

Report to: Licensing and Enforcement Committee



Date of Meeting 17 November 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A.

---

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

### Report summary:

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

Is the proposed decision in accordance with:

Budget Yes  No

Policy Framework Yes  No

### Recommendation:

That the report be noted

### Reason for recommendation:

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

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

---

Portfolio(s) (check which apply):

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

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk; .

**Links to background information.**

Link to [Council Plan](#)

Priorities (check which apply)

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

## Report in full

### 1 Licensing Act 2003

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

- 1.1.1 This report informs the Committee of work undertaken by the licensing team and also with regard to any strategic or national updates for each area of work that the team oversees. It covers the period from July to November 2021.
- 1.1.2 The increase in Licensing Act applications reported to this Committee throughout the year has continued as we approach the end of 2021 and it has been possible to calculate the increase in comparison to previous years. The number of (premises) licences issued over the course of ten months this year increased by 53% over the same period last year. An 80% increase in licences issued was identified when comparing the same periods of 2018 and 2019. To date **137** applications for the variation, transfer or new licensed premises were processed and issued by the team this year. Applications continue as licensed businesses adapt and recover from the pandemic.
- 1.1.3 The removal of all national lockdown restrictions for licensed businesses ended on 19th July and there has been a welcome return to popular locations being able to arrange weddings and similar events. Increasing numbers of Temporary Event Notices (TENs) were received from event organisers over the summer months (indoor and outdoor) and with the number of applications returning to similar levels before the Coronavirus pandemic.
- 1.1.4 Licensing Act applications area complex and time consuming area of work that require extensive engagement before, during and after the 28 day consultation with applicants and with those submitting representations. The work involves reviewing applications, consulting on those accepted, checking notices and adverts, recording responses, engaging with authorities, mediation, and preparing Committee reports before issuing licences. The timescales for officers to assess acceptance or rejection is within 24 hours of receipt for some applications, which includes the web updates and consultations commencing. Regardless of any potential concerns or objections being anticipated, the licensing authority cannot refuse a properly prepared and paid application which must progress to consultation.
- 1.1.5 Officers have persisted with the necessary work that authorities undertake collecting annual licence fees payable by licensed businesses on the anniversary of each licence being issued. The Act is prescriptive in that a premises licence must be suspended for those failing to pay an annual fee and suspension cannot be lifted until payment is made. A licensee would commit an offence if he/she carried on licensable activities from the premises otherwise.

#### 1.2 Hearings

- 1.2.1 Licensing officers arrange mediation if appropriate when representations are received for new licensing applications and there were contested applications over the previous period.
- 1.2.2 Licensing sub-committee hearings have occurred on:
  - 11<sup>th</sup> July for a time limited premises licence for an outdoor music event in Kilminster that occurred shortly afterwards,
  - 8<sup>th</sup> September for a time limited premises licences for an outdoor festival planned in Sidmouth next year.
- 1.2.3 Officers are also preparing arrangements for a further Licensing sub-committee hearing planned for 24<sup>th</sup> November for a new licence application in Exmouth.

- 1.2.4 Over the course of the previous period it was evident that procedures for Licensing Act hearings and Planning hearings differ considerably which can cause frustration for the public. The guidance approved by this Committee has been circulated subsequently on occasions to help inform Councillors and the public with regard to submitting relevant representations.

## **2 Gambling Act 2005**

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

- 2.1.1 The Gambling Commission was set up under the Act in 2005 to regulate commercial gambling in partnership with licensing authorities and it has responsibility for licensing operators and for all online betting with a primary aim of preventing harm to the public. Local authorities oversee the gambling premises licensed in each district.
- 2.1.2 The Gambling Commission circulates a bulletin for licensing authorities outlining changes in legislation and any enforcement action taken. The latest bulletin can be viewed online at [September LA Bulletin \(campaign-archive.com\)](http://September LA Bulletin (campaign-archive.com))
- 2.1.3 It is mandatory under the Act that licensing authorities submit an annual return to the Commission detailing number of gambling licences, permits and notices managed along with details of inspections and enforcement work undertaken. Officers completed the return prior to the deadline of 30 October 2021. Responses are usually published by the Commission at a later date that will allow the details to be shared at a meeting of this Committee.
- 2.1.4 The annual return identified this licensing authority administered 1 Bingo Premises Licence, 4 Adult Gaming Centre Premises Licences, 11 Family Entertainment Centre Gaming Machine Permits, 7 Betting Premises Licences, 11 Club Machine Permits, 1 Prize Gaming Permit, 11 Alcohol Licensed Premises Gaming Machine Permits, and 138 Small Society Lotteries over the last year. In addition, 116 alcohol licensed premises gave notification of having gaming machines in public house premises.
- 2.1.5 A separate report has been prepared today with regard to adopting the Council's Gambling Policy from January 2022 to 2025. In line with that report, the need to develop a Local Area Profile was agreed and the Gambling Commission will provide a briefing to authorities on 8<sup>th</sup> November concerning Public Health England's evidence review on gambling related harms, being attended by the Licensing Manager. It is aimed at the public health community to share the key findings from the review to promote advancing work to tackle gambling related harms in the public health space. The briefing is expected to support the work to deliver a more meaningful Local Area Profile in the months ahead.

