 3rd August 2012. I was told that this meeting was not worth going to as there would be nowhere to park as it was Folk Festival week and it was purely to rubber stamp what had already been agreed. This was a message relayed to me that had apparently originated from Mr. Jackson. Present at this meeting were Mr.Hill and an operator from Sidmouth, so I believe. We then have the debacle of the incorrect fares being published.

The figures that I had to work on after that were those e-mailed to me by Mr.Loveridge which he took to be correct. This is where my Tariff 3 increases worked out at up to 45%. That aside, the changes that were agreed to in February had suddenly changed to something totally different. I feel that we have been pushed into something we did not want. No doubt you will say that Axminster and Honiton etc. would like this but this is one of the problems of single zoning-what's good for one is not always good for another. Waiting time has increased from £28/hr to £28.80/hr-hardly worth the effort!

Further, I would say that it is not a good time of year to try to squeeze more money out of an already hard pushed public and what seems to be the main thing in this, is that Mr. Hill of AJ's Taxis, who was first to call for an increase, has 17 hours a day in which he could charge more than the £4.50 maximum anywhere in Exmouth with £1 per drop off, which, incidentally, could result in some instances in being more expensive than the metered fare. The possible idea is to keep the metered fare as far ahead of his private hire prices.

In conclusion, I still am against any increase in Tariffs.

Yours Faithfully

(Signed by an objector)

Objection from an Exmouth Taxi Operator and Driver

Chief Executive,
East Devon District Council,
Council Offices,
Knowle, Sidmouth,
DEVON
EX10 8HL.
23.9.2012

Hackney Carriage Fares

Dear Sir,

I am writing to object to the Public Notice as advertised in the Express and Echo of the 20th September 2012 regarding the proposed increases in fares.

The original notice advertised on the 6th September still had till noon of the 21st September to run, the ad of the 20th been displayed with no wording anywhere on it saying that this was an amended notice of the previous legal notice.

The rates shown calculate as follows;

Tariff 1, 1st mile £4.05, 10 miles £22.95

Tariff 2, 1st mile £5.25, 10 miles £27.75

Tariff 3, 1st mile £6.60, 10 miles £31.80

There are 7,7ths in one whole unit, half of which is 3.5 times that by £0.30 = £1.05 not £1.20 as shown in the letter of reply of the 18th Sept.

These changes also mean that the increase is more than the average increase of private and public sectors which will lead to a down turn in our trade.

The increases mean problems for any driver firstly with the five pence totals meaning even more change in the float to start with.

The meter clicks will be very fast and the passengers will be complaining to us not you. Yes why should we have to take the flack when this could have been avoided in the first place by the person who came up with this change in tariffs?

Referring to the letter dated 18th September received from Mr Tippin , the first meeting of the 15 February it was agreed to go for a twenty pence rise on the kick off only and to have another meeting in one month's time this never came. The next meeting was the one of the 3rd August same time as the Folk Festival. In future it would be better to make sure that functions like these do not coincide with important meetings.

I run my taxi on the meter I paid for it I use it and charge the prices unlike larger companies who want us out of business so they can clear up, tough.

My objection stands and I will not back down.

Regards

(Signed by an objector)

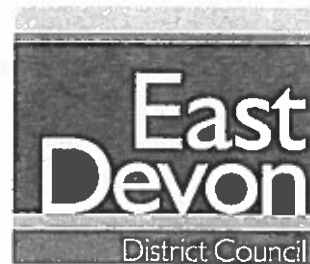
Hackney Carriage Fares – Agreed Option (28.08.2012)

TARIFF 1		TARIFF 2		TARIFF 3	
Name:		Name:		Name:	
Wait:	25 (secs)	Wait:	25 (secs)	Wait:	25 (secs)
Soiling charge:	£50	Soiling charge:	£80	Soiling charge:	£80
Flag fall:	£3.00 A	Flag fall:	£4.00 A	Flag fall:	£5.20 A
Initial yardage:	880 B	Initial yardage:	880 B	Initial yardage:	880 B
Unit thereafter	251.42857 C	Unit thereafter	176 C	Unit thereafter	251.42857 C
Price Unit:	0.3 D	Price Unit:	0.25 D	Price Unit:	0.4 D
Initial Waiting Time (secs)	88	Initial Waiting Time (secs)	125	Initial Waiting Time (secs)	88

Distance miles	TARIFF 1			TARIFF 2			TARIFF 3		
	Current	Agreed	% Change	Current	Agreed	% Change	Current	Agreed	% Change
Flag	£2.80	£3.00	7.14%	£3.60	£4.00	11.11%	£4.60	£5.20	13.04%
1	£3.80	£4.05	6.58%	£4.80	£5.25	9.37%	£6.00	£6.60	10.00%
2	<u>£5.80</u>	<u>£6.15</u>	6.03%	£7.20	£7.75	7.64%	£8.80	£9.40	6.82%
3	£7.80	£8.25	5.77%	£9.60	£10.25	6.77%	£11.60	£12.20	5.17%
4	£9.80	£10.35	5.61%	£12.00	£12.75	6.25%	£14.40	£15.00	4.17%
5	£11.80	£12.45	5.51%	£14.40	£15.25	5.90%	£17.20	£17.80	3.49%
6	£13.80	£14.55	5.43%	£16.80	£17.75	5.65%	£20.00	£20.60	3.00%
7	£15.80	£16.65	5.38%	£19.20	£20.25	5.47%	£22.80	£23.40	2.63%
8	£17.80	£18.75	5.34%	£21.60	£22.75	5.32%	£25.60	£26.20	2.34%
9	£19.80	£20.85	5.30%	£24.00	£25.25	5.21%	£28.40	£29.00	2.11%
10	£21.80	£22.95	5.28%	£26.40	£27.75	5.11%	£31.20	£31.80	1.92%
Running mile	£2.00	£2.10	5.00%	£2.40	£2.50	4.17%	£2.80	£2.80	0.00%



Agenda Item 8



Licensing & Enforcement Committee

20 November 2012

JT/JL

Gambling Act 2005 – Tri-annual Review of the Council's Licensing Policy and Policy Adoption

Summary

This report updates the Licensing & Enforcement Committee on the tri-annual review of the Council's Gambling Act 2005 Licensing Policy and the results of the consultation process and invites the Committee to recommend that the Council adopt the amended Licensing Policy as required by the Gambling Act 2005 at its next meeting on the 5 December 2012.

Recommendation

That the Committee:

1. **Note the results of the public consultation undertaken on the Council's draft Licensing Policy relating to the Gambling Act 2005.**
2. **Recommend to Council at its meeting on the 5 December 2012:**
 - a. **To nominate in writing the Area Child Protection Committee and Local Safeguarding Children Board (Devon County Council) as the body competent to advise the authority about the protection of children from harm issues as required by the Gambling Act 2005, Section 157(h);**
 - b. **To adopt, for the period 31 January 2013 to 30 January 2016, the East Devon Gambling Licensing Policy as attached at Appendix A.**

a) Reasons for Recommendation

It is a legal requirement for the Council to have a 'Statement of Licensing Policy' in order to carry out its statutory functions under the Gambling Act 2005. The Council's Licensing and Enforcement Committee and officers must have regard to its Gambling Licensing Policy when deciding upon licence applications.

b) Alternative Options

To amend the proposed policy within the legal and guidance limitations which apply.

c) Risk Considerations

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

d) Policy and Budgetary Considerations

Explained within the report

e) **Date for Review of Decision**

December 2015 or earlier. This means that to enable the review to be completed in good time the consultation process will commence around June 2015. The Gambling Act 2005 requires that the Policy must be reviewed at least every three years although if there is a need identified it can be reviewed earlier.

