



LICENSING ACT 2003

Statement of Licensing Policy

**Environmental Health and
Housing Services**

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Licensing Statement of Policy 2019

Licensing Act 2003

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1 INTRODUCTION

NB. This Policy is intended to provide general guidance only. It does not constitute a definitive statement of law. Applicants who require legal advice on a specific licensing topic are advised to consult a licensing solicitor. Text in the shaded boxes is advisory or explanatory and intended only to give general assistance.

- 1.1 Section 5 of the Licensing Act 2003 requires each Licensing Authority “to determine a policy with respect to the exercise of its licensing functions”.

This Statement of Licensing Policy (“the Policy”) draws its authority from the Licensing Act 2003 (“the Act”) and has been prepared in accordance with revised Guidance issued by the Home Office under section 182 of the Act in 6 April 2018.

The Policy has four main purposes:

- to assist the Licensing Authority in determining licence applications in a consistent and equitable manner,
- to inform and advise applicants,
- to inform and advise residents and businesses, and
- to inform a court at appeal.

- 1.2 The Policy relates to the licensable activities identified by the Act, namely: -

- Retail sale of alcohol
- Supply of alcohol to club members
- Provision of 'regulated entertainment' - to the public, to club members or with a view to profit. Regulated entertainment is defined by the Act as:
 - A performance of play
 - An exhibition of a film
 - An indoor sporting event
 - Boxing or wrestling entertainment
 - A performance of live music
 - Any playing of recorded music
 - A performance of dance
 - Entertainment of a similar description to live music, recorded music or dance.
 - The supply of hot food and/or hot drink from any premises including mobile food stalls between 11pm and 5 am.

- 1.3 This Policy sets out those matters that North Devon District Council Licensing Authority (“the Authority”) will normally take into account when determining licence applications. Additionally, the document seeks to provide clarity for applicants, residents and members of the business community, thus enabling them to make plans to move to, remain in or invest in the District with some measure of certainty.

Section 5 of the Licensing Act 2003 (as amended by s.122 of the Police Reform and Social Responsibility Act 2001) requires a Licensing Authority to prepare and publish a statement of its licensing policy every five years. Such a policy must be published before the Authority carries out any function in respect of individual applications made under the terms of the 2003 Act.

The Licensing Authority will keep this policy statement under continual review and make such changes as it feels are necessary in accordance with any changes in the legislation and with local circumstances. Where revisions are made, the Authority will publish a statement of those revisions.

1.4 The Licensing Authority Area

In being largely rural in character, and an area of outstanding natural beauty, North Devon, in common with other parts of Devon, has much to offer its residents and visitors. The holiday and entertainment industries, therefore, are major contributors to the economy of the district.

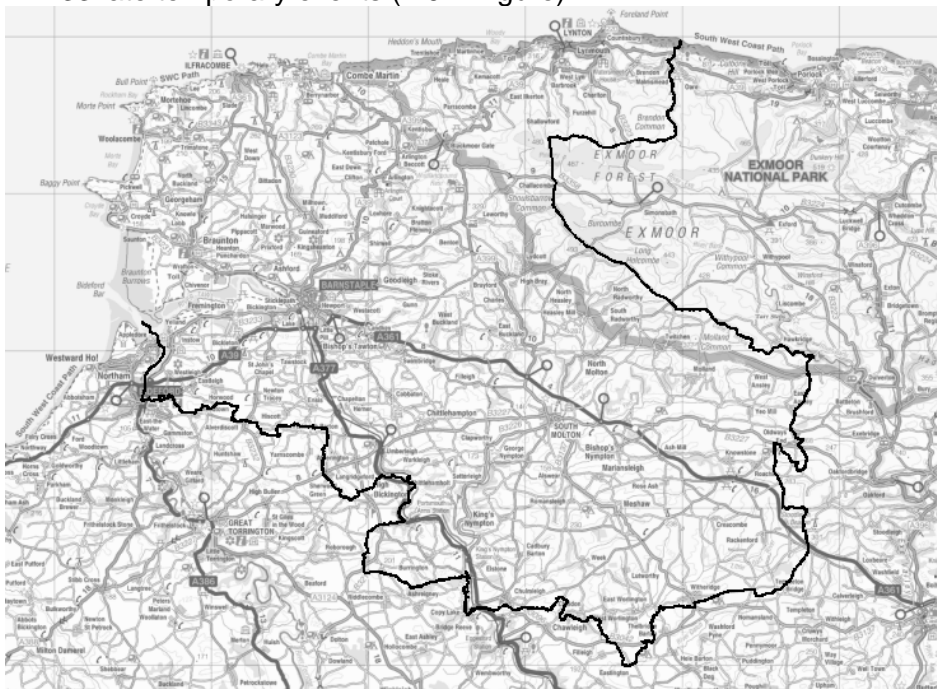
North Devon is 108,590 hectares (419 square miles) in size, and has an estimated resident population of 95,400⁽¹⁾, comprised of 45,766⁽²⁾ households. Of those residents 46,800⁽¹⁾ are male and 48,600⁽¹⁾ are female. With individuals aged 16 to 64 estimated to number 55,200⁽¹⁾. The total population from minority ethnic groups in 2011 was 2.1%.

Almost half of the population lives in, or close to, Barnstaple, whilst there are smaller concentrations of population at Braunton, Ilfracombe and South Molton. Holiday locations such as Croyde and Woolacombe have national and international renown.

Despite the popularity and benefits of the area, however, the median gross annual pay for employees in full or part time employment (not including self-employed) in North Devon for 2016 is £17,565⁽³⁾ some £5,519⁽³⁾ below the median for all employees in the UK. The rate of unemployment is 2.3%⁽⁴⁾, which is 2%⁽⁴⁾ lower than the national average.

At the time of preparing this Policy, the Authority has responsibility for regulating:

- 624 alcohol-licensed premises/clubs
- 66 non-alcohol-licensed premises
- 349 standard temporary events (2017 figure).
- 133 late temporary events (2017 figure)



Data Sources

1. 2017 Population estimates published by Office for National Statistics
2. NDC Figure 9.9.2018
3. 2017 Office for National Statistics population estimate
4. April 2017 to March 2018 Office for National Statistics annual population survey

2. CONSULTATION

2.1 In preparing this Policy the Licensing Authority has consulted the following: -

- The Chief Officer of Police
- Devon & Somerset Fire and Rescue Service
- Public Health Devon
- Devon Safeguarding Children's Board
- Devon County Council Trading Standards
- Representatives of holders of premises licences issued by this authority
- Representatives of holders of Club premises certificates issued by this authority
- Representatives of holders of Personal Licences issued by this authority
- Local businesses and their representatives
- Local residents and their representatives

2.2 Consultation took place for a period of 9 weeks, between 6 July 2018 to 17 September 2018 a period considered taking into consideration the Consultation Principles (November 2013) outlined by the Cabinet Office.

2.3 The approved policy will be published on our website. (www.northdevon.gov.uk/licensing). Copies will also be available for viewing at the Licensing Team's Offices at North Devon Council, Lynton House, Commercial Road, Devon, EX31 1DG.

2.4 Should you have comments regarding the Policy please write to the above address or email licensing@northdevon.gov.uk.

2.5 Proper weight will be given to the views of organisations and individuals prior to implementing this Policy.

2.6 This Policy was approved at a meeting of the Full Council on the 21 November 2018 and published on our website

2.7 This Policy will remain in force for a maximum period of five years and will then be subject to review and further consultation. The Authority may revise the Policy at any time during the five year period if it considers it appropriate to do so. The Authority will consult on any substantial revisions to the Policy.

Section 5(3) of the Act places a legal obligation on licensing authorities to consult the above individuals, groups and organisations when determining and publishing its Statement of Licensing Policy. However, the Authority may consult beyond the statutory requirements if it believes this is necessary and appropriate

3. THE LICENSING OBJECTIVES

3.1 The Authority has a duty under s.4 of the Act to carry out its licensing functions with the aim of promoting the four licensing objectives. The objectives are:

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

Each licensing objective is of equal importance. When discharging its licensing function, the Authority will attach the utmost importance to the promotion of the objectives.

