



# Statement of Licensing Policy

## Licensing Act 2003

**Date of implementation: 7 January 2019**

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# 1. Introduction

- 1.1 Mid Devon District Council has a duty to administer and enforce the Licensing Act 2003 (the “Act”) which gives local authorities responsibility for licensing the sale and supply of alcohol, regulated entertainment and the provision of late night refreshment.
- 1.2 The Act requires that Licensing Authorities publish a Statement of Licensing Policy for their area to guide them when considering licence applications and controlling licensed premises. This Statement of Licensing Policy is produced in response to this requirement and applies to all applications, notices, representations and requests we receive under the Act. The Policy also aims to provide guidance to applicants, objectors and interested residents, businesses and the wider community about the approach we will take as the Licensing Authority. It has been the subject of consultation with local bodies, organisations and residents. A list of consultees is provided within the policy itself.
- 1.3 Mid Devon District Council’s original policy was published in 2005 and was subsequently reviewed every 3 years, as required by the legislation at that time. Since then changes to the Act mean that licensing authorities are now required to review their statements of Licensing Policy every 5 years. This is the fourth review of this Policy by Mid Devon District Council.
- 1.4 This Policy Statement will come into force on 7 January 2019.
- 1.5 This Statement of Licensing Policy has been prepared in accordance with the provisions of the Act and the latest version of Home Office Guidance issued under section 182 of the Act.

## 2. Background

### Purpose and Scope of the Licensing Policy

- 2.1 This Statement of Licensing Policy is produced in response to the requirements of Section 5 of the Act. It aims to ensure a consistent approach to licensing within Mid Devon. The policy will assist officers and members in reaching a decision on a particular application or licence, setting out those matters that will normally be taken into account. In addition, the Policy seeks to provide clarity for applicants, licence holders, residents, and businesses to enable them to understand the objectives being promoted and the matters that will be considered when determining licences.
- 2.2 In carrying out its licensing function the Licensing Authority must promote the following four licensing objectives:
- The prevention of crime and disorder
  - Public Safety
  - The prevention of public nuisance
  - The protection of children from harm
- 2.3 For the purposes of this Policy, Mid Devon District Council is the Licensing Authority and is referred to as the “Licensing Authority”, unless otherwise stated.
- 2.4 This Policy covers a wide range of licensable activities under the Act and these are as follows:
- Retail sale of alcohol
  - Supply of alcohol to club members
  - Provision of entertainment to the public or club members or with a view to making profit, including raising money for charity, where the entertainment involves:
    - A theatrical performance
    - Film exhibition

- Indoor sporting event
  - Boxing or Wrestling
  - Live music
  - Recorded music
  - A performance of dance
- Supply of hot food or drink from premises between 23:00 and 05:00 (the provision of late night refreshment)
- 2.5 The scope of the policy includes new applications, variations (including transfers and changes of designated premises supervisors), notices and existing licences. Nothing in this policy will prevent a person from making an application under the Act and each application will be determined on its own individual merits.
- 2.6 This Policy sets out the vision for the regulation of licensed premises throughout Mid Devon and outlines the standards expected to ensure the promotion of the four licensing objectives.
- 2.7 The Licensing Authority may depart from the Policy if it considers that doing so would benefit the promotion of the Licensing Objectives. Reasons will be given for any such departure from the general policy. However, it is expected that any such departure would be likely only in exceptional circumstances.

### **Profile of Mid Devon**

- 2.8 Mid Devon District Council is a rural council, lying inland within Devon. The Council covers an area of 352 square miles (913 square kilometres). The district boasts a high quality natural environment, bordering Dartmoor and Exmoor National Parks and the Blackdown Hills Area of Outstanding Natural Beauty.
- 2.9 With an approximate population of 79,200, the district is one of the most sparsely populated local authorities within England and Wales, comprising approximately 32,750 households.
- 2.10 There are three main market towns in the district. Tiverton is the largest of these with a population of approximately 22,177 and Cullompton and Crediton are the other two, having populations of approximately 9,245 and 7,872 respectively.