1 Main Body of the Report

- 1.1 Under the Gambling Act 2005, it is the responsibility of the Council to develop and publish a Statement of Licensing Policy. The published Policy then provides the framework for all decisions on applications relating to the Gambling Act 2005 and the way the Authority carries out its functions in relation to the legislation.
- 1.2 Licensing authorities are also required to review their policy at least every three years. The Council's first Policy was adopted by Council on the 6 December 2006. The policy was then reviewed three years later in 2009 and expires on the 31 January 2013. The Council needs, therefore, to start the review/consultation process to enable a new policy to be in place by January 2013.
- 1.3 At the time of the first review in 2009 a number of changes were made to remove information relating to transitional matters, and to include relevant changes in legislation and Gambling Commission guidance. In particular Part B relating to the definition of "Premises" was extensively reworded to reflect LACORS and the Commission's Guidance. Also included were statements of principles to be applied to unlicensed family entertainment centres and prize gaming permits.
- 1.4 In view of the changes made in 2009 to correct some of the ambiguities following the introduction of the new legislation in 2007 it is believed that there is little need to make any significant changes to the Policy on this occasion particularly as there has been no significant changes to the relevant legislation or currently the Gambling Commission guidance. In preparation for this review the Licensing Manager has proposed some fairly minor changes. One relates to the sighting of gaming machines in premises to ensure better supervision. This follows difficulties identified in other parts of the region with underage use of large payout machines in betting shops. Other proposed changes are meant, in the main, to enhance the changes agreed in 2009. In particular that relating to the definition of "Premises". A copy of the draft policy is attached to this report at **Appendix A**. The proposed changes are shown in heavy underlined type and for colour versions these are also in red type. A summary of the changes proposed is also attached as **Appendix B**.
- 1.5 The District Council's draft Licensing Policy, with the changes outlined in paragraph 1.4 above included was made available for consultation on the 18 June 2012. The closing date for comments was Monday 17 September 2012 although if comments had been received after that date and before the preparation of this report they would have been included.
- 1.6 In accordance with the Guidance published under Section 182 of the Act a wide consultation on the draft of the policy has been undertaken. This has provided opportunity for views and representations to be received from industry, statutory bodies, East Devon residents and other agencies.



1.7 This report presents the Licensing Policy and the results of the public consultation.

2. Results of consultation

2.1 The Consultation exercise for this policy has been wide. The list of consultees is reproduced at **Appendix C**. Details of the consultation were placed in the 'Knowledge' to invite comment and a letter or email was sent to each of the consultees inviting them to make comment on the Policy. They were given the choice of downloading a PDF copy of the draft Policy from the District Council's website or requesting a printed copy to be sent out by post. A copy of the draft policy was placed on the Council's website.

2.2 The general public were also invited to take part in the consultation as details of the consultation were made available on the Council's website. Copies of the draft policy were sent out to anyone requesting a copy and copies were made available in all Devon County Council libraries within the district as well as the Council's Information Points.

2.3 A total of three responses have been received to the consultation exercise all of which simply acknowledge receipt of the document. One of the responses was from the Institute of Licensing merely to inform the Council that they did not wish to comment.

3. Child Protection

3.1 One of the requirements under the Gambling Act is for the council to designate in writing who it considers competent to advise the authority about the protection of children from harm.

3.2 As the Devon County Council's Area Child Protection Committee and Local Safeguarding Children Board based in Totnes is the responsible consultee for this authority under the Licensing Act Members may wish to nominate the same Board. (They have indicated their willingness if so nominated). There is no obvious alternative organisation that could be considered and they were similarly nominated in 2009 when the policy was last reviewed.

4. Conclusions

4.1 The lack of responses to the draft Licensing Policy for East Devon seems to demonstrate a general acceptance of the Policy by businesses and public alike.

4.2 The Licensing Authority must adopt a new policy prior to the 3 January 2013 in order to exercise its powers under the Act. Once the Council has approved the Gambling Act Licensing Policy on the 5 December 2012 it will be published and sent to all respondents. It will also be available through the Council's website. Existing licence holders will be up dated and advised that a copy is available on the Council's website or alternatively they can request a copy to be sent to them.

Legal Implications

The legal implications are set out within the report.



Financial Implications

There are no financial implications in this review.

Appendices

- | | | |
|--------------------------|--|------------|
| <input type="checkbox"/> | Draft Policy for adoption | Appendix A |
| <input type="checkbox"/> | Summary of Main Changes Sheet | Appendix B |
| <input type="checkbox"/> | List of those invited to respond to the consultation | Appendix C |

Background Papers

- Gambling Act 2005
- Guidance issued by the Gambling Commission under the Gambling Act 2005
- East Devon District Council's Draft Policy Statement under the Gambling Act 2005 issued for consultation in June 2012
- Gambling Commissions Policy Template

John Tippin Ext 2787
Licensing Manager

Licensing & Enforcement Committee
20 November 2012

John Loveridge Ext 2611
Licensing Officer

EAST DEVON DISTRICT COUNCIL



Statement of Licensing Policy

UNDER THE GAMBLING ACT 2005

For the period 31 January 2013 to 30 January 2016

[Draft Version 2012 V1](#)

(Approved by Full Council X December 2012)
Responsible Authorities updated 7.11.2012

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STATEMENT OF GAMBLING LICENSING POLICY

Text in the shaded boxes within this Statement of Licensing Policy is advisory only intended to give assistance to applicants, interested persons and responsible authorities.

Part A

1 The Licensing Objectives

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

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

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

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

Applicants are also advised to note Part B of this Statement of Principles:-
Premises Licences – General Principles

2 Introduction

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

2.2 The Statement takes effect on 31 January 2013.

3 The Geographical Area

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

The District has a dispersed and mainly rural population. The rural nature of the area is emphasised by the low population density of 163 per square kilometre (the England and Wales average is 366). The District is fully parished with 68 Town and Parish Councils. Areas of Outstanding Natural Beauty and the World Heritage Coast cover a high proportion of the District.

The main settlements comprise the coastal resorts of Exmouth (Devon's largest town – population 35,989), Budleigh Salterton, Sidmouth and Seaton. In the mainly rural inland area the settlements comprise Honiton, Ottery St Mary, and Axminster. There are numerous villages and hamlets.

The District's population currently stands at 136,484. The black and ethnic minority population of East Devon is considerably small – only 2.4% (3200 people described their ethnic group as non-white in the 2006 ethnicity census, with Mixed race being the single largest grouping at 1,000). East Devon also has a high percent of elderly residents with 36% of the population over 60 years of age.

The East Devon population is set to grow by about 3% in the next few years, projected to reach 140,200 by 2016. The age band predicted to have the largest growth over the next 3 years is the 65 year old band.

The entertainment industry within the District is a major contributor to the economy of East Devon. It attracts tourists and visitors, makes for vibrant towns and communities and is a major employer.