3.2 Prevention of Crime and Disorder

3.2.1 The Authority will endeavour to reduce crime and disorder throughout the district in accordance with its statutory duty under section 17 of the Crime and Disorder Act 1998. Where relevant representations are made, the Licensing Authority may look more favourably upon applications where the applicant has addressed the issue of preventing crime and disorder in a positive way.

3.2.2 The Authority will require applicants to take appropriate and proportionate measures to promote the crime and disorder objective. Such measures may include those listed in the Authority's guidance for applicants which can be viewed at www.northdevon.gov.uk/licensing.

3.3 Public Safety

3.3.1 All premises will be risk-rated by the Licensing Authority, and are to be subject to both announced and unannounced inspections (including multi-agency inspections).

3.3.2 The Authority will require applicants to take appropriate and proportionate measures to promote the public safety objective. Such measures may include those listed in the Authority's guidance for applicants which can be viewed at www.northdevon.gov.uk/licensing.

3.4 Prevention of Public Nuisance

3.4.1 Public nuisance can include low level nuisance affecting a few people living locally, as well as a major disturbance affecting the wider community. Nuisance is generally attributable to noise (from loud music or from rowdy customers), vibration, light pollution, noxious smells and litter. Applicants will be required to demonstrate that they have adequate measures in place in their applications to prevent nuisance and disturbance.

3.4.2 Noise from people entering and leaving licensed premises, particularly late at night or in the early hours of the morning, can be a significant problem. Customers under the influence of alcohol are often less inhibited about their behaviour and may be unaware of the noise they are creating. As background noise levels are lower at night, any noise is more intrusive for residents trying to sleep.

3.4.3 The Licensing Authority will require applicants to take appropriate and proportionate measures for the prevention of public nuisance. Such measures may include those listed in the Authority's guidance for applicants which can be viewed at www.northdevon.gov.uk/licensing.

3.5 Protection of Children from Harm

3.5.1 The Authority recognises the great variety of premises for which licences may be sought. These include theatres, members' clubs, sports clubs, cinemas, restaurants, pubs, nightclubs, cafes, takeaways, community halls, schools and off-licences. The Authority will not restrict access by children to any particular type of premises unless it is considered necessary to do so in order to protect them from harm.

3.5.2 The Authority will require applicants to take appropriate and proportionate measures for the protection of children. Such measures may include those listed in the Authority's guidance for applicants which can be viewed at www.northdevon.gov.uk/licensing.

4.0 THE LICENSING FUNCTION

4.1 Regulation

4.1.1 Licensing is about regulating licensable activities on licensed premises, in qualifying clubs and at temporary events under the provisions of the Act. Licensing also involves making judgements about risk, in particular the risk of any adverse effect on the licensing objectives of granting licences and club premises certificates.

4.1.2 The licensing function is only one means of delivering the licensing objectives and should not be seen as a panacea for solving all alcohol- and entertainment-related problems within the

community. The Authority recognises that as well as the licensing function there are a number of other mechanisms for addressing alcohol-related crime and disorder such as:

- planning controls
- Community Alcohol Partnerships
- installation and/or expansion of CCTV systems in problem areas
- powers to designate parts of the District as places where alcohol may not be consumed publicly (Designated Public Places Order)
- S.27 and s.30 Dispersal Orders (Anti-Social Behaviour Act 2003)
- police powers to close some premises for up to 24 hours in extreme cases of disorder or excessive noise (Licensing Act, ss.160 & 161)
- the power of Responsible Authorities and other persons to apply for a review of the licence (see 9.2)

The Authority will therefore continue to work in partnership with other Licensing Authorities, the Responsible Authorities, other agencies such as North Devon and Torridge Community Safety Partnership and with local businesses and residents in a co-ordinated approach to tackling alcohol-related crime and anti-social behaviour.

4.1.3 In discharging its licensing function, the Licensing Authority will comply with relevant legislation and have regard to:

(i) Strategies

- current North Devon and Torridge community Safety Partnership Strategy
- current Government alcohol strategy
- NDC Corporate Plan 2015 -2018 New policy TBC

(ii) Policies/Codes of Practice

- Regulators' Compliance Code (BIS) (April 2014)
- North Devon Council's Enforcement Policy
- NDC Community Engagement Framework
- DCC Local Transport Plan
- Age Restricted Products and Services: A Code of Practice for Regulatory Delivery

(iii) Guidance

- Guidance issued under s.182 of the Licensing Act 2003 (Home Office)
- The Purple Guide to Health, Safety and Welfare at Music and Other Events
- The Event Safety Guide (HSE)
- Guide to Fire Precautions in Entertainments and Like Premises
- Good Practice Guide on the Control of Noise from Pubs and Clubs (Institute of Acoustics)
- Good Practice in Managing the Evening and Late Night Economy (ODPM)
- Technical Standards for Places of Public Entertainment (ABTT/IOL)
- Code of Practice on Environmental Noise Control at Concerts (Noise Council)
- Home Office Guide to Safer Clubbing
- 'No Proof of Age – No Sale' (Trading Standards handbook)
- The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks

4.1.4 The central purpose of the licensing function is to promote the licensing objectives through the effective regulation of licensed premises, qualifying clubs and temporary events. The Authority is keen to foster a safe and vibrant leisure economy and will work with applicants and licence holders to encourage and sustain well managed premises which make a positive contribution to the community. The Authority will expect applicants and licence holders to demonstrate that they have

given thought to and have in place adequate measures to ensure that the operation of their premises will not have an adverse effect on the quality of life of persons living and/or working in the vicinity of the premises.

4.1.5 The powers of the Licensing Authority under the Act may be carried out by the Licensing Committee, by a sub-Committee of the Licensing Committee or by one or more officers acting under delegated authority. Many licensing procedures are largely administrative with no perceived areas of contention. In the interests of efficiency, these procedures will generally be carried out by licensing officers.

4.1.6 The Authority will ensure that all Officers and Members have received adequate and appropriate training for their roles under the Licensing Act 2003.

4.1.7 The Authority will delegate its functions in the following ways:

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for personal licence		If a police objection made	If no police objection made
Application for personal licence with relevant unspent convictions or relevant convictions arising during tenure of a licence		Decision to revoke or suspend if referred	All cases unless referred for revocation or suspension
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for minor variation of premises licence/club premises certificate			All cases
Application to vary designated premises supervisor		If a police objection made	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection made	All other cases
Applications for interim authorities		If a police objection made	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of an objection to a temporary event notice		All cases	
Determination of application to vary premises licence for community premises to include alternative licence condition		If a police objection made	All other cases
Decision whether to consult other responsible authorities on minor variation application			All cases

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Suspension of premises licence/club premises certificate for non-payment of annual fee			All cases
Review of Statement of Licensing Policy	All cases (Full Council)		
Implementation of a Late Night Levy	All cases (Full Council)		
Creation of an Early Morning Restriction Order	All cases (Full Council)		

4.2 The Licensing Authority as Responsible Authority

- 4.2.1 Section 103 of the Police Reform and Social Responsibility Act 2011 amended the Licensing Act by making the Licensing Authority a 'responsible authority'. This enables the Authority to make representations about an application for a premises licence or club premises certificate or to apply for a review of a premises licence or a club premises certificate.
- 4.2.2 In cases where the Authority is acting in its capacity as a responsible authority, it has established a clear separation of responsibilities within the Authority's Licensing Team in order to ensure procedural fairness and to avoid potential conflict of interest.

4.3 Integrating Strategies and Avoiding Duplication

- 4.3.1 The Authority recognises that unnecessary and over-burdensome regulation can prevent businesses from thriving and growing. The Authority will therefore endeavour to regulate licensed premises in a proportionate manner in accordance with the Regulators' Compliance Code. Premises will be assessed on the basis of risk to the promotion of the licensing objectives. Premises with a high risk-rating will be inspected more frequently than premises with a low risk-rating.
- 4.3.2 The Authority will endeavour to ensure that this Statement of Licensing Policy is aligned with and supports local crime prevention, transport, tourism and cultural strategies (see 4.1.3). To this end, the Authority will work closely with other agencies and will contribute, where appropriate, to the development of policies and initiatives to tackle alcohol-related crime and disorder. This may include promoting and participating in schemes such as Best Bar None, Purple Flag, and Business Improvement Districts etc.
- 4.3.3 The Authority recognises that it is a fundamental principle of the Act that the licensing function should not duplicate other statutory regulation. In particular, the Licensing Authority recognises that licensing applications should not be seen as a repeat of the planning application and building control approval processes and that there is no legal basis to refuse a licence application because it does not have planning permission. Applicants are recommended, however, to ensure that appropriate planning permissions are obtained before an application for a premises licence or club premises certificate is made. (See Section 7 – Licence Conditions – for further advice).