- Devon County Council - Local Safeguarding Children's Board
- Weights and Measures (Trading Standards)
- Public Health (Mid Devon)
- Community Safety Partnership (Mid Devon)
- Town and Parish Councils within Mid Devon
- Health and Safety Executive
- Mid Devon District Council - Environmental Health Services
- Mid Devon District Council - Planning Services
- Home Office
- Persons / bodies representative of local premises licence holders
- Persons / bodies representative of local club premises certificate holders
- Persons / bodies representative of local personal licence holders
- Persons / bodies representative of local businesses and residents in the area

- 2.13 This consultation was carried out between 15 June 2018 and 31 August 2018.
- 2.14 Proper weight has been given to the views of organisations and individuals consulted prior to implementing this Policy.
- 2.15 This Policy was formally adopted by the Council on 24 October 2018 and had effect from 7 January 2019. It will remain in force for a maximum period of five years. It 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 and will consult on any substantial revisions to the Policy.

### 3. The licensing function

#### Purpose

- 3.1 The 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.
- 3.2 It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as a “cure all” for solving all problems within the community. The Licensing Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. The Licensing Authority will therefore continue to work in partnership with its neighbouring authorities, the police, the fire authority, the Council’s Environmental Health Department, the Community Safety Partnership, local businesses and local people towards the promotion of the objectives as outlined.

#### Delegation of Functions

- 3.3 The powers of the Licensing Authority under the Act may be carried out by the authority’s Licensing Committee, by a Sub-Committee or by one or more officers acting under delegated authority. The Licensing Committee will consist of between 10 and 15 elected members of the Council and will establish sub committees consisting of 3 members of the committee. The Council’s delegation of functions follow the Home Office Guidance issued under Section 182 of the Licensing Act.
- 3.4 Many of the licensing procedures will be largely administrative and un-contentious. In the interests of efficiency and effectiveness officers will generally carry these out.
- 3.5 In situations where representations have been made and an agreement has been reached between all relevant parties to amend the application (i.e. to add conditions) the Licensing Authority reserves the right to not hold a hearing and issue the licence as per the agreement (in such situations the application will be considered ‘uncontested’). This will only be done when the proposed amendments promote the licensing objectives and consideration will be given to the potential for any party to be disadvantaged.
- 3.6 A list of delegations is available below:

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub-Committee</b>	<b>Officers</b>
Application for personal licence		If a police objection made	If no police objection made
Application for personal licence with unspent convictions		All cases	
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 (except addition of conditions)	Addition of conditions consistent with existing Licence
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
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)		

## Related Legislation, Policies and Guidance

- 3.7 When making licensing decisions, the licensing authority will comply with all relevant legislation and have regard to a number of strategies, policies and guidance documents. This includes:

### Legislation

- Section 17 Crime and Disorder Act 1998
- The European Convention on Human Rights, which is applied by the Human Rights Act 1998
- The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000
- Equality Act 2010
- Crime and Disorder Act 1998
- Health and Safety at Work etc. Act 1974
- Environmental Protection Act 1990
- Anti-Social Behaviour, Crime and Policing Act 2014
- Building Regulations
- Regulatory Reform (Fire Safety) Order 2005
- Town and Country Planning Act 1990
- Private Security Industry Act 2001
- Violent Crime Reduction Act 2006
- Police Reform and Social Responsibility Act 2011

### Strategies

- Current East and Mid Devon Community Safety Strategy
- Current Government alcohol strategy
- Current Mid Devon Corporate Plan

### Policies / Codes of Practice

- Regulators' Compliance Code (BIS)
- Mid Devon District Council's Enforcement Policy
- Local Transport Plan

### Guidance

- Guidance issued under s.182 of the Licensing Act 2003 (Home Office)
- Guidance to Health and Safety at Outdoor Events (Purple Book)

- Licensed Property: Noise Control (British Beer and Pub Association)
- Guidance on running events safely (HSE website)
- Managing work-related violence in licensed and retail premises (HSE)
- Code of Practice on Environmental Noise Control at Concerts (Noise Council)
- Home Office Guide to Safer Clubbing
- Any guidance / policy produced by the Council in relation to noise nuisance
- The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks

3.8 There are some other notable pieces of legislation and these are as follows:

#### Gambling Act 2005

3.9 The provision of gaming machines and certain forms of low-stakes gambling (i.e. poker and bingo) are permitted in alcohol-licensed premises and qualifying clubs under the Gambling Act 2005. The type of gambling allowed, 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 premise where it believes that gaming is becoming the dominant activity or is having a detrimental effect on the licensing objectives.