4 Review of Statement of Principles

- 4.1 Licensing authorities are required by the Act to publish a statement of the principles which they propose to apply when exercising their functions. This statement must be published at least every three years. The statement must also be reviewed from "time to time" and any amended parts re-consulted upon. The statement must be then re-published.
- 4.2 The Gambling Act requires that the following parties be consulted by Licensing Authorities:
- The Chief Officer of Police;
 - One or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
 - One or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.
- 4.3 Before adopting this policy statement the Licensing Authority will consult the following:
- All premises licensed to sell alcohol in the East Devon district
 - British Beer & Pub Association
 - Chambers of Commerce within East Devon area
 - Citizen's Advice Bureau
 - Environmental Health Authority for the district
 - Devon and Cornwall Constabulary
 - Devon County Council Children and Young Peoples Services
 - Devon Fire and Rescue Service
 - Devon Licensing Officers Group
 - East and Mid Devon Community Safety Partnership
 - Planning Authority for the district
 - Gamblers Anonymous
 - Gambling Commission
 - Gamcare
 - HM Commissioners of Custom and Excise
 - Local businesses and their representatives
 - Local faith groups
 - Local residents and their representatives
 - Mencap
 - NSPCC
 - Premises holding Club Premises Certificates
 - Primary Care Trust
 - Representatives of existing licence/permit holders including bookmakers
 - Town and Parish Councils within East Devon
 - Voluntary & Community organisations working with children & young people
- 4.4 Proper weight will be given to the views of all those who have been consulted prior to the date of implementation of the Statement of Principles.

Our consultation took place between 25 July 2012 and 17 September 2012 and we followed the HM Government Code of Practice on Consultation (published July 2008), which is available at:
<http://www.berr.gov.uk/files/file47158.pdf>

- 4.5 The Statement of Principles was approved at a meeting of the Full Council on XXX and was published via our website on XXX. Copies were placed in the public libraries of the area as well as being available for viewing at the offices of the East Devon District Council, Knowle, Sidmouth, EX10 8HL
- 4.6 Should you have comments regarding this Statement of Licensing Principles please write to the above address or email licensing@eastdevon.gov.uk
- 4.7 It should be noted that this statement will not override the right of any person to make an application, make representations about an application, or apply for a review of a licence, as each will be considered on its own merits and according to the statutory requirements of the Act.

5 Declaration

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

6 The Overriding Principle

- 6.1 In exercising its functions under the Act, this Licensing Authority will aim to permit the use of premises for gambling in so far as it thinks fit:
- in accordance with any relevant codes of practice issued by the Gambling Commission;
 - in accordance with any relevant guidance issued by the Gambling Commission;
 - as is reasonably consistent with the licensing objectives; and
 - in accordance with the authority's Statement of Licensing Policy under section 349.
- 6.2 Each case will be considered on its merits.
- 6.3 In deciding whether or not to grant a licence, this authority does not have regard to the expected demand for the facilities that are the subject of the application.
- 6.4 The overriding principle does not, however, apply to the consideration of an application for a casino licence if this Authority resolves not to issue casino premises licences.

7 Responsible Authorities

- 7.1 Responsible authorities are those public bodies, as specified by the Gambling Act, which must be notified of applications for premises licence. Such bodies are entitled to make representations to the licensing authority in relation to the applications. The Responsible Authorities are detailed in Appendix A and available via the Council's website at <http://www.eastdevon.gov.uk/>.
- 7.2 The licensing authority is required by regulations to state the principles it will apply in exercising its powers under Section 157(h) of the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm. The principles are:

- the need for the body to be responsible for an area covering the whole of the licensing authority's area; and
- the need for the body to be answerable to democratically elected persons, rather than any particular vested interest group.

7.3 In accordance with the suggestion in the Gambling Commission's Guidance for local authorities, this authority designates the Area Child Protection Committee and Local Safeguarding Children Board.

8 Interested Parties

8.1 Interested parties can make representations about licence applications, or apply for a review of an existing licence. These parties are defined in the Gambling Act 2005 as: "For the purposes of this Part a person is an interested party in relation to an application for or in respect of a premises licence if, in the opinion of the licensing authority which issues the licence or to which the application is made, the person -

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

8.2 The licensing authority is required by regulations to state the principles it will apply in exercising its powers under the Gambling Act 2005 to determine whether a person is an interested party. The principles are:

- (a) Each case will be decided upon its merits. This licensing authority will not apply a rigid rule to its decision-making. It will consider the examples of considerations provided in the Guidance at 8.11 to 8.19. The authority will also consider the Gambling Commission's Guidance that "business interests" should be given the widest possible interpretation and include partnerships, charities, faith groups and medical practices.
- (b) Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected, will be considered to be interested parties. Other than these, however, this licensing authority will generally require written evidence that a person/body (e.g. an advocate / relative) 'represents' someone who either lives sufficiently close to the premises to be likely to be affected by the authorised activities and/or has business interests that might be affected by the authorised activities. A letter from one of these persons, requesting the representation may normally be sufficient.

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

9 Exchange of Information

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

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

10 Enforcement

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

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

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

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

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

11 Licensing Authority functions

11.1 Licensing Authorities are required under the Gambling Act 2005 to:

- Be responsible for the licensing of premises where gambling activities are to take place by issuing **Premises Licences**
- Issue **Provisional Statements**
- Regulate **members' clubs and miners' welfare institutes** who wish to undertake certain gaming activities by issuing Club Gaming Permits and/or Club Machine Permits
- Issue **Club Machine Permits to Commercial Clubs**
- Grant permits for the use of certain lower stake gaming machines at **unlicensed Family Entertainment Centres**
- Receive notifications from alcohol licensed premises (under the Licensing Act 2003) for the use of two or fewer gaming machines
- Issue **Licensed Premises Gaming Machine Permits** for premises licensed to sell/supply alcohol for consumption on the licensed premises, under the Licensing Act 2003, where there are more than two machines
- Register **small society lotteries** below prescribed thresholds
- Issue **Prize Gaming Permits**
- Receive and Endorse **Temporary Use Notices**
- Receive **Occasional Use Notices**
- Provide information to the Gambling Commission regarding details of licences issued (see section above on 'information exchange')
- Maintain registers of the permits and licences that are issued under these functions

It should be noted that this Licensing Authority will not be involved in licensing remote gambling. This is the responsibility of the Gambling Commission through Operator Licences.

12 The Licensing Process

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

Part B - Premises Licences: Consideration of Applications

1 General Principles

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

particular to the protection of children and vulnerable persons from being harmed or exploited from gambling.

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

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

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

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

The Gambling Commission's relevant access provisions for each premises type are reproduced below from the Guidance, 7.25:

Casinos

- The principal access entrance to the premises must be from a street (as defined at 7.23 of the Guidance)
- No entrance to a casino must be from premises that are used wholly or mainly by children and/or young persons
- No customer must be able to enter a casino directly from any other premises which holds a gambling premises licence

Adult Gaming Centre

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

Betting Shops

- Access must be from a street (as per paragraph 7.23 Guidance to Licensing Authorities) or from another premises with a betting premises licence
- No direct access from a betting shop to another premises used for the retail sale of merchandise or services. In effect there cannot be an entrance to a betting shop from a shop of any kind and you could not have a betting shop at the back of a café – the whole area would have to be licensed.

Tracks

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

Bingo Premises

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

Family Entertainment Centre

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

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

1.8 Premises “ready for gambling”

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

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

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

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

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

1.10 More detailed examples of the circumstances in which such a licence may be granted can be found at paragraphs 7.59 – 7.66 of the Guidance.