Home Office guidance makes it clear that licensing committees are not bound by decisions made by planning, and vice-versa. The Guidance also states that, where, as a condition of a planning permission, a terminal hour has been set for use of the premises for commercial purposes and this is different to the licensing hours, the applicant must observe the earlier closing times. (Home Office Guidance 14.64 and 14.65)

4.4 Large Scale Public Events and the Safety Advisory Group (SAG) Function

- 4.4.1 The Council recommends that organisers of large scale public events (outdoor music concerts, sporting events, festivals, carnivals, firework displays etc.) consult the Council at the earliest opportunity to discuss arrangements for the licensing of those activities falling under the Act.

- In respect of some events, the organisers may require a single premises licence to cover a wide range of activities at different locations within the premises. This may involve the preparation of a substantial operating schedule. For other events, applications for connected premises licences or TENs may be made which in combination will represent a single event. The Authority consider it is essential to have proper co-ordination of such arrangements and will expect organisers to work with the Authority in ensuring that responsible authorities are aware of the connected nature of the individual applications.
- Applicants planning a large scale event - whether this involves licensable activities or not - are likely to be requested to submit an application to the Safety Advisory Group (SAG). SAG comprises of personnel from relevant statutory authorities and will provide the applicant with advice and guidance to help ensure public health and safety. A SAG meeting will generally be recommended where there is a higher risk to public safety and more than 500 persons are expected to attend the event although smaller events with perceived high risks to public safety may also be required to attend a SAG meeting. It will be the responsibility of the event organiser to submit an application to SAG. It will be the responsibility of the Authority to arrange and convene SAG meetings. Individuals seeking advice are recommended to contact the Authority if in any doubt as to whether a SAG application is required.

4.5 Related Legislation

4.5.1 There is a significant interplay between the Licensing Act and other legislation. The Authority will endeavour to interpret and apply other statutory requirements in a way which is consistent with the promotion of the licensing objectives.

4.5.2 Anti-Social Behaviour and Policing Act 2014

Under the provisions of the Act, consumption of alcohol is not a licensable activity. However, the Authority recognises that consumption of alcohol can be a major contributory factor to disorder and nuisance both within and outside licensed premises. This Council has adopted the relevant powers under the Anti-Social Behaviour and Policing Act 2014 to designate parts of the District as places where alcohol may not be consumed publicly.

Five areas within Barnstaple, Croyde, Ilfracombe, South Molton, and Woolacombe are currently designated with Public Space Protection Orders (PSPO's) Please refer to <http://www.northdevon.gov.uk/business/licences-and-permits/entertainment-and-alcohol-licences/alcohol-free-zones/> for zone maps and more information on the powers available to the police in a controlled zone. The Authority, in conjunction with the police, North Devon and Torridge community Safety Partnership and other Responsible Authorities, will keep this under review and may recommend the designation of other areas if there is evidence that this is necessary to reduce or prevent alcohol-related crime and disorder.

4.5.3 Gambling Act 2005

The provision of gaming machines and certain forms of low-stakes gambling (e.g. poker, bingo) are permitted in alcohol-licensed premises and qualifying clubs under the Gambling Act 2005. The type of gambling allowed and stakes and prizes are specified in regulations and are set at levels which are designed to keep this form of gaming a low-risk, sociable activity. Generally, such gaming should be ancillary to the primary use of the premises. The Authority may take action against a premises where it believes that gaming is becoming the dominant activity or is having a detrimental effect on the licensing objectives.

4.5.4 Health Act 2006

The introduction of the Health Act 2006 which prohibited smoking in enclosed or substantially enclosed spaces in England has had a significant impact on alcohol-licensed premises and qualifying clubs. In many premises, customers wishing to smoke must do so in beer gardens, outdoor patio areas or in the street. This can result in noise, nuisance and anti-social behaviour for

nearby residents, businesses and passers-by, especially late at night when background noise levels are low. The Authority will expect applicants and licence holders to have particular regard to the management of customers in the immediate vicinity of their premises to ensure that their behaviour does not cause offence or undermine the licensing objectives.

4.5.5 Live Music Act 2012; The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013; The Legislative Reform (Entertainment Licensing) Order 2013 and 2014

Since 2012 The Government has made deregulatory changes that have amended the Act meaning that no licence is required for some activities.

Included in this de-regulation are the following:

- plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
- dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
- films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
- indoor sporting events: no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.
- boxing or wrestling entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- live music and recorded music: no licence is required at certain times of the day, dependant upon the nature of the premises and other licences in place.

An overview of circumstances in which entertainment facilities are not licensable can be viewed at Section 16.5 to 16.9 of the Home Office revised guidance issued under 182 of the Act (April 2018 version).

Any conditions relating to live music which are attached to a premises licence or a Club Premises Certificate will stay in place but will be suspended between 8.00 am and 11.00 pm. However, the Licensing Authority will be able to re-impose these conditions (or attach new conditions) following a review of a licence.

Any current licence condition that relates to an activity for which a licence is no longer required will have no effect, except in certain circumstances where non-licensable activities take place at the same time as other activities for which a licence is required. Licence holders wishing to remove such conditions may apply for a minor licence variation. In the course of considering such applications, the Licensing Authority will generally remove such conditions unless there are sufficiently serious specific concerns about the hosting of deregulated entertainment activities in relation to the remaining licensable activities taking place in the premises in question.

The Authority recognises the importance of encouraging live music as part of the Authority's wider cultural strategy and will endeavour to promote this activity through its licensing function. However, applicants and licence holders must be aware that, although certain types of live music are no longer licensable, this does not mean that such activity is totally exempt from licensing controls. The legal duty on licence holders to promote the licensing objectives remains. A Responsible Authority or any other person may apply for a review of a premises licence where it can be demonstrated that live music provided under the provisions of the Live Music Act undermines any of the licensing objectives.

When considering whether an activity constitutes 'the provision of regulated entertainment' each case will be treated on its own merits. There will inevitably be a degree of judgement as to whether

a performance constitutes live music or not. If in doubt, organisers of events should check with the Licensing Authority.

The impact of this Policy on regulated entertainment, particularly live music and dancing will be monitored. Where it appears that such events are being deterred or constrained by licensing requirements, the Policy will be reviewed.

4.5.6 Immigration Act 2016

From 6 April 2017 the provisions of Immigration Act 2016 which relate to Licensing became effective. These provisions amend the Act making the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf.

Applicants for personal or premises licence (for sale of alcohol/provision of late night refreshment) must be able to satisfy the Licensing Authority that they have permission to be in the United Kingdom and are entitled to undertake work relating to the carrying on of a licensable activity.

Licences will not be issued to disqualified persons who are:

- unlawfully present in the UK
- not permitted to work in the UK
- permitted to work, but not in this licensable activity

A premises or personal licence issued in respect of an application made on or after 6 April 2017 will lapse if the holder's permission to live or work in the UK comes to an end.

4.5.7 Sexual Entertainment Venues

Performances of dance which are "relevant entertainment" within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") are not affected by The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013, regardless of the size of the audience or the time of day. "Relevant entertainment" is defined in the 1982 Act as a live performance or live display of nudity that, ignoring financial gain, can be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.

In almost all cases where a performance of dance is potentially licensable as both the provision of *relevant* entertainment (under the 1982 Act) and *regulated* entertainment (under the 2003 Act), the 1982 Act disapplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments. However, an authorisation under the 2003 Act will be required where:

- the premises are not licensed as a sex entertainment venue under the 1982 Act, and
- relevant entertainment has been provided at those premises on no more than 11 occasions in any 12 month period, with none of those occasions lasting longer than 24 hours or taking place within a month of any other such occasion.