3.10 The Council has adopted a Gambling Act Policy which stands separate from this Licensing Policy. The Policy may be viewed on the licensing webpages of Mid Devon District Council.

#### Health Act 2006

3.11 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.

### Sexual Entertainment Venues

- 3.12 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.
- 3.13 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 disappplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments.
- 3.14 However, the Licensing Act 2003 will permit the holder of a premises licence to carry out relevant entertainment where the premises are not licensed as a sex entertainment venue under the 1982 Act if:
- The relevant entertainment has only 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.
- 3.15 The Council has an adopted Sex Establishment Policy which stands separate from this Licensing Policy.

### Promotion of Equality

- 3.16 This policy recognises that the Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Actions of the Licensing Authority will be undertaken with due regard to equality obligations and where necessary, information will be published at least annually by the Council.

## Integrating Strategies and Avoiding Duplication

3.17 This Policy supports the following elements of the Council's Corporate Plan:

### Economy

- Business development and growth
- Improving and regenerating our town centres
- Growing the tourism sector

### Community

- Working with local communities to encourage them to support themselves
- Working with town and parish councils
- Increasing activity and promoting health and wellbeing

### Environment

- Protecting the natural environment

3.18 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 and inspections will only be carried out when and if they are judged to be necessary.

3.19 The Authority will endeavour to ensure that this Statement of Licensing Policy is aligned with and supports local crime prevention, planning, transport, tourism and cultural strategies. 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.

### Planning

3.20 The Licensing Authority recognises that licensing applications should not be seen as a re-run of the planning application process and that there should be a clear separation of the planning and licensing regimes to avoid duplication and inefficiency.

3.21 The Licensing Authority recognises that it is legally permissible for applications for licences to be made before any relevant planning permission has been sought or

granted by the planning authority. However the grant of a licence under the Act does not remove the need for applicants to obtain all the necessary planning consents. It should also be noted that grant of a licence in no way means that any planning application would also be granted and vice versa.

- 3.22 It is strongly recommended that prospective applicants contact the Local Planning Authority in advance of making a licence application in order to check, or seek advice on, any planning consents or any conditions relevant to the use of the premises. It makes operational sense to ensure that planning and licensing are compatible.
- 3.23 Where, as a condition of planning permission, a terminal hour has been set for the use of the premises for commercial purposes that is different to the licensing hours, the licensee must observe the earlier closing time in order to avoid any breach of planning permission (and vice versa where the licensing hours finish earlier than the planning permission).



## 4. The licensing process

### General

- 4.1 Application forms may be downloaded from the Authority's licensing webpages. 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.
- 4.2 Applications, notices or relevant representations shall be treated as having been "given" to the Authority in accordance with the principles of "deemed service" as set out in the Civil Procedure Rules.
- 4.3 The Act requires that applications for premises licences / club premises certificates 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 may reject the application. Further guidance on advertising applications is available on the Licensing Act 2003 pages available on the Authority's website.
- 4.4 When determining applications the Licensing Authority will have regard to this policy, the Act and Section 182 Guidance. Each application will be considered on its own individual merits.
- 4.5 Applicants should make themselves aware of the relevant sections of this policy, in particular the issues that will need to be addressed in formulating the operating schedule and offering appropriate conditions. In order to assist with this, the Licensing Authority has created two documents of note, a 'Pool of conditions' (Appendix C) and a 'Code of Practice for Licensed Premises' (Appendix D).
- 4.6 The Licensing Authority will expect individual applicants to address the licensing objectives in their operating schedule having regard to the location and type of premises, the licensable activities to be provided, and the operational procedures.
- 4.7 Applicants should consider the benefits of exceeding their statutory consultation requirements by proactively seeking the views of parties on the application and proposed licensable activities. This includes proactively liaising with local residents, local ward Councillors, businesses and responsible authorities.

## Regulated entertainment exemptions and de-regulations

- 4.8 Since the introduction of the Act, the Government has de-regulated various types of regulated entertainment. Applicants are advised to consult the government's website for further information:

<https://www.gov.uk/guidance/entertainment-licensing-changes-under-the-live-music-act>

- 4.9 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 regulated entertainment or not. If in doubt, organisers of events should check with the Licensing Authority.