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

merits, with the onus upon the applicant showing how potential concerns can be overcome.

1.12 **Planning:**

The Guidance states:

Paragraph - 7.59 – In determining applications the licensing authority has a duty to take into consideration all relevant matters and not to take into consideration any irrelevant matters, i.e. those not related to gambling and the licensing objectives. One example of an irrelevant matter would be the likelihood of the applicant obtaining planning permission or building regulations approval for their proposal.

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

Paragraph - 7.66 - When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have or comply with the necessary planning or building consents. Those matters should be dealt with under relevant planning control and building regulation powers, and not form part of the consideration for the premises licence. Section 210 of the Act prevents licensing authorities taking into account the likelihood of the proposal by the applicant obtaining planning or building consent when considering a premises licence application. Equally the grant of a gambling premises licence does not prejudice or prevent any action that may be appropriate under the law relating to planning or building.

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

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

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

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

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

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

- 1.23 This authority will also ensure that where category C or above machines are on offer in premises to which children are admitted:
- all such machines are located in an area of the premises which is separated from the remainder of the premises by a physical barrier which is effective to prevent access other than through a designated entrance;
 - only adults are admitted to the area where these machines are located;
 - access to the area where the machines are located is supervised;
 - the area where these machines are located is arranged so that it can be observed by the staff or the licence holder; and
 - at the entrance to and inside any such areas there are prominently displayed notices indicating that access to the area is prohibited to persons under 18.
- These considerations will apply to premises including buildings where multiple premises licences are applicable.

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

- 1.25 It is noted that there are conditions which the licensing authority cannot attach to premises licences which are:
- any condition on the premises licence which makes it impossible to comply with an operating licence condition;
 - conditions relating to gaming machine categories, numbers, or method of operation;
 - conditions which provide that membership of a club or body be required (the Gambling Act 2005 specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated); and
 - conditions in relation to stakes, fees, winnings or prizes.

- 1.26 **Door Supervisors** - The Gambling Commission advises in its Guidance that if a licensing authority is concerned that a premises may attract disorder or be subject to attempts at unauthorised access (for example by children and young persons) then it may require that the entrances to the premises are controlled by a door supervisor, and is entitled to impose a premises licence condition to this effect.

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

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

2 Adult Gaming Centres

2.1 This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the premises. Appropriate licence conditions may cover the following issues:

- CCTV
- Door supervisors
- Location of entry
- Notices/signage
- Physical separation of areas
- Proof of age schemes
- Provision information leaflets helpline numbers for organisations such as GamCare.
- Self-exclusion schemes
- Specific opening hours
- Supervision of entrances/machine areas

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

2.2 The question of sub-division of such premises has been the subject of further Gambling Commission Guidance. This Licensing Authority will have regard to any relevant additional guidance that may be issued by the Gambling Commission in respect to such applications any decision-making.

2.3 This Authority accepts that there must be no direct entry from one adult gaming centre into another and will have regard to any relevant guidance issued by the Gambling Commission in respect to such applications.

3 (Licensed) Family Entertainment Centres

3.1 This licensing authority will specifically have regard to the need to protect children and vulnerable persons from harm or being exploited by gambling and will expect the applicant to satisfy the authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only gaming machine areas.

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

- CCTV
- Door supervisors
- Location of entry
- Measures/training for staff on how to deal with suspected truant school children on the premises
- Notice/signage
- Physical separation of areas
- Proof of age schemes
- Provision of information leaflets/helpline numbers for organisations such as GamCare.
- Self-exclusion schemes
- Specific opening hours
- Supervision of entrances / machine areas

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

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

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

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

4 Casinos

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

5 Bingo premises

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

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

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

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

6 Betting premises

Betting machines

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

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

Factors to be taken into consideration will include the following:

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

7 Tracks

- 7.1 This licensing authority is aware that tracks may be subject to more than one premises licence, provided each licence relates to a specified area of the track. In line with the Gambling Commission's Guidance, this licensing authority will especially consider the impact upon the third licensing objective (that is the protection of children and vulnerable persons from being harmed or exploited by gambling) and the need to ensure that entrances to each type of premises are distinct and that children are excluded from gambling areas where they are not permitted to enter.
- 7.2 This authority will therefore expect the premises licence applicant to demonstrate suitable measures to ensure that children do not have access to adult only gaming facilities. It is noted that children and young persons will be permitted to enter track areas where facilities for betting are provided on days when dog-racing and/or horse racing takes place, but that they are still prevented from entering areas where gaming machines (other than category D machines) are provided.
- 7.3 This licensing authority may consider measures to meet the licensing objectives including those relating to:
- CCTV
 - Location of entry
 - Notices/signage
 - Physical separation of areas
 - Proof of age schemes
 - Provision of information leaflets/helpline numbers for organisations such as GamCare

- Self-exclusion schemes
- Specific opening hours
- Supervision of entrances / machine areas

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

7.4 Gaming Machines

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

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

7.5 Betting Machines

This licensing authority will, in line with part 6 of the Guidance, take into account the size of the premises and the ability of staff to monitor the use of the machines by children and young persons (it is an offence for those under 18 to bet) or by vulnerable people, when considering the number/nature/circumstances of betting machines an operator proposes to offer.

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

7.6 Applications and plans

The Act (s151) requires applicants to submit plans of the premises with their application, in order to ensure that this licensing authority has the necessary information to make an informed judgement about whether the premises are fit for gambling. The plan will also be used for this licensing authority to plan future premises inspection activity.

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

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

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

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

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

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

8 Travelling Fairs

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

9 Provisional Statements

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

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

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

10 Reviews

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

PART C

Permits / Temporary & Occasional Use Notice

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

1.1 Where an establishment does not hold a Premises Licence but wishes to provide gaming machines, it may apply to the licensing authority for this permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use (Section 238).

1.2 The Gambling Act 2005 states that a licensing authority may prepare a **statement of principles** that they propose to consider in determining the suitability of an applicant for a permit and in preparing this statement, and/or considering applications, it need not (but may) have regard to the licensing objectives and shall have regard to any relevant guidance issued by the Commission under section 25. The Gambling Commission's Guidance for local authorities also states: "In their three year Statement of Principles (Licensing Policy), licensing authorities may include a statement of principles that they propose to apply when exercising their functions in considering applications for permits, licensing authorities will want to give weight to child protection issues." (Guidance Paragraph 24.6)

1.3 Guidance also states: "...An application for a permit may be granted only if the licensing authority is satisfied that the premises will be used as an unlicensed Family Entertainment Centre, and if the chief officer of police has been consulted on the application . . ." This Licensing Authority will require the applicant to demonstrate:

- a full understanding of the maximum stakes and prizes of the gambling that is permissible in unlicensed Family Entertainment Centres;
- that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act; and
- that staff are trained to have a full understanding of the maximum stakes and prizes. (Guidance Paragraph 24.7)

1.4 It should be noted that a licensing authority cannot attach conditions to this type of permit.

1.5 Statement of Principles

1.5.1 This licensing authority has adopted a Statement of Principles in accordance with Paragraph 7 of Schedule 10 of the Act and they are for the purposes of clarifying the measures that the council will expect applicants to demonstrate when applying for a permit for an unlicensed family entertainment centre. This will allow the council to better determine the suitability of the applicant and the premises for a permit.