Where the promoter of a sexual entertainment venue wishes to provide any of the licensable activities as outlined in the Licensing Act 2003 in addition to relevant entertainment, a premises licence will also be required to authorise such activities.

The Council's Sex Establishment Policy is the subject of a separate public consultation and the adopted policy stands separate from this Licensing Policy. The Policy may be viewed on the Sex Establishment Toolkit available on www.northdevon.gov.uk/licensing.

5. THE LICENSING PROCESS

5.1 Applications

5.1.1 Application forms may be downloaded from the Authority's website. Applicants are strongly recommended to discuss their application with a member of the Licensing Team prior to formal submission. The Authority may reject applications which have not been completed correctly or contain insufficient information.

5.1.2 The Authority will act in accordance with the section 182 Guidance with respect to-

- when applications, notices, or relevant representations are 'given' i.e. submitted to the Authority
- holding and deferring electronic applications

5.1.3 The Act requires that applications for premises licences/club premises certificates – or variations thereof – are advertised in accordance with regulations. The Authority will need to be satisfied that the applicant has complied fully with these regulations and may request copies of notices and advertisements to verify that the application has been properly made. If an application has not been correctly advertised, the Authority are likely to reject the application. Further guidance on advertising applications is available on the Authority's website at www.northdevon.gov.uk/licensing

5.1.4 When preparing applications, it is essential that applicants give full consideration to the nature of the premises, the locality in which a premises is situated, the potential risks involved in carrying out licensable activities and put in place measures which are appropriate for the promotion of the licensing objectives. (See also 7.5)

5.1.5 Applicants and licence holders should ensure that they have due regard to any planning restrictions on the use of the premise when applying for a licence to avoid any enforcement action by a council officer.

5.2 Representations

- Representations must be made to the Authority in writing within the 28 day consultation period. For this purpose, a representation made by e-mail will be acceptable.

5.2.1 Section 18(6) of the Licensing Act 2003 defines what constitutes a 'relevant' representation. To be relevant, a representation must relate to the likely effect of the grant of a licence on the promotion of one or more of the licensing objectives. There is nothing in the Act to say that a representation must be of a negative nature. The Act specifically refers to 'representations' rather than 'objections' recognising that representations may express positive support for an application. The Authority will consider both positive and negative representations provided they are relevant.

5.2.2 Where no relevant representations are received, the application will be granted on the terms applied for. Where relevant representations are received, the application will be considered by a Licensing sub-Committee at a hearing as will any application for review of a licence (see 9.2). The Authority has established its own hearing procedures as provided for by regulations made under the Act and these are available on request to the Licensing Authority and Authorities website at www.northdevon.gov.uk/licensing

Home Office Guidance states "A hearing is not required where an application has been properly made and no Responsible Authority or other person has made a relevant representation. In these cases, the licensing authority must grant the application on the terms sought subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the Act". (Guidance 9.2)

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

- 5.2.4 Representations which are deemed by the Authority to be repetitious, frivolous, vexatious are likely be disregarded.
- 5.2.5 Where a notice of a hearing is given to an applicant, the Licensing Authority is required by regulations to provide the applicant with copies of the relevant representations that have been made. In exceptional circumstances, a person wishing to make a representation may be reluctant to do so because of fears of intimidation or harassment if their personal details are disclosed to the applicant. Where the Authority considers that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation, the Authority may consider alternative approaches. For example, the Authority may advise the individual to provide the relevant Responsible Authority with details of how they consider that the licensing objectives are being undermined so that the Responsible Authority can make representations if appropriate and justified. Alternatively, the Authority may advise the individual to request their local Councillor to make a representation on their behalf. Where appropriate, the Authority may decide to withhold some or all of the person's details from the applicant. The Authority will only withhold such details where the circumstances justify such action. Persons making representations should be aware that their personal details will normally be disclosed during the hearing process.

5.3 Determining Applications

- 5.3.1 When determining a licence application, the overriding principle adopted by this Authority will be that each application will be determined on its merits. The Authority will have regard to any guidance issued by the Home Office, this Statement of Licensing Policy and any measures it deems necessary to promote the licensing objectives. The Authority may depart from the guidelines in this Policy if it has justifiable and compelling reasons to do so. The Authority will give reasons for any such departure from policy.
- 5.3.2 The Authority will expect applicants to demonstrate in their applications active steps for the promotion the licensing objectives. When determining an application, a key consideration for the Authority will be the adequacy of measures proposed in the Operating Schedule to promote the licensing objectives having regard to the type of premises, the licensable activities to be provided, the nature of the location and the needs of the local community.
- 5.3.3 The Authority will also have regard to wider considerations affecting the residential population, businesses and the amenity of an area. These include alcohol-related violence and disorder, anti-social behaviour, littering, fouling, noise and the capacity of the infrastructure and police resources to cope with the movement of large numbers of people, particularly late at night and in the early morning.
- 5.3.4 Since the introduction of the Act, the Authority's experience is that the vast majority of complaints about licensed premises are caused by public nuisance, in particular excessive noise from live and recorded music and disturbance caused by customers congregating outside licensed premises. The Authority will expect applicants to have particular regard to these issues and to include in their Operating Schedules adequate and effective steps to control noise and disturbance from their premises. Existing licence holders will also be expected to demonstrate – through the effective management of their premises – that they are taking appropriate and reasonable steps within their control to minimise disorder, anti-social behaviour and public nuisance.

Public nuisance is not defined in the Licensing Act 2003 and retains its broad common law meaning. It should be noted that public nuisance can include low-level nuisance affecting a few people living locally as well as major disturbance affecting the whole community. It may also include the reduction of the living and working amenity and environment of persons and businesses in the vicinity of licensed premises. (Home Office Guidance 2.16)

- 5.3.5 When deciding whether to grant a licence, the Authority may take account of any non-compliance with other statutory requirements brought to its attention, if these undermine the licensing objectives. This is because any non-compliance with other statutory requirements may demonstrate that the premises are unsuitable for the activities proposed, or that the management of the premises is not sufficiently competent to protect the public from harm or nuisance.

- 5.3.6 When determining an application, the Authority will consider all relevant evidence, both oral and written, provided by parties to a hearing. Evidence which is irrelevant may be disregarded. The Authority encourages applicants and persons making representations to attend hearings so that they can give evidence. Where an individual fails to attend the hearing, the Authority will consider their application or representation but may attach less weight to it.
- 5.3.7 It should be noted that, when determining an application, the Authority is making a judgement about risk. A key purpose of the licensing function is not to respond to crime and disorder, nuisance or public harm once it has happened but to make an informed assessment of the risk of such things occurring if a licence is granted and to take such steps as it considers appropriate to prevent or minimise such risks.
- 5.3.8 The Authority will generally give its decision on an application at the end of a hearing and will give clear reasons for its decision. In all other cases, the Authority will make its determination within five working days.
- 5.3.9 Any party to a hearing who is dissatisfied with the Authority's decision may appeal to the Magistrates' Court. An appeal must be made within 21 days of formal notification of the decision.

5.4 Mobile, Remote, Internet and Other Delivery Sales

- 5.4.1 The Licensing Authority shall have due regard to sales of alcohol which are made remotely, by mobile methods, internet or by other delivery sales.
- 5.4.2 The expectation of the Licensing Authority is that conditions suggested by way of operating schedules for these types of activities are extremely robust in order to negate any perceived issues.
- 5.4.3 Persons who wish to run premises providing 'alcohol delivery services' should notify the relevant Licensing Authority that they are operating such a service in their operating schedule, and premises with existing premises licences who wish to include such a service should consider applying to vary their licence to add this activity.

6.0 LICENSING HOURS

- 6.1 In general, the Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with hours beyond midnight higher standards of control and supervision will be expected in order to promote the licensing objectives - especially for premises situated in or near residential areas.
- 6.2 The Act does not provide for standard closing times. Licensed premises will generally be permitted to sell alcohol during the hours they intend to open provided they can demonstrate to the satisfaction of the Licensing Authority that the premises will be operated in a manner consistent with the licensing objectives Home Office guidance and this Policy. However, there is no presumption that applications for extended hours will take precedence over the human rights of local residents and businesses.
- 6.3 The licensed hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives. The Licensing Authority may, however, set an earlier terminal hour where it considers this is appropriate to the nature of the activities and the amenity of the area or is necessary to achieve one or more of the licensing objectives.