## **3 Taxis**

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

- 3.1.1 Last year officers circulated contact details for Devon County Council Transport Services to all licensed drivers to support options for gaining transport work during difficult times. The subsequent take up of licensed taxis and private hire vehicles undertaking educational and health related transport work has been confirmed by the trade. Gaining transport contracts that are managed by Devon County Council helped to supplement income for many drivers.
- 3.1.2 Although this authority ended its requirement in 2017 for all taxi licences to be renewed annually by 31<sup>st</sup> October, the proportion of licences that still have to be renewed each October are high, although numbers are decreasing. Each autumn presents the challenge of completing bulk licence renewals and officers again engaged early in the process with licensees, providing clear communication to support all renewing their licences.
- 3.1.3 The renewal work is shared within the licensing team with all staff rising to the challenge of increased demands this time of year. It can be a stressful period for companies renewing high

numbers of licences and when positive feedback is received it is always appreciated with a recent example from one company stating, “*Thank you so much for your very impressive response time to my recent requests for the re-licensing, and transfer of license for two of my vehicles. We really do appreciate your work, and helping to keep us on the roads providing the service for our local community.*”

3.1.4 The October renewal period usually sees a small number of licence holders choosing that time to retire and not renewing their licences. Following the renewal period, on 2<sup>nd</sup> November 2021 figures show an annual increase in all taxi and private hire licences managed by the licensing authority over the last year:

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

3.1.5 It is encouraging that a small upturn of licences has occurred in the district. National statistics for England and Wales collected by the Dept of Transport report that the total licensed taxi and private hire vehicles licensed fell by 15.9% and that taxi and driver licences fell by 5.7% nationally, being largely attributed to the pandemic.

[Taxi and Private Hire Vehicle Statistics: England 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

3.1.6 This trend has also been reported in the media and in early November, the Licensed Private Car Hire Association (LPCHA) estimated the industry is short of 160,000 of the previously 300,000-strong workforce who have not returned after the pandemic. The association has suggested that a backlog in some licensing and registration of vehicles, as well as criminal and medical checks for drivers, are partly to blame [BBC Online: Public safety fears due to taxi driver shortage](#)

3.1.7 That situation is not attributed to East Devon. Although there is a mandatory procedure for assessing all new and renewal applications against the ‘fit and proper’ test, there have been no back logs or delays for this authority when dealing with applications or during the recent ‘bulk’ taxi licence renewal period. It has been reported previously to this Committee that officers have worked diligently throughout the pandemic revising procedures to actively avoid delays in processing applications. Recently our officers shared with other Devon authorities a faster process for providing vehicle licence plates that we introduced through new working practices with the company producing taxi licence plates.

3.1.8 The contribution made by officers, Lucy Maxwell and Martha Loak has ensured that delays in issuing licences are not a factor for this Council. In addition, the involvement of Strata staff based in the digital mail room at Blackdown House offices has also contributed to supporting our licence holders over the last 18 months with receiving timely licence renewals.

## 3.2 Enforcement

3.2.1 The licensing team records and investigates complaints received from the public which is recognised as an effective procedure by the Department of Transport. Two complaints were received over the previous period regarding matters relating to failure to attend pre-booked appointments by licensed drivers (different proprietors in different locations). Officers always

follow up with contact and review on these occasions and any repeated course of behaviour can lead to enforcement.

### **3.3 Hearings**

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

### **3.4 Implementation of Tax Conditionality and Tax Checks**

3.4.1 Officers attended an online partnership meeting in October concerning a new requirement next year for tax checks regarding the industry. The government has legislated in the Finance Act 2021 to apply tax conditionality to licence applications for taxi and private hire drivers, private hire vehicle operators and scrap metal dealers. The legislation will come into effect on 4 April 2022 in England and Wales and it will place new obligations on licence applicants to complete a tax check which will be shared with licensing authorities to confirm that an applicant has completed a tax check before making a decision on the application.