1.5.2 Within this process the council will aim to grant the permit where the applicant is able to demonstrate that:

- they are a fit and proper person to hold the permit
- they have considered and are proposing suitable measures to promote the licensing objectives, and
- they have a legal right to occupy the premises to which the permit is sought.

- 1.5.3 The measures suggested in this document should be read as guidance only and the council will be happy for applicants to suggest measures above and beyond those listed in the document and or to substitute measures as appropriate.

1.6 Unlicensed family entertainment centres

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

1.7 Supporting documents

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

- (iv) the location of any fixed or semi-fixed counters, booths or offices on the premises whereby staff monitor the customer floor area
- (v) the location of any ATM/cash machines or change machines
- (vi) the location of any fixed or temporary structures such as columns or pillars
- (vii) the location and height of any stages in the premises; any steps, stairs, elevators, balconies or lifts in the premises
- (viii) the location of any public toilets in the building

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

1.8 Child protection issues

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

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

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

1.9 Protection of Vulnerable Persons Issues

1.9.1 The council will expect the applicant to show that there are policies and procedures in place to protect vulnerable persons. Applicants should refer to the section in the council's 'Statement of Licensing Policy under the Gambling Act 2005' to familiarise themselves with who the council considers vulnerable. The council will assess these policies and procedures on their merits, however, they may (depending on the

particular permit being applied for) include appropriate measures / training for staff relating to the following:

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

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

1.10 Other miscellaneous issues

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

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

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

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

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

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

2.1 Automatic Entitlement for two machines

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

- provision of the machines is not reasonably consistent with the pursuit of the licensing objectives;
- gaming has taken place on the premises that breaches a condition of section 282 of the Gambling Act (i.e. that written notice has been provided to the licensing authority, that a fee has been provided and that any relevant code of practice issued by the Gambling Commission about the location and operation of the machine has been complied with);

- the premises are mainly used for gaming; or
 - an offence under the Gambling Act has been committed on the premises
- The Licensing Authority will use its discretion to remove permits where appropriate taking into account individual circumstances.

2.2 **Permit - three or more machines**

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

- 2.3 It is recognised that some alcohol-licensed premises may apply for a premises licence for their non-alcohol licensed areas. Any such application would most likely need to be applied for, and dealt with as an Adult Gaming Centre premises licence.
- 2.4 It should be noted that the licensing authority can decide to grant the application with a smaller number of machines and/or a different category of machines than that applied for. Conditions (other than these) cannot be attached.
- 2.5 It should also be noted that the holder of a permit to must comply with any Code of Practice issued by the Gambling Commission about the location and operation of the machine.

Applicants should be aware that only those premises which have a 'bar' (servery) at which alcohol is sold for consumption on the premises will be eligible for a machine in the bar area of the premises. This means that premises such as restaurants which do not have a bar for serving drinks or can only sell alcoholic drinks as an ancillary to food (the old Part IV restaurant licences under the former Licensing Act 1964) will no longer automatically qualify for two machines.

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

- 3.1 The Gambling Act 2005 states that a licensing authority may "prepare a statement of principles that they propose to apply in exercising their functions under this Schedule" which "may, in particular, specify matters that the licensing authority propose to consider in determining the suitability of the applicant for a permit".
- 3.2 **Statement of Principles**
- 3.2.1 This licensing authority has adopted a Statement of Principles in accordance with paragraph 8 of Schedule 14 of the Act and they are for the purposes of clarifying the

measures that the council will expect applicants to demonstrate when applying for a prize gaming permit. This will allow the council to better determine the suitability of the applicant and the premises for a permit.

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

3.3 Prize gaming permits

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

3.4 Supporting documents

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

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

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

3.5 Child protection issues

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

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

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

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

3.6 Protection of Vulnerable Persons Issues

- 3.6.1 The council will expect the applicant to show that there are policies and procedures in place to protect vulnerable persons. Applicants should refer to the section in the council's 'Statement of Licensing Policy under the Gambling Act 2005' to familiarise themselves with who the council considers vulnerable. The council will assess these policies and procedures on their merits, however, they may (depending on the particular permit being applied for) include appropriate measures / training for staff relating to the following:
- display Gamcare helpline stickers on all gaming machines
 - display Gamcare posters in prominent locations on the premises
 - training for staff members which focuses on building an employee's ability to maintain a sense of awareness of how much (e.g. how long) customers are gambling, as part of measures to detect persons who may be vulnerable
 - consider appropriate positioning of ATM and change machines. (including the display of Gamcare stickers on any such machines.)

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

3.7 Other miscellaneous issues

- 3.7.1 The applicant should also be mindful of the following possible control measures (depending on the particular permit being applied for) to minimise crime and disorder and the possibility of public nuisance:
- maintain an effective CCTV system to monitor the interior and exterior of the premises
 - keep the exterior of the premises clean and tidy
 - ensure that external lighting is suitably positioned and operated so as not to cause nuisance to neighbouring or adjoining premises
 - consider the design and layout of the outside of the premises to deter the congregation of children and youths.

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

4 Club Gaming and Club Machine Permits

- 4.1 Members' Clubs (but not Commercial Clubs) may apply for a Club Gaming Permit or a Clubs Gaming Machine Permit. The Club Gaming Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D), equal chance gaming and games of chance as set out in forthcoming regulations. A Club Gaming Machine Permit will enable the premises to provide gaming machines (3 machines of categories B, C or D).
- 4.2 Gambling Commission Guidance states: "Members clubs must have at least 25 members and be established and conducted "wholly or mainly" for purposes other than gaming, unless the gaming is permitted by separate regulations. The Secretary of State has made regulation and these cover bridge and whist clubs, which replicates the position under the Gaming Act 1968. A members' club must be permanent in nature, not established to make commercial profit, and controlled by its members equally. Examples include working men's clubs, branches of Royal British Legion and clubs with political affiliations."
- 4.3 The Commission Guidance also notes that "licensing authorities may only refuse an application on the grounds that:
- (a) the applicant does not fulfil the requirements for a members' or commercial club or miners' welfare institute and therefore is not entitled to receive the type of permit for which it has applied;
 - (b) the applicant's premises are used wholly or mainly by children and/or young persons;
 - (c) an offence under the Act or a breach of a permit has been committed by the applicant while providing gaming facilities;
 - (d) a permit held by the applicant has been cancelled in the previous ten years; or
 - (e) an objection has been lodged by the Commission or the police.
- 4.4 There is also a 'fast-track' procedure available under the Act for premises which hold a Club Premises Certificate under the Licensing Act 2003 (Schedule 12 paragraph 10). As the Gambling Commission's Guidance to licensing authorities states: "Under the fast-track procedure there is no opportunity for objections to be made by the Commission or the police, and the ground upon which an authority can refuse a permit are reduced"
- The grounds on which an application under the process may be refused are:
- (a) that the club is established primarily for gaming, other than gaming prescribed under schedule 12;
 - (b) that in addition to the prescribed gaming, the applicant provides facilities for other gaming; or
 - (c) that a club gaming permit or club machine permit issued to the applicant in the last ten years has been cancelled."
- 4.5 There are statutory conditions on club gaming permits that no child uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines.