Home Office Guidance states that the licensing objectives should be the Authority's paramount consideration at all times when determining applications. If the Licensing Committee or a sub-Committee believes that granting longer hours would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested. (Guidance 10.14)

- 6.4 The Licensing Authority recognises that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when large numbers of people tend to leave licensed premises at the same time. Flexible licensing hours in relation to the sale of alcohol may therefore be considered as a potential means of reducing friction at late night food outlets, taxi ranks and other 'flashpoints' in areas where there have already been incidents of disorder and disturbance.
- 6.5 Shops, stores and supermarkets will generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes. However, in the case of individual shops, which are known to be a focus of disorder and disturbance then, where relevant representations are received from a Responsible Authority or an interested party, the Licensing Authority may consider a restriction on licensed hours where this is necessary to promote one or more of the licensing objectives.
- 6.6 Because opening hours (i.e. hours when there are no licensable activities taking place) may in themselves impact on the licensing objectives, the Authority will require any proposed change to opening hours for an existing licence to be authorised by way of a variation to the licence. This can be achieved by way of a minor variation application.

7. LICENCE CONDITIONS

- 7.1 Conditions attached to a premises licence or club premises certificate are a key element of the regulatory framework established by the Act. There are three types of condition:

- mandatory conditions set out in the Act,
- conditions consistent with the operating schedule, and
- conditions imposed by the Licensing Authority.

The Licensing Authority may only impose conditions on a premises licence or club premises certificate where it has received a relevant representation about an application. The application will then be determined at a hearing by a Licensing sub-Committee. If no relevant representation is received, the application must be granted on the terms applied for subject only to the mandatory conditions and conditions consistent with the Operating Schedule.

- 7.2 Conditions are crucial in setting the parameters within which premises can lawfully operate. Any contravention of a condition on a premises licence or club premises certificate is a criminal offence so it is essential that conditions are worded clearly, precisely and unambiguously. In addition, conditions must:
- (i) be appropriate, reasonable and proportionate
 - (ii) be enforceable
 - (iii) not duplicate other statutory requirements
 - (iv) be relevant to the particular type, location and character of the premises concerned
 - (v) not be standardised
 - (vi) not replicate offences set out in the Act or in other legislation
 - (vii) be written in a prescriptive format
- 7.3 The Authority encourages applicants to seek technical advice from the appropriate Responsible Authorities when preparing their Operating Schedules as this will enable any problems to be resolved at an early stage and will reduce the likelihood of representations.
- 7.4 Experience has shown that many of the conditions volunteered by applicants are poorly worded, unclear or ambiguous and therefore unenforceable. As an aid to applicants, the Authority has prepared a menu of suggested measures to promote the licensing objectives which applicants are encouraged to consider when preparing their operating schedules. These measures are not prescriptive but will help to ensure that licence conditions are expressed clearly and consistently and enable enforcement to be carried out equitably. The measures can be viewed at www.northdevon.gov.uk/licensing. The Authority, in consultation with the applicant, may amend the wording of proposed conditions where this is unclear, ambiguous or unenforceable.

Home Office guidance states that it is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention. ((Home Office Guidance 10.5)

- 7.5 The Authority will pay particular attention to the effect – potential or actual - of licensable activities on those living, working or otherwise engaged in the area concerned and, where relevant representations are received, may attach conditions if it considers it appropriate for the promotion of the licensing objectives.
- 7.6 Conditions attached by the Authority to Premises Licences and Club premises certificates will relate to matters falling within the control of individual licensees. It is recognised that the licensing function cannot be a mechanism for the control of disorderly behaviour by individuals once they are beyond the direct control of the licence holder. However, the Licensing Authority and Responsible Authorities may take action where it can be established that there is a clear linkage between disorderly behaviour and a specific premises.
- 7.7 The Authority will not impose inappropriate or over-burdensome conditions on licences. The Authority may, however, impose conditions where existing legislation does not provide adequate controls and additional measures are considered to be appropriate for the promotion of the licensing objectives.
- 7.8 Although it is not a legal requirement, the Licensing Authority recommends as good practice - in respect of premises licensed to sell or supply alcohol for consumption on the premises - that a Personal Licence holder is on the premises at all times to make or authorise such sales or supplies. The Authority is keen to encourage the presence of properly trained staff on licensed premises. Applicants may wish to consider including this as a condition of licence, where appropriate, as a measure to promote the licensing objectives. Where this is not possible (because the premises is too small or because staffing levels do not permit) or when the Premises Supervisor/Personal Licence holder will be absent for a significant length of time, a responsible person should be authorised to oversee the sale of alcohol in the place of the Premises Supervisor/Personal Licence holder. The Authority will expect the authorisation to be made in writing, kept securely on the premises and made available for inspection by an authorised person if requested. Copies of the authorisation should be sent to the Licensing Authority and the police.

NB. 'Authorisation' does not mean direct supervision. The government recommends that Personal Licence holders give specific written authorisations to individuals they are authorising to sell or supply alcohol and that such individuals are clearly identified (Home Office Guidance 10.31 and 10.3)

7.9 Disapplication of Certain Mandatory Conditions for Community Premises

- 7.9.1 An amendment to the Licensing Act 2003 made in 2009 allows certain community premises which have or are applying for a premises licence that authorises alcohol sales to also apply to include the 'alternative licence condition' instead of the usual mandatory conditions in sections 19(2) and 19(3) of the Act (requirement for a DPS and for alcohol sales to be made or authorised by a personal licence holder). Such an application may only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of the premises.
- Where it is not clear whether premises are community premises, the Licensing Authority will approach the matter on a case by case basis. The main consideration being how the premises are predominantly used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of persons and sectors of the local community for purposes which include purposes beneficial to the community as a whole, the premises will be likely to meet the definition.

8. CUMULATIVE IMPACT

'Cumulative impact' or 'saturation' has been described within the Home Office Guidance and used by Licensing Authorities within their policies since the Commencement of the 2003 Act. It is defined in Home Office guidance as 'the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area'. Whilst flexible opening hours may encourage the gradual dispersal of customers from premises, it is possible that the behaviour of customers from a concentration of premises, taken together, may have a disproportionate impact on the amenity of the surrounding area. Where a Licensing Authority believes that a particular area is becoming saturated with licensed premises, it may adopt a 'cumulative impact assessment' and refuse applications for new premises licences where relevant representations relating to cumulative impact have been received.

- 8.1 'Cumulative impact assessments' (CIA) were introduced in the 2003 Act by the Policing and Crime Act 2017, with effect from 6 April 2018.
- 8.2 The Authority may publish a cumulative impact assessment (CIA) to help limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives.
- 8.3 This should not, however, be equated with 'need' which relates more to the commercial demand for a particular type of premises. The issue of 'need' is a matter for planning consideration or for the market to decide and does not form part of this licensing policy statement.
- 8.4 If the Authority receives relevant evidence suggesting that the cumulative impact of new and varied licences is leading to an area becoming saturated with premises of a particular type and thereby creating problems of disorder and nuisance over and above the impact of the individual premises, the Authority may consider the issue of cumulative impact when determining an application. The onus is on any person, or organisation, submitting evidence to prove the assertion that the grant of the licence would cause the cumulative impact claimed.
- 8.5 The Authority does not propose to operate a quota system of any kind, which would have the effect of pre-determining any application; nor does it seek to impose general limitations on trading hours in particular areas. The Authority recognises that pubs, clubs, restaurants, hotels, theatres, concert halls and cinemas have contrasting characteristics and styles of operation. Proper regard will be given to those differences and the impact they are likely to have on the promotion of the licensing objectives.
- 8.6 There must be an evidential basis for the Authority to make the decision to publish a CIA. The Community Safety Partnership, the Police and Environmental Health, may hold relevant information which would assist the Licensing Authority when establishing the evidence base for publishing a CIA. Evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the relevant problems identified in the specified area to be covered by the CIA. Information which the Authority may be able to draw on includes:
 - local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
 - statistics on local anti-social behaviour offences;
 - health-related statistics such as alcohol-related emergency attendances and hospital admissions;
 - environmental health complaints, particularly in relation to litter and noise;
 - complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
 - residents' questionnaires;
 - evidence from local and parish councillors; and
 - evidence obtained through local consultation.