## New and full variation process

- 4.10 The procedure for making a new application and changes to an existing Premises Licences or Club Premise Certificates are very similar. Both involve the same advertising procedure, a 28 day consultation period and the application is determined by the Licensing Sub-Committee if relevant representations are received. If no relevant representations are received then the application is automatically granted at the end of the consultation period.

- 4.11 In brief, applicants must:

- Submit a completed application on the prescribed application form to Mid Devon District Council with the required fee and a plan of the premises of 1:100 scale (unless agreed otherwise). The application form must include an Operating Schedule.
- Submit an entire copy of the application to all responsible authorities at the same time as the application is submitted to the Licensing Authority. *NB. If applicants chose to submit the application electronically they are not required to submit copies to the responsible authorities.*
- Advertise the application in a prominent position at or on the premises on a pale blue coloured notice of at least A4 size with a minimum font size of 16, for not less than 28 consecutive days starting on the day following the day on which the application was submitted to the Licensing Authority.

- Advertise the application within 10 working days (starting on the day following the day on which the application was submitted to the Licensing Authority) in a local newspaper circulating in the Mid Devon area.
- If the application includes the retail or supply of alcohol, the consent of the individual Personal Licence holder who wishes to be the Designated Premises Supervisor (DPS) is required with the application.

4.12 The application will be advertised on Mid Devon District Council's website.

4.13 All applicants for the grant or variation of a Premises Licence or Club Premises Certificate are expected to demonstrate within their Operating Schedules how they intend to promote each of the four licensing objectives. The proposals included in the Operating Schedule will form the main body of conditions to be applied to the licence or certificate (if granted).

### **Beer gardens or other outdoor spaces**

4.14 Applicants should 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 treated as taking place where the alcohol is appropriated to the contract. This means that 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.

4.15 In such cases it will not be necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence, assuming the licence authorises the sale of alcohol for consumption off the premises. 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).

4.16 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.

## Mobile, Remote, Internet and Other Delivery Sales

- 4.17 The Licensing Authority shall have due regard to sales of alcohol which are made remotely, by mobile methods, internet or by other delivery sales.
- 4.18 The expectation of the Licensing Authority is that conditions suggested by way of operating schedules for these types of activities should be extremely robust. If new applications are made or existing premises are looking to extend into this area they should seek advice from the Licensing Authority or the police as it might be appropriate for provisions in the operating schedule for age verification and restriction of delivery times and quantities.

## Vessels

- 4.19 The Licensing Authority will give particular weight to the views of the British Waterways Board when considering applications for premises licences in respect of vessels. Where, in the opinion of the Licensing Authority, if its discretion is engaged and any of the four objectives are undermined and cannot be resolved through the imposition of conditions, the application may be refused.

## Minor Variation process

- 4.20 Small changes to a Premises Licence or Club Premises Certificate that will not impact adversely on the licensing objectives can be dealt with via the 'Minor Variation' process which is a scaled down version of the full variation process detailed above, with a reduced fee.
- 4.21 We expect that the process will be used for changes such as:
- Small changes to the structure or layout of a premises;
  - Additional authorisations required for late night refreshment or regulated entertainment (such as live music, performance of plays or film exhibitions);
  - Small changes to licensing hours (see below for changes that relate to alcohol);
  - Revisions, removals and additions of conditions (this could include the removal or amendment of out of date, irrelevant or unenforceable conditions, or the addition of volunteered conditions).

4.22 Minor variation applications will not apply to:

- Substantial changes to the premises;
- Varying the Designed Premises Supervisor;
- Authorising the sale by retail of alcohol;
- Authorising the supply of alcohol at any time between 23:00 and 07:00 hours;
- Authorising an increase in the amount of time on any day during which alcohol may be sold by retail.

4.23 In brief, applicants must:

- Submit a completed application on the prescribed application form to Mid Devon District Council with the required fee. If you are applying for a variation to the layout of your premises, you must include a revised plan of the premises of 1:100 scale (unless agreed otherwise).
- Advertise the application in a prominent position at or on the premises on a white notice of at least A4 size with a minimum font size of 32 for the header and 16 for the content, for not less than 10 working days starting on the day following the day on which the application was submitted to the Licensing Authority.