5 Temporary Use Notices

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

6 Occasional Use Notices

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

7 Vessels

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

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

Relevant Authorities' Contact Details

Responsible Authority Contacts -

The list of Responsible Authorities and their contact details may change where additional responsible authorities are designated by regulations from the Secretary of State or existing Responsible Authorities change their address (last updated 22.11.2011).

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

East Devon Licensing Authority

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

The Gambling Commission

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

Devon & Cornwall Constabulary

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

Devon and Somerset Fire & Rescue Service

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

Area Child Protection Committee and Local Safeguarding Children Board

Devon Safeguarding Children's Board

Parkers Barn

Parkers Way

Totnes

TQ9 5UF

Email CPChecks@devon.qcsx.gov.uk

<http://www.devon.gov.uk/index/cyps/child-protection.htm>

Environmental Health (Environmental Health and Parking Services Manager)

(Nuisance, Public Health & Health & Safety)

East Devon District Council

Environmental Health Service

Council Offices

Knowle

SIDMOUTH

EX10 8HL

Tel: 01395 517467

Email: environmentalhealth@eastdevon.gov.uk

www.eastdevon.gov.uk

Head of Planning

East Devon District Council

Planning & Countryside Service

Council Offices

Knowle

SIDMOUTH

EX10 8HL

www.eastdevon.gov.uk

Tel: 01395 516551

HM Customs and Excise

HM Revenue and Customs

National Registration Unit

Portcullis House

21 India Street

Glasgow

G2 4PZ

Tel: 0141 555 3633

Email: nru.betting&gaming@hmrc.gsi.gov.uk

Additional Responsible Authority Contacts for vessels –

Maritime and Coastguard Agency

(For attention of Mr Tony Heslop)

Plymouth Marine Office

Western Region

New Fish Market,

Fish Quay

PLYMOUTH

PL4 0LH

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

Tel: (01752) 266 211

GLOSSARY

DCMS - Department of Culture, Media, and Sport

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

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

Responsible Authority –

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

DCMS - Department for Culture, Media and Sport

[http://www.culture.gov.uk/what we do/gambling and racing/default.aspx/](http://www.culture.gov.uk/what%20we%20do/gambling%20and%20racing/default.aspx/)
Licensing Documents...
Gambling Act 2005
Guidance under Section 25 of the Act

Consultation on the Draft Statement of Licensing Policy under the Gambling Act 2005



Summary of main changes

Part A	Brief Description
1.2	An emphasis of the Gambling Commission's advice to the Licensing Authority on what it should consider when deciding to reject an application. In particular what the Authority will not consider.
Part B	
1.6	Prior to the definition of "Premises" being extensively reworded to reflect the LACORS and Gambling Commission's Guidance in 2009 the District have some premises that were granted licences in the early days of this legislation and may not now comply with the new definition. This paragraph puts those premises on notice that if they fail to abide by the Licensing Objectives, in particular the one relating to the protection of children and vulnerable persons they may face a review in the light of the amended guidance.
2.2 & 2.3	These two paragraphs are intended to emphasise the change of definition of "Premises" relating to Adult Gaming Centres following the LACORS and Gambling Commission's Guidance in 2009 and the District's changes to its Policy in 2009 to reflect that advice.
5.1 (2 nd Para)	This additional sentence at the end of the 2 nd paragraph is intended to emphasise the change of definition of "Premises" relating to Bingo premises following the LACORS and Gambling Commission's Guidance in 2009 and the District's changes to its Policy in 2009 to reflect that advice.
6 (Penultimate Para)	This change relates to the sighting of gaming machines in Betting (shops) premises to ensure better supervision. This follows difficulties identified in other parts of the region with underage use of large payout machines in betting shops
7.4 (2 nd Para)	This change relates to the sighting of gaming machines to ensure better supervision.
7.5 (2 nd Para)	This change relates to the sighting of betting machines to ensure better supervision.

Please note: That the minor alterations (i.e. dates/grammar etc.) made to the draft Policy are not included in this list.

Consultation commenced June 2012

Closing date for comments/responses Monday 17 September 2012

APPENDIX C

Key Organisations consulted by the Licensing Manager – July/September 2012

List of persons this authority consulted

- All premises with licences for gambling activities in East Devon
- British Beer and Pub Association
- Catholic Church in England and Wales
- Companies that supply gaming machines to premises in East Devon
- Chambers of Commerce in East Devon
- Citizens' Advice Bureaux
- Catholic Office for the Protection of Children and Vulnerable Adults (COPCA)
- Children and Young People's Services Devon County Council
- Devon PCT
- Devon and Cornwall Constabulary
- Devon and Somerset Fire and Rescue Service
- Devon Licensing Officers Group
- Devon Regional Office of Federation of Small Businesses
- East and Mid Devon Community Safety Partnership
- Exeter Diocesan Registry
- Gambling Commission
- Gamcare
- HM Customs and Revenue
- Head of Environmental Health Service
- Head of Planning and Countryside Service
- Health and Safety Executive
- Head Teachers of all Secondary Schools in East Devon
- Institute of Licensing
- Maritime and Coastguard Agency
- Muslim Council of Britain
- North and East Devon Health Authority
- South West Forum
- Trustees for Methodist Church Purposes
- Town and Parish Councils within East Devon

Agenda Item 9

Licensing & Enforcement Committee

20 November 2012

JT



An Explanation of New Licensing Legislation which is likely to have a major effect on the Late Night Economy and those living in the District

- (1) Police Reform and Social Responsibility Act 2011 – Late Night Levy/Early Morning Restriction Orders**
- (2) The Live Music Act 2012**

Summary

An explanation to Members of the Licensing and Enforcement Committee about the new licensing powers introduced by the Police Reform & Social Responsibility Act 2011 and the changes brought about by the Live Music Act 2012.

Recommendation

- (1) that Members note the content of the report,
- (2) that where the need is identified the Authority's Statement of Licensing Policy be revised to take account of the Late Night Levy, Early Morning Restriction Orders and the changes brought about by the Live Music Act 2012; and
- (3) that information on the Late Night Levy, Early Morning Restriction Orders and the Live Music Act 2012 be disseminated to licence holders in the next licensing newsletter and on the Authority's website.

a) Reasons for Recommendation

To brief Members about the new licensing powers introduced by the Police Reform & Social Responsibility Act 2011 and the changes brought about by the Live Music Act 2012.

b) Alternative Options

None

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

There will be a significant amount of officer time involved in administering the Late Night Levy or an Early Morning Restriction Orders (EMRO). In the case of the Levy, these costs can be recovered from the revenue generated but there is no similar provision for an EMRO. There will also be costs involved in making and advertising the necessary Orders. It is too early to quantify these costs with any accuracy. It is

also anticipated that the Authority's Licensing Act 2003 Licensing Policy will require amendment to incorporate some of these changes.

e) **Date for Review of Decision**

N/A

1 Introduction

- 1.1 The Police Reform and Social Responsibility Act received Royal Assent on 15 September 2011. The main purpose of the Act was to 're-balance' the Licensing Act 2003 by giving more power to licensing authorities and local communities. Some of these changes (for example removing the vicinity test, reducing the burden of proof and introducing changes for temporary event notices) came into effect in April this year. Members have received several update reports on these changes, the latest being at your meeting on the 1 June this year. However, some of the more far-reaching powers contained in the Act only came into force on 31 October. The Home Office has now published regulations governing two of these powers: the Late Night Levy and Early Morning Restriction Orders (EMRO). This report provides Members with further detail on these important elements of the legislation. The opportunity is also taken to explain the changes brought about by the Live Music Act 2012 which came into effect on 1 October.