8.7 This Licensing Authority may consider this evidence, alongside its own evidence of the impact of licensable activities within its area, and consider in particular the times at which licensable activities are carried on. Information which may inform consideration of these issues includes:

- trends in licence applications, particularly trends in applications by types of premises and terminal hours;
- changes in terminal hours of premises;
- premises capacities at different times of night and the expected concentrations of drinkers who will be expected to be leaving premises at different times.

Where there is evidence that a particular area of the District is already suffering adverse effects arising from a concentration of late night premises, or that residential areas are under stress, this may be taken into account in determining any further applications for licences within the area identified. In such circumstances the Licensing Authority may take into account:

- The character of the surrounding area;
- The impact of the licence on the surrounding area, both individually and cumulatively with existing licences;
- The nature and character of the proposed operation.
- Evidence from a Responsible Authority of potential or actual negative impact on the licensing objectives in any given area,
- The number of substantiated complaints about licensed premises received from residents and/or businesses in any given area.

8.8 If this Licensing Authority Publishes a CIA it will review it every three years.

8.9 The concept of cumulative impact may be relevant to the town centres of Barnstaple and Ilfracombe which, since the introduction of the Act, have seen a significant rise in the number of licensed premises granted extended hours, resulting in a general trend towards later disorder and nuisance which places significant demands on police resources.

8.10 This Authority does not currently propose to adopt a CIA in relation to cumulative impact. However, the Authority recognises that there is a significant concentration of licensed premises in Barnstaple and Ilfracombe town centre which, collectively, has the capacity to have a disproportionate effect on residents and businesses both in the town centre and in the immediately adjacent area. Therefore, when considering applications for new licences/club premises certificates or applications to vary existing premises licences/club premises certificates - especially where longer hours are sought - applications will only be granted where the Authority is completely satisfied that there will be no adverse effect on the licensing objectives.

9. ENFORCEMENT

9.1 Enforcement Activity and Policy

9.1.1 The Licensing Authority employs enforcement officers to investigate complaints against licensed premises, allegations of unlicensed activities, and the breach of licence conditions. Enforcement may be carried out independently by these authorised persons or in partnership with other enforcement agencies and Responsible Authorities. Where joint enforcement work is envisaged, the Licensing Authority will establish appropriate protocols, which will be reviewed at regular intervals.

9.2.1 In general, action will be taken in accordance with the Authority's Licensing Enforcement Policy. The Authority will apply the key principles of targeting, consistency, transparency and proportionality in accordance with the Regulatory Compliance Code. Inspection and enforcement will be risk-based with a lighter touch being adopted for premises which are well managed and where there is little or no evidence of crime and disorder, public nuisance or other problems.

9.2.2 An incremental approach will be adopted starting with a verbal or written warning for infringements of the law or failure to comply with licence conditions. Failure to respond to such warnings will result in stronger enforcement measures being taken, which could lead to a prosecution or an application being made for the review of a licence or club premises certificate (see 9.2). (Please refer to section 18.0 with regard to the suspension of a premises licence or club premises certificate for non-payment of an annual maintenance fee).

9.2.3 The Licensing Authority will refer to the following Policies when considering enforcement:

The Regulators Code (April 2014).

9.2 Review

9.2.1 A Responsible Authority and any other person can, at any time following the grant of a Premises Licence or Club Premises Certificate, apply to the Licensing Authority to review the licence/certificate because of concerns arising at the premises which may have an adverse impact on any of the licensing objectives. The Authority regards this as a valuable protection for residents and businesses. Applications for a review must be made in writing and will be considered by a Licensing sub-Committee at a hearing.

9.2.2 Any application for a review should be treated seriously. Responsible authorities will aim to give licensees early warning of any concerns identified at a premises, and talk to the licence or certificate holder to establish whether there are any steps they may be willing to take to rectify the situation. Similarly those seeking a review which are not a responsible authority are encouraged to take initial steps such as:

- asking the Licensing Authority to talk to the licence holder on their behalf
- asking their local MP or Councillor to speak to the licence holder on their behalf
- talking to the relevant responsible authority (e.g. Environmental Protection Team in relation to noise nuisance or the police in relation to crime and disorder) to establish whether there is other action that can be taken to resolve the problem.

9.2.3 The review process is not intended as a means of challenging the grant of a licence following the failure of representations to persuade the Licensing Authority on an earlier occasion. No more than one review from a person other than a Responsible Authority will be entertained in relation to a particular premises within a period of twelve months on similar grounds, save in compelling circumstances (e.g. where new problems have arisen) or where it arises following a closure order made under s.160 or s.161 of the Act.

9.2.4 When considering a review of a premises licence or club premises certificate, the Authority will expect the applicants for the review to provide evidence of previous infringements of licensing regulations, failure to comply with licence conditions and/or of failure to promote the licensing objectives. Further guidance on the review procedure is available from the Home Office (www.homeoffice.gov.uk) and North Devon Council (www.northdevon.gov.uk/licensing).

9.2.5 Following a review, the Authority will focus any remedial action directly on the concerns identified in the representations. In all cases, action will be appropriate, reasonable and proportionate to the nature of the problems giving rise to the review. Options available to the Authority are:

- (ii) to modify the conditions of licence
- (iii) to exclude a licensable activity from the scope of the licence
- (iv) to remove the designated premises supervisor
- (v) to suspend the licence for a period of not more than three months
- (vi) to revoke the licence

9.2.6 In cases where the crime and disorder objective has been undermined or where it can be demonstrated that a premises has a history of persistent offending, suspension or revocation of a

licence, even in the first instance, may be seriously considered as a form of deterrence. (See also 10.6).

9.2.7 Any person aggrieved by the decision of the Authority has the right of appeal to the Magistrates' Court. An appeal must be made within 21 days of the Licensing Authority's decision.

10. CHILDREN IN LICENSED PREMISES

10.1 The Licensing Authority recognises the great variety of premises for which licences may be sought. These will include theatres, cinemas, restaurants, pubs, nightclubs, registered clubs, cafes, takeaways, community halls and schools. As a general principle, access by children to licensed premises will not be limited, and any restrictions will be left to the discretion of the licensee unless it is considered necessary to protect children from harm.

10.2 When deciding whether to limit access to children, the Licensing Authority will judge each application on its individual merits. Examples which may give rise to concern in respect of children would include premises:

- where entertainment of an adult or sexual nature is provided
- where there is a strong element of gambling taking place
- where a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal)
- with a known association with drug taking or dealing
- where it is known that unaccompanied children have been allowed access
- in some cases, the premises are used exclusively or primarily for the sale of alcohol
- for consumption on the premises.

10.3 Where the exhibition of films is permitted, the Licensing Authority will expect age restrictions to be complied with in accordance with the British Board of Film Classification's recommendations. The Authority will only consider variations to this general rule in exceptional circumstances.

10.4 Where relevant representations have been received, the Authority may impose licence conditions at premises where children will be present for regulated entertainment so that sufficient adult staff must be present to control the access and egress of children and to ensure their safety. Where children may also be present at an event as entertainers it will be a requirement for there to be a nominated adult responsible for child performers present at such performances.

10.5 The Licensing Authority will take strong measures to protect children where any licence holder is convicted of serving alcohol to minors, where premises have a known association with drug taking or dealing, gambling takes place on the premises or where entertainment of an adult or sexual nature is provided. Options which the Authority may consider appropriate to limit access by children may include:

- a limit on the hours when children may be present
- restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place
- restricting on the parts of the premises to which children may have access
- age restrictions (for under 18s)
- restrictions or exclusions when certain activities are taking place requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult)
- and full exclusion of people under 18 from the premises when any licensable activities are taking place.