3.4.2 The online briefing was provided by HMRC and attended by authorities and representatives from trade bodies. This is mandated in law and is in line with the government's tax consultation framework for which HMRC has published draft regulations for technical consultation. The draft regulations contain administrative details about how the tax check process will operate; in particular, how certain actions must be carried out and when certain actions take place. It is proposed that where a licensee doesn't complete and provide the necessary tax code that a licence renewal cannot proceed until received and checked by authorities. The draft regulations can be viewed here [Draft regulations: tax conditionality for the hidden economy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/draft-regulations-tax-conditionality-for-the-hidden-economy).

3.4.3 The additional tax code checking will be a new task required of officers from next April and being added to other similar tasks including provision of vehicle emission data and the increased frequency of DBS checking that was introduced under new Statutory Standards.

### **3.5 Taxi 'Statutory Standards' Taxi and Private Hire licences**

3.5.1 On 2<sup>nd</sup> November officers and members attended an online briefing regarding an update on the new Statutory Standards that authorities are required to incorporate within existing tax policies. It is an expectation that of the Department for Transport (DofT) for all licensing authorities to implement 'Statutory Standards' Taxi and Private Hire licences. The measures set-out a range of robust standards to protect passengers that licensing authorities should implement unless there is a compelling local reason for not doing so.

3.5.2 A previous meeting of this Committee resolved to adopt the Statutory Standards in two phases with changes to the frequency of Disclosure and Barring Service (DBS) checks now being adopted earlier this year. The second phase still requires a detailed review of the Statutory Standards in conjunction with our taxi policy before consulting licensees and stakeholders ahead of implementation in 2022.

3.5.3 This Council started from a positive position having introduced a comprehensive Taxi and Private Hire policy and keeping it under review since 2017. It is considered appropriate to adopt the Statutory Standards within the existing policy and authorities not adopting them will need to provide a rationale for failing to act.

3.5.4 The Minister for Roads, Buses and Places, Baroness Vere, wrote to all Council Leaders earlier this year expressing the expectation to sign up to the national taxi refusal database

known as NR3 and reinforced this approach at the recent online briefing this month. A bill is now in the process of being prepared to require all authorities to sign up by law.

3.5.5 This is a key area of work to be completed by this authority, along with all other Devon licensing authorities. It is a complex project and a mixed approach was reported at the recent briefing heard with some signing up, others signing up but not making use and many others not yet being in a position to complete the preparation work to sign up. This remains a key project for officers to move forward with in the months ahead in conjunction with fully revising the Council's Taxi and Private Hire policy.

3.5.6 This section of report is to inform members of the necessary work and the necessary officer time. Signing up to the national licensing database will allow secure information sharing on revoked or refused licences referred to as the 'NR3 Database' and the recent consolidation of staffing in the licensing team will support officers to concentrate on this. Over the forthcoming period it will be necessary for officers to progress:

- a Memorandum of Understanding under a Membership Agreement,
- The Licensing Authority will need to specify a Data Controller,
- Preparing policy together with need to contact licensees, including those previously subject of refusal or revocation (inclusion on the database requires consent of each party),
- IT compliance by working with Strata.

3.5.7 The costs for authorities to join the new register as a new member of between £130 and £265 and then with an annual membership fee of £1600 per year. It will be necessary to factor costs in to the 2022/23 budget with work by officers to progress that over the remainder of this financial year.

3.5.8 Phase one for implementing the Statutory Standards has been completed by requiring Disclosure and Barring Service (DBS) checks every six months being more frequent than previously. Full implementation of the Statutory Standards in conjunction with revising the Council's Taxi and Private Hire policy may have implications for passing on increased costs to the licence holders, that being a factor already highlighted by national trade associations as a further financial burden to the trade. The approach adopted by this Committee for a gradual, comprehensive review to fully revise the Taxi and Private Hire policy will enable the necessary work going forward to together with consulting stakeholders and licence holders to introduce the Statutory Standards.

3.5.9 In addition to the online update briefing provided earlier this month, the LGA has also prepared a handbook for Councillors to help understand some of the key issues concerning taxi and PHV licensing in this complex area of business regulation. The handbook outlines that it is not a replacement for the training necessary in this field:

[Councillor Handbook: Taxi and PHV Licensing | Local Government Association](#)

## **3.6 Taxi Tariffs Fares**

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

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

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

4.1.1. This council adopted policy in 2018 for the current street trading regime whereby most of the district is designated to allow street trading upon prior application and with consent. Currently

there are 25 Street Trading Consents in being across the district on public areas with a further 3 applications under consultation.