2 The Late Night Levy

- 2.1 The Act gives licensing authorities the power to raise a financial contribution from late opening alcohol-licensed premises ('on' and 'off' sales) towards the cost of policing the night time economy. In deciding whether to apply the Levy, the licensing authority must consider:

"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 6.00 am" (PRSRA, s.125(3)).

- 2.2 If adopted the Levy must be applied to the whole of the local authority area. The licensing authority will be able to choose the period (between midnight and 6.00 am) during which the levy will apply and can decide, within the parameters allowed by the legislation, what exemptions and reductions should apply. The late night supply period must begin at or after midnight and end at or before 6am. The licensing authority can decide the times within the late-night supply period at which the levy will apply (which must be the same every day). The late-night supply period cannot apply on different days or times.

- 2.3 Licensing authorities will have discretion to exempt the following premises from the Levy:

- Premises with overnight accommodation (e.g. hotels, guest houses). However an exemption can apply only where their licences only permit the sale of alcohol between midnight and 6.00 am (a) to a person who is staying at the premises (not their guests) and (b) for consumption on the premises.
- Theatres and cinemas
- Bingo halls
- Community premises (village halls and similar)



- ❑ Participants in Business Improvement Districts (currently none in East Devon)
- ❑ Community Amateur Sports Clubs
- ❑ Public houses entitled to rural rate relief (there are 12 within East Devon)
- ❑ Premises which are licensed to supply alcohol between midnight and 6.00 am on New Year's Eve – this will allow all premises licensed to sell alcohol after midnight to stay open on New Years Eve without having to pay a levy.

2.4 At least 70% of the proceeds generated by the Levy must go to the police (although there is no requirement for the police to spend their share in East Devon) with the remaining 30% going to the District Council to fund relevant crime prevention initiatives (connected with the late night economy). The potential yield from the Levy (once exempt premises have been excluded) is likely to be relatively low - particularly the later it is imposed. At the time of preparing this report Licensing staff are working to assess the possible amounts involved. It is planned to provide the Committee with approximate figures at its meeting on the 20 November. This will be **Appendix A** however the figures will only be a rough estimate as a number of assumptions will need to be made but may not follow through in the longer term.

2.5 The levy rates have been set by central government and are shown in the table below.

Rateable Value Bands	Amount of Levy
£0 - £4,300	£299
£4,301 - £33,000	£768
£33,001 - £87,000	£1,259
£87,001 - £125,000	£1,365
Over £125,000	£1,493

2.6 Regulations also permit the licensing authority to allow a reduction of 30% in the amount of the Levy for premises which are members of best practice schemes such as Pubwatch, Best Bar None etc. and licensed premises which are entitled to small business rate relief.

2.7 Before introducing the Levy, the licensing authority must consult the local police force, the Chief Officer of Police for the area and the holders of 'relevant late night authorisations'¹. The Authority must also publish a notice of the proposal and send this to the above persons. In contrast to an EMRO, there is no provision for persons to make representations about a proposal to introduce the Levy. However, the Authority must fully consider all responses to the consultation before making an Order. Licence holders who wish to 'escape' the Levy will be able to apply for a free minor variation, to reduce their alcohol licensing hours prior to the Levy coming into force. The Levy does not apply to premises licensed only for regulated entertainment or late night refreshment. Meaning that 'taking away' style premises are automatically exempt. This is a surprising omission given the issues these premises cause.

2.8 The decision to introduce the levy is for the licensing authority to make and any decision to introduce it, and its

¹ 'Relevant late night authorisation' – a premises licence or Club Premises Certificate which authorises the supply of alcohol at any time during the proposed period during which the Levy will apply.

design, must be put to full Council for approval. The guidance advises licensing authorities to consider the need for a levy with the chief officer of police and police and crime commissioner ("PCC") for the police area. Local residents can use existing channels and forums to put forward views and call for the implementation or not of the levy in their area. It is understood that the Devon and Cornwall Constabulary intend to encourage all Councils within the force area to introduce the levy however before the force does so senior officers first wish to discuss this with the new police and crime commissioner. For the time being this Authority may wish not rush any decision and to adopt a wait and see approach, awaiting developments from the police and what the approach is generally across the country

- 2.9 Licensing authorities will be able to deduct certain specified expenses from the proceeds of the Levy to cover administration and enforcement costs. These expenses are widely expected to be quite high, especially during the introduction period – possible in the region of £10,000 in the first year and £5,000 in following years. However it is too early to quantify the costs with any accuracy. The Council must also publish estimates of expenses at the beginning of the Levy year and statements of receipts at the end of the Levy year.
- 2.10 The Authority can amend or vary the Levy at any time after its introduction in accordance with Regulations. This includes the late-night supply period and any exemptions or reductions that may apply. However as mentioned earlier in this report central government sets the levy amounts and if adopted the Levy must apply across the whole district.
- 2.11 Non-payment of the Levy will result in suspension of licence/certificate by the Authority in the same way that we can do now for failure to pay the annual fee.
- 2.12 There is no provision for appeal against a local authority's decision to apply the Late Night Levy. Any challenge would be by way of judicial review on the grounds that the Authority had not followed proper procedures and/or had made an irrational decision.
- 2.13 Licensing Manager's Comment on the Late Night Levy**
- 2.13.1 It is very possible that the Levy is unlikely to be viable in a rural area such as East Devon. Discussions with Licensing Managers from other rural Devon authorities have revealed similar concerns. It is anticipated that there will be interest from the police who see the Levy as a useful method of raising revenue to fund additional policing resources. For local authorities, however, the financial benefits are dubious. By the time administrative costs have been deducted and certain types of premises excluded from the Levy, the net yield is likely to be lower than many anticipate. The proposed levies are significant - £768 for a Band B premises represents a substantial extra cost on business in difficult economic times – and it is likely that there will be a great financial incentive for licence holders to resist and challenge its imposition.
- 2.13.2 The Levy is perceived as being a 'blunt instrument'. It may be viable for urban authorities where there is a high concentration of premises in a relatively small area but it may prove inappropriate for a rural authority.
- 2.13.3 Should the Licensing Authority decide to consider the Levy option, the council will need to exercise great care to ensure the fairness of the consultation procedure, proper consideration of responses and the robustness of its decision-making process in order to avoid legal challenge.



- 2.13.4 There will be a significant amount of officer time involved in administering the Late Night Levy. These costs can be recovered from the revenue generated and there will also be costs involved in preparing for and advertising the Levy.