- 10.6 In the event of a review of a premises licence or club premises certificate for under age sales of alcohol, the Authority will take strong and appropriate action to ensure that children are protected. This may include, for example, removal of the Designated Premises Supervisor or suspension or revocation of the licence/club premises certificate.
- 10.7 In the event of a review of a premises licence or club premises certificate for under age sales of alcohol, the Licensing Authority will take strong and appropriate action to ensure that children are protected. This may include, for example, removal of the Designated Premises Supervisor or suspension or revocation of the licence/club premises certificate.
- 10.8 This Authority has designated the Devon County Council (Devon Children and families partnership), as the body competent to advise the Authority on issues relating to the protection of children from harm.

11. DRUGS/ILLEGAL SUBSTANCES

- 11.1 The Licensing Authority recognises that drug use is not something that is experienced by all licensed premises. However, where relevant representations are received, the Licensing Authority may need to impose special conditions for certain types of venues in order to reduce the sale and consumption of drugs and to create a safer environment for customers using the premises. The conditions to be imposed in such cases will be taken from the Authority's guidance notes which can be viewed at www.northdevon.gov.uk/licensing. The Authority may also have regard to guidance published by the Home Office. Where the Authority deems such conditions to be appropriate for the promotion of the licensing objectives, it will seek advice from an appropriate agency and the Police.

12. DOOR SUPERVISORS

- 12.1 Whenever any persons are employed at licensed premises to carry out any security activity, all such persons must be licensed by the Security Industry Authority. The Authority recognises that certain premises, because of the nature of their operation, their capacity, their licensed hours and the licensable activities provided, may require stricter supervision for the purpose of reducing crime and disorder and public nuisance. In such cases, where relevant representations are received, the Authority may impose a condition that licensed door supervisors must be employed at the premises either at all times or at such times as certain licensable activities are being carried out.
- 12.2 The Authority recognises that Door Supervisors have an important function in terms of supervising customers not only inside premises but also outside. Door Supervisors will therefore be expected to take a pro-active role in managing the behaviour of customers outside premises in order to minimise any disturbance and nuisance to nearby residents. Licence holders should ensure in particular that, at closing times, they have sufficient Door Supervisors to effectively control 'surges' of customers leaving premises.
- 12.3 Whenever security operatives are employed at licensed premises to carry out any security function such operatives must be licensed by the Security Industry Authority (SIA). Competent and professional door supervisors are key to public safety at licensed premises and the provision of door supervisors is an action point for the leisure industry to consider in the Home Office Alcohol Harm Reduction Strategy.

It is a mandatory condition of a Premises Licence that where the licence requires personnel to carry out security activity (e.g. screening of customers, dealing with conflict management, crowd control) such personnel are licensed by the Security Industry Authority. (Licensing Act 2003, s.21)

13. VESSELS

- 13.1 There are a number of additional responsible authorities stipulated in the Act which relate to the licensing of vessels. The Authority will consider any representations made by these Responsible Authorities when considering applications for premises licences in respect of a vessel. Where, in the opinion of the Authority, any of the four objectives are undermined, and this cannot be resolved through the imposition of specific conditions, the application is likely to be refused.

14. LICENSING OF PUBLIC LAND

- 14.1 The Authority recognises that land owned by the local authority and by other public bodies often lends itself to the performance of public events which involve one or more licensable activities. In the interests of promoting cultural richness and diversity within the area, the Authority will encourage the local authority to apply for such licences for the benefit of the community where it is satisfied that they will not have a negative impact on the licensing objectives.
- 14.2 In order to help event organisers and touring entertainment providers plan where licensable activities will be carried out the DCMS maintain a Register of Licensed Public Spaces in England and Wales (<https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport>). When a licence is issued for public land, North Devon Council will provide those areas licensed and the activities to which the licence relates to the DCMS for use in this register.

The Government encourages local authorities to consider establishing a policy of seeking premises licences for public spaces they own e.g. public parks, promenades, community buildings etc. Where such licences are in force, this removes the burden on individuals and community organisations of applying for a premises licence or giving a Temporary Event Notice.

15. BEER GARDENS OR OTHER OUTDOOR SPACES

- 15.1 Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale and any conditions that relate to off-sales would apply.
- 15.2 In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).
- 15.3 If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed application form requires the applicant to provide a description of where the place is and its proximity to the premises.

16. TEMPORARY ACTIVITIES

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

16.2 The system of temporary activities is intended as a light touch process and, as such, the carrying on of licensable activities does not have to be authorised by way of an application. Instead, a person wishing to hold an event at which it is proposed to carry out such activities is required to notify the Licensing Authority by way of a Temporary Event Notice (TEN).

16.3 A number of limitations are imposed on the use of TENs by the Act. The limitations apply to:

- the number of times a premises user may give a TEN (50 times in a calendar year for a personal licence holder and five times in a calendar year for other people);
- the number of times a TEN may be given for any particular premises (15 times in a calendar year);
- the maximum duration of an event authorised by a TEN is 168 hours;
- a maximum total duration of the events authorised by TENs in relation to individual premises (21 days in a calendar year);
- the maximum number of people attending at any one time (fewer than 500); and
- the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user (24 hours).

16.4 A TEN can be used for any 'premises'. This could be a building, a room in a building, a vehicle, a marquee, an open field etc. A TEN may only be given by an individual (aged over 18) and not by an organisation or club or business.

16.5 There are two types of TEN; a standard TEN and a late TEN. A standard TEN must be given no later than ten working days before the event to which it relates; a late TEN must be given not before nine and no later than five working days before the event. (NB. Notice periods do not include the day the Notice is given to the Licensing Authority or the day of the event. If this minimum period of notice is not given, the Authority will reject the Notice and the licensable activities may not take place).

16.6 The police and North Devon Council's Regulatory Services ('relevant persons') may object to a TEN. If the Authority receives an objection notice from a relevant person that is not withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection (unless all parties agree that this is unnecessary). The Authority must consider any objection on the basis of the licensing objectives and decide whether the event should go ahead. Relevant persons may also intervene by agreeing a modification of the proposed arrangements directly with the person giving the TEN.

16.7 Where an objection is received, the Authority may impose conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. The Authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded.

16.8 When giving a TEN, the premises user should consider the promotion of the four licensing objectives. Organisers are strongly advised to contact relevant persons for advice at the earliest opportunity when planning events. Planning at an early stage may well minimise or avoid potential objections.

16.9 Where the TEN includes the supply of alcohol, the responsibility for the supply rests with the person giving the Notice (the 'premises user'). The premises user does not have to be on the premises for the entire duration of the event but will be liable for any offences committed.

16.10 Further advice on Temporary Events is available on our website at www.northdevon.gov.uk/licensing or on the Home Office website at <https://www.gov.uk/guidance/alcohol-licensing#temporary-events>.

17. LATE NIGHT LEVY

- 17.1 The Late Night Levy is a discretionary power conferred on Licensing Authorities by Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011. This provision came into force on 31st October 2012 and enables a Licensing Authority to charge a levy on premises in the authority's area which are licensed to sell alcohol late at night as a means of raising a financial contribution towards the costs of policing the late-night economy. The levy applies to the whole of the Licensing Authority's area.
- 17.2 The levy will be payable by the holder of any premises licence or club premises certificate in the authority's area which authorises the sale or supply of alcohol on any days during the 'late night supply period'. This is a period beginning at or after midnight and ending on or before 6am.
- 17.3 The decision to introduce the levy is for the licensing authority to make. Before making any such decision, the Licensing Authority must consult the Chief Officer of Police, the Police and Crime Commissioner and the holders of relevant late night licences or certificates. Local residents can use existing channels and forums to put forward views and call for the implementation of the levy in their area if they wish to do so.
- 17.4 The Licensing Authority must pay at least 70% of the net levy revenue to the police. A Licensing Authority can deduct the costs it incurs in connection with the introduction, administration, collection, variation and enforcement of the levy prior to the levy revenue being apportioned between the police and Licensing Authority. The licensing authority has discretion to exempt certain premises - prescribed by regulations - from the levy and to reduce the amount of the levy by 30% for premises which participate in business-led best practice schemes.
- 17.5 At the time of approving this Policy, this Authority has taken no decision to implement the Late Night Levy but is aware that it is a power which it can use if it considers it appropriate for the promotion of the licensing objectives.
- 17.6 The Authority will review the need for a Late Night Levy at least every five years in conjunction with the review of this policy. The Authority will, however, consider the introduction of a Late Night Levy at any time if circumstances change and evidence supports this course of action.