- 4.1.2 The level of street trading across the district has continued over the summer period and the uptake by new mobile businesses is one of the few growth areas during the pandemic. In recent months officers have been engaged in licensing arrangements for a number of outdoor events (alcohol and late night refreshments) that included the Ottery St Mary Tar Barrels event that officers also attend for compliance checks.

## **5.1 Pavement Licences**

- 5.1.1 The Business and Planning Act 2020 introduced a process to allow businesses selling food/drink to apply to the Local Authority for placing tables and chairs on a highway adjacent to their premises – a “temporary Pavement Licence”. This has been extended to allow applications up until 30 September 2022.
- 5.1.2 The take up by businesses applying to place tables and chair on highways has remained very low. With the County Council still retaining responsibility for permanent café pavement licences, businesses have not needed to apply for the temporary option.
- 5.1.3 There has been one application received over the previous period to renew an existing licence which upon on consultation was refused by Devon County Council highways being the landowner. For that reason, it is not procedurally possible to grant a licence contrary to refusal by the highways authority. That takes the total to one Pavement Licence issued by this Council. Consents granted on land owned by EDDC do not fall within this process, instead being managed by other Services under Sitting Out Consents or Lease agreements.

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

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

- 6.1.2 Quarterly meetings of this council’s Safety Advisory Group (SAG) occur to consider advanced planning for outdoor events although the number of events reduced significantly. The SAG operates as a multi-agency, non-statutory group that provides guidance to event organisers to support safely organised events licensed in the district. The meeting held over the previous period considered a reduced list of prospective events through to the end of this year and with a further meeting planned for next year.
- 6.1.3 Overall where an event organiser applies to run a safely organised and well planned event, the priority is to ensure that the latest government guidance, relevant at that time, is adhered to along with completing necessary risk assessments

## **7. Member Training**

- 7.1 Initial training was provided for Licensing and Enforcement Committee members in 2019 when delivered by leading expert, Phillip Kolvin QC who attended locations in the South West.
- 7.2 Training is mandatory to provide sufficient understanding for members to determine contested applications at licensing sub-committee hearings and to stand any challenges upon appeal. It was also highlighted recently during the online briefing for the new Statutory Standards that suitably trained Councillors are important in supporting the licensing regime
- 7.3 Further training opportunities have been offered by the Institute of Licensing for Councillors on 10<sup>th</sup> August and 13<sup>th</sup> October being delivered virtually through Zoom. Attendance benefits the pool of trained Councillors that can sit on hearings through a greater understanding of; Taxis and private hire vehicles - a basic overview

Licensing Act 2003 - a basic overview

General Principles concerning Councillor conduct

Hearings for Licensing Act 2003, Taxis and Private Hire

Decision making, Appeals and Conditions

- 7.4 Further virtual training dates are expected to be provided by the Institute early next year and officers have recently circulated an online training event occurring later this month that has availability for members to attend.

## **8. Licensing Team update**

- 8.1 The Licensing Manager has provided updates to this Committee concerning the challenges and the need to meet new and existing demands through growth within the team. The support and resolution of this Committee was evident and also appreciated. It has supported recruitment of one further Licensing Officer (full time) and one Licensing Support Officer (part time) to take place by the end of the year.
- 8.2 The need to manage more Licensing Act applications and contested hearings, the increased allowance for temporary event notices, additional procedural work checking Taxi and Private Hire licences and DBS vetting, together with implementing new Statutory Standards in the year ahead is achievable through the recent recruitment.
- 8.3 From December, the Licensing Team will consist of:  
Manager post (Full Time),  
4 Licensing Officer posts (2 Full Time and 2 Part Time)  
5 Licensing Support Officer posts (4 Part Time and 1 FT).
- 8.4 The Licensing Team also oversee burial and memorial requests in the three cemeteries managed by the Council, not being the responsibility of this Committee.
- 8.5 Officers will also be working with Strata in the months ahead with delivery for a number of IT projects in 2022.

---

### **Financial implications:**

Significant Officer time updating policies and records with the administration of DBS checks and Training for Licence Holders. Potential sanctions from Government if the draft standards have not been implemented. Other Financial costs have also been included within the body of the report

### **Legal implications:**

The legislative framework is set out within the report.