3 Early Morning Restriction Orders

- 3.1 An Early Morning Restriction Order (EMRO) is a power which will enable a licensing authority to restrict the sale of alcohol if it considers this appropriate for the promotion of the licensing objectives. Unlike the Levy, the authority may make an Order for the whole or a part of its area. (This could extend to a town centre or a single street where problems associated with late night drinking have been identified). An EMRO is intended to be a flexible tool which may be applied for any period between midnight and 6.00 am and may be for a finite period or of unlimited duration. It may be made for the same period every day or for different periods on different days.
- 3.2 An application for an EMRO may be made by a member of the public, an organisation or a statutory authority. Licensing authorities will be required to justify an EMRO so any person applying for an EMRO would be expected to produce robust evidence in support of their application.
- 3.3 The Act sets out the procedural requirements for making an EMRO including advertisement of a proposed Order (for a period of no less than 42 days). A Responsible Authority and any person who is likely to be affected by an EMRO may make representations to the licensing authority about the Order and, provided they are relevant, this will trigger a hearing. This could be potentially burdensome to a licensing authority if a high number of representations are received.
- 3.4 The only exceptions to an EMRO will be:
- Premises authorised to sell alcohol between midnight and 6.00 am on New Year's Eve
 - Premises such as hotels or similar premises supplying alcohol to persons consuming alcohol in the privacy of their room.
- 3.5 A licensing authority may vary or revoke an EMRO at any time but must follow the same procedures as for making an Order
- 3.6 It is important to note that an EMRO restricts just the sale of alcohol and not consumption. It does not require premises to close at a specified time. This is a potential weakness in the legislation as there is nothing to prevent a person from ordering alcohol prior to the commencement hour of the Order and consuming it afterwards during such time as the premises is permitted to stay open.
- 3.7 There is no provision for appeal against a local authority's decision to make an EMRO. Any challenge would, as in the case of the levy, be by way of judicial review.
- 3.8 **Licensing Manager's Comment on Early Morning Restriction Orders**
- 3.8.1 This is likely to be a more attractive mechanism for tackling problems associated with late night drinking. It can be targeted at a specific area (or areas) where there is

evidence of alcohol-related crime and disorder and is more flexible in its application. However, it must be evidence-based and any licensing authority contemplating making an Order will need to give careful consideration to the area(s) to be covered and the potential impact on the night time economy. It could have an adverse effect on local businesses, deter local investment and simply displace activity into other areas or other towns. However, used with sensitivity and discretion, it could be an effective method to tackle localised problems in the night time economy.

3.8.2 As with the levy Licensing Authorities will need to exercise great care to ensure the fairness of the consultation procedure, proper consideration of responses and the robustness of its decision-making process in order to avoid legal challenge.

3.8.3 There will be a significant amount of officer time involved in administering Early Morning Restriction Orders. Unlike the Late Night Levy these costs can not be recovered from an additional levy. There will also be additional costs involved in preparing and advertising the necessary Orders.

4 The Live Music Act 2012

4.1 Live music is regulated by the Licensing Act 2003 however with the introduction of the Live Music Act 2012 on 1 October 2012 it has meant that some aspects of live music performance regulation has been relaxed.

4.2 Unamplified Music

As from 1 October 2012 permission is not needed for performances of live unamplified music between 8.00am and 11.00pm. Live unamplified music may take place anywhere (this means indoors or outdoors in any place) between the hours of 8am and 11pm on the same day regardless of audience size without licensing requirements.

4.3 Live Amplified Music

The rules are different with performances of amplified music. Live amplified music ceases to be regulated by the Licensing Act 2003 if all the following conditions are met:

- There is a Premises Licence or Club Premises Certificate in operation that permits on-sales of alcohol
- The premises to which the licence or certificate applies is open for sale or supply of alcohol on the premises
- Live music is only performed inside the hours of 8.00 am until 11.00pm on the same day
- The audience size is not greater than 200 people

4.4 Many of our community premises/village halls are not included in the Live Amplified Music exemption unless they hold a Premises Licence or Club Premises Certificate that permits on-sales of alcohol. Most of our community premises are not licensed to sell alcohol and in any case those that are can only use the exemption when they are actually selling/supplying alcohol.

4.5 Existing conditions attached to licences

The legislation provides for all conditions attached to a Premises Licences or Club Premises Certificates relating to



live music to be suspended whilst unregulated live music is taking place during the period 8.00 am and 11.00 pm. For example from the 1 October if the premises is currently licensed for live music until 12 midnight the licence should be regarded as not existing between 8.00 am and 11.00 pm for the performance of live music providing there is compliance with the requirements of paragraph 1.4.2 or 1.4.3. However if the event continues after 11.00 pm the provisions of the existing licence take effect meaning that there must be compliance with all conditions attached to a Premises Licences or Club Premises Certificates relating to live music.

4.6 In practical terms it will suspend any existing conditions on premises licences and club premises certificates that relate to live music between the hours of 8.00 am and 11.00 pm. The conditions have to specifically relate to live music – an example would be doors and windows to remain closed while amplified music is played. It does not include the kind of conditions that ask customers to leave quietly and those would remain.

4.7 The capacity of 200 is interesting as a large pub with separate rooms could, potentially have live music in one room for 200 people and a disco in another for 200 more people. If the second event was a disco then all the noise-related conditions would apply to the room in which the disco was being held.

4.8 Performances of live music in the workplace

Performances of live music (both amplified and unamplified) in the work place will not be regulated for audiences not exceeding 200 persons (there is no capacity limit for unamplified live music) between the hours of 8.00 am and 11.00 pm on the same day. A beer garden is often not include within the licensed area of a premises licence and the Department for Culture, Music and Sport has indicated that in those case they should be considered a workplace for the purposes of this legislation.

4.9 Enforcement

4.9.1 All persons responsible for any musical performances will need to comply with all related legislation including noise nuisance legislation.

4.9.2 Should noise nuisance become a problem with a premises that holds an existing Premises Licence or Club Premises Certificate then at any time the licensing authority as a responsible authority, any other responsible authority or any other person may apply for a review of the licence or club certificate. At the subsequent hearing members may decide to reinstate the live music conditions, perhaps add new ones or apply new conditions to premises that had not previously been licensed for live music as they might decide that live music was now a licensable activity on those premises. In other words if the situation warrants it in relation to a specific licensed premises the Licensing Authority at a review could decide to reinstate the requirement for live music to be controlled by the licence.

4.9.3 The responsible authority which is likely to be engaged here is Environmental Health and Environmental Health Officers would need to gather evidence in order to persuade members that the conditions need to be applied. This is the same as any other representations that Environmental Health may make on licensed premises and will still be based on the licensing objectives, the primary one here being the prevention of public nuisance.

5. Entertainment Facilities

5.1 The Live Music Act 2012 changed the law in relation to the provision of Entertainment facilities. Facilities for entertainment no longer need to be licensed and as licences pass through the Licensing Office for variations; change of DPS etc. the licences will be amended to remove Entertainment facilities.

6. Morris Dancing and dancing of a similar type

6.1 Finally the Live Music Act 2012 widens the licensing exemption for live music integral to a performance of Morris dancing or dancing of a similar type, so that the exemption applies to live or recorded music instead of just unamplified live music.

Legal Implications

The legal context and implications are contained within the report and require no further comment.

Financial Implications

If introduced, Late Night Levy costs will be covered from the income generated from the levy. However there are financial implications from introducing Early Morning Restriction Orders as there is no income generated. This will need to be looked at in more detail if they are to be used.

Appendices

Estimates of potential yield should a Late Night Levy be introduced in the District

Appendix A

Background Papers

- Police Reform and Social Responsibility Act 2011
- Licensing Act 2003
- Live Music Act 2012
- Guidance issued by the Home Office on the Late Night Levy and Early Morning Restriction Orders
- Guidance issued by the Department for Culture, Music and Sport on the Live Music Act 2012

John Tippin Ext 2787
Licensing Manager

Licensing & Enforcement Committee
20 November 2012