18. EARLY MORNING RESTRICTION ORDERS

- 18.1 Early Morning Restriction Orders (EMROs) are a discretionary licensing power conferred on Licensing Authorities by s.119 of the Police Reform and Social Responsibility Act and came into force on 31st October 2012. This power enables a Licensing Authority to prohibit the sale of alcohol for a specified time period between the hours of midnight and 6 a.m. in the whole or part of its area if it is satisfied that this would be appropriate for the promotion of the licensing objectives.
- 18.2 EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times, serious public nuisance and other instances of alcohol-related anti-social behaviour which are not directly attributable to specific premises.
- 18.3 The decision to implement an EMRO must be evidence based. Evidence will be considered from partners including Responsible Authorities and local Community Safety Partnerships alongside the Authority's own evidence to determine whether an EMRO is appropriate for the promotion of the licensing objectives.
- 18.4 Measures that may be considered in advance of making an EMRO include:
- introducing a Cumulative Impact Policy
 - reviewing licences of specific problem premises
 - encouraging the creation of business-led practice schemes in the area and
 - the other mechanisms designed for controlling cumulative impact see 8.4

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

- 18.5 The only exemptions relating to EMROs are premises which are authorised to sell alcohol between midnight and 6.00 am on New Year's Eve and the provision of alcohol to residents in premises with overnight accommodation by means of mini bars and room service.
- 18.6 At the time of approving this Policy, this Authority has taken no decision to introduce an EMRO but is aware that it is a power which it can use if it considers it appropriate for the promotion of the licensing objectives.
- 18.7 The Authority will review the need for an EMRO at least every five years in conjunction with the review of this policy. The Authority will consider the introduction of an EMRO at any time if circumstances change and evidence supports this course of action.

19. PERSONAL LICENCE

- 19.1 The Police have the right to object to a person applying for a personal licence if that person has a relevant unspent conviction (at the time of application) or if they obtain a relevant conviction during the application period of their licence.
- 19.2 The Licensing Authority can revoke or suspend a licence in relation to convictions obtained after 6 April 2017.

20 FEES

- 20.1 Following amendments that came into force in October 2012 the Act requires a licensing authority to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due.
- 20.2 It is the practice of this Authority to issue an invoice for annual maintenance fee. . Non payment will then result in a suspension notice being served. Regulations state that the premises licence or club premises certificate holder will be given notice of a suspension that is at least 2 working days before the suspension is to take place.
- 20.3 The Authority will not generally refund fees for licence applications, particularly where the Authority has incurred costs in accepting and processing applications. Each case will, however, be decided on merit.

21. EQUALITY AND HUMAN RIGHTS ISSUES

- (i) In developing this policy, the Authority recognises its responsibilities under the Equality Act 2010, to consider the need to eliminate unlawful discrimination and to promote equal opportunities. The Policy therefore supports and is supported by North Devon's Equality Scheme and any equality issues will be addressed in an Equality Impact and Needs Assessment.
- (ii) The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way that is incompatible with a convention right. The Authority will have regard to the Human Rights Act when exercising its licensing functions.
- (iii) Conditions relating to disabled access will not be attached to licences, as this would duplicate existing statutory requirements. The Authority therefore takes this opportunity to remind holders of premises licences and club premises certificates of their duties under the Equality Act 2010.

22. FURTHER INFORMATION

- 22.1 Contact details of the Licensing Authority and Responsible Authorities are available from www.northdevon.gov.uk/licensing
- 22.2 Further information and guidance on the Act can be viewed on the Authority's website at www.northdevon.gov.uk/licensing. Application forms can be downloaded from the site or electronic applications submitted online.
- 22.3 Further information on alcohol and entertainment licensing is available on the Home Office website at www.gov.uk

APPENDIX A – GLOSSARY OF TERMS

Alcohol, authorised sale of

- it is a mandatory condition of a Premises Licence that every supply of alcohol must be made or authorised by a person who holds a Personal Licence.

Alcohol, retail sale of

defined by the Act (s.192) as any sale of alcohol other than to:

- a trader for the purposes of his trade
 - a club which holds a Club premises certificate for the purposes of the Club
 - the holder of a Personal Licence for the purpose of making sales authorised by a Premises Licence
 - the holder of a Premises licence for the purpose of making sales authorised by that licence, or to the premises user in relation to a Temporary Event Notice for the purpose of making sales authorised by that Notice.
- and which is made for consumption off the premises.

Appeal

- the Act provides for right of appeal to the Magistrates' Court against a decision of the Licensing Authority. Appeals must be brought within 21 days of notification of the Authority's decision.

Authorised Person

- an officer of the Licensing Authority who has been authorised by the Authority – generally for the purposes of inspection and/or enforcement – under the provisions of the Licensing Act 2003;
- an inspector appointed under s.18 of the Health and Safety at Work Act 1974;
- an officer of the local authority exercising a statutory function in relation to pollution control or harm to human health;
- in relation to a vessel, an inspector or surveyor of ships appointed under s.256 of the Merchant Shipping Act 1995;
- a person prescribed under s.13 (2) of the Act.

British Board of Film Classification

- the body responsible for determining the age rating of films screened in the UK. Current ratings are:
 - U – generally suitable for audiences over 4 years of age
 - PG – suitable for general viewing but some scenes may be unsuitable for young children
 - 12A – suitable for children aged 12 years and over
 - 18 – suitable only for adults

Club Premises Certificate

- A certificate authorising the use of premises by a qualifying club for one or more club activities.

Designated Premises Supervisor

- The individual specified in the premises licence as the premises supervisor. - in relation to premises selling alcohol, the person (who must hold a Personal Licence, who will normally have been given the day to day responsibility for running the premises by the holder of the Premises Licence or will be the Premises Licence holder himself.

Hearing

- a meeting of a Licensing sub-Committee – generally held in public - to determine an application for a Premises Licence where relevant representations have been received from a Responsible Authority or an interested party. The hearing will be held before a licensing 'panel' comprising three members of the Licensing Committee who will hear evidence from the applicant and from the objectors.

Hot Food or Hot Drink

- food or drink supplied on or from any premises is "hot" for the purposes of Schedule 2 to the Act if the food or drink, or any part of it:
 - (i) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature, or
 - (ii) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

Late Night Refreshment

- the provision, between 11 pm and 5 am, of hot food or hot drink, to members of the public or a section of the public on or from any premises, whether for consumption on or off the premises between 11 pm and 5 am, or-at any time between those hours when members of the public, or a section of the public, are admitted to any premises, a person supplies, or holds himself willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises.

Licensing Committee

- The committee established by the licensing authority to discharge the licensing functions of the authority.

Licensing Hours

- The hours during which authorised licensable activities take place.

Licensing Qualification

- A qualification accredited or certified by the Secretary of State.

Operating Schedule

- a document containing a statement including the following matters:

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

Personal Licence

- A licence which authorises an individual to supply or authorise the supply of alcohol in accordance with a premises licence..

Premises Licence

- A licence authorising premises to be used for one or more licensable activities.

Qualifying Club

- in order to be a 'qualifying club' for the purposes of the Act, a club must meet the following criteria:

- a person must not be admitted to membership or enjoy the privileges of membership without a period of at least 48 hours between their application for membership and their admission,
- the club must be established in good faith as club, and
- the club must have at least 25 members.

(NB. A proprietary club (i.e. a commercial club which is established and operated for profit) cannot be regarded as a 'qualifying club' for the purposes of the Licensing Act 2003).

Relevant Persons

- References to relevant persons in relation to any premises are references to the following:

- the Chief Officer of Police for any police area in which the premises are situated,
- the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health (i.e. the Council's Environmental Protection and Health and Safety Teams).

Responsible Authorities

- the public bodies that must be fully notified of applications and that are entitled to make relevant representations to the licensing authority in relation to the grant, variation, minor variation or review of a premises licence. (See Appendix C)

Temporary Event Notice

- a Notice authorising a permitted temporary activity involving one or more licensable activities subject to certain conditions and limitations.

Zoning

- The adoption of fixed terminal hours in designated areas.