4.24 On receipt of a minor variation application, the Licensing Authority will consider the application and consult the relevant responsible authorities as it considers appropriate. In deciding on the application the Licensing Authority will consider any relevant representations received within the statutory time limit (ten working days from the day after the application was received by the Licensing Authority). The Licensing Authority will either grant the application or refuse it where it considers that the proposed application could impact adversely on any of the four licensing objectives.

4.25 If the Licensing Authority fails to determine the application within 15 working days, the application will be treated as being refused but the fee returned. However, in such cases the Licensing Authority and applicant may agree instead that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application thus avoiding the need for a new application to be submitted.

- 4.26 Applications that have been rejected under the minor variations process can then be the subject of a full variation application or a revised minor variation application. The refusal of a minor variation does not affect or pre-determine any subsequent variation application in respect of the same premises.

### Personal Licence process

- 4.27 Any premises licensed for the sale of alcohol must specify a Designated Premises Supervisor (DPS). This person must be a Personal Licence holder. In order to obtain a Personal Licence, the applicant must:
- Be aged 18 or over
  - Submit a completed application on the prescribed application form to Mid Devon District Council with the required fee.
  - Possess a licensing qualification accredited by the Secretary of State
  - Not have forfeited a Personal Licence within 5 years of his/her application
  - Produce a satisfactory 'Basic Disclosure' from the Disclosure and Barring Service (DBS), or the results of a subject access search of the police national computer by the National Identification Service (this check must be no more than one month old at the time of application)
  - Not have an objection notice from the Police about the grant of a Personal Licence following notification of any unspent relevant offence or foreign offence; OR must show that such an offence should not lead to refusal on crime prevention grounds
- 4.28 Photographs submitted with the application must be clearly endorsed on the reverse side with the person's name, date of birth and contact number in order to ensure they are correctly processed.
- 4.29 Applicants with unspent criminal convictions for relevant offences set out in the Licensing Act are strongly encouraged to first discuss their intention to apply for a Licence with the Police and Licensing Authority before making an application.
- 4.30 There is no longer a requirement to renew a Personal Licence and the Licence is portable, although changes of name and home address or updates to photos must be notified to the issuing Licensing Authority for a prescribed fee.

## Temporary Event Notices (TENs)

- 4.31 The Act sets out the legal requirements relating to TENs. A TEN is a notification given by an individual to the Licensing Authority where it is proposed to use a premises for one or more licensable activities during a period not exceeding 168 hours. They can be used to authorise relatively small-scale ad hoc events held in or on any premises involving no more than 499 people at any one time.
- 4.32 A TEN is typically used to:
- Authorise a licensable activity at a premises not currently licensed - e.g. selling alcohol at a fete
  - Temporarily extend the hours for providing a licensed activity at an existing licensed premises for a specific event
  - Provide for licensable activities not authorised by the existing licence
- 4.33 The organiser must submit a TEN to the Licensing Authority and where this TEN is submitted in writing, it is the responsibility of the notice giver to ensure that a copy is sent to the Police and Environmental Health as stipulated in the Act. Where a TEN has been submitted electronically copies of it will be forwarded to the Police and Environmental Health by the Licensing Authority.
- 4.34 The TEN must normally be submitted 10 clear working days' before the proposed event. This does not include the date of submission, the date of the event, weekends or bank holidays. It is recommended that TENs are submitted to the authority at least 28 days prior to the event to allow sufficient time for the organiser to liaise with relevant council officers and responsible authorities to ensure the event takes place with minimum problems.
- 4.35 Where relevant representations are received from the Police or Environmental Health, the matter will be referred to the Licensing Sub-Committee for a decision as to whether or not the event can take place. Where representations relate purely to the addition of conditions to the TEN which are consistent with an existing Premises Licence, a statement of conditions will be issued with the TEN without the need for a Licensing Sub-Committee hearing, unless the applicant disagrees.
- 4.36 Late TENs can be given up to five working days but no earlier than nine working days before the event is scheduled and, unless given electronically to the Licensing Authority, must also be sent by the notice giver to the Police and the Council's Environmental Health Section.

- 4.37 It should be noted that in case of any relevant objections to a late TEN a counter notice will be served and the event cannot take place.

### **Large Scale Public Events**

- 4.38 The Council strongly recommend that organisers of large scale public events (for example outdoor music concerts and beer festivals) consult the Safety Advisory Group (SAG) at the earliest opportunity to discuss arrangements for the licensing of those activities. This will help to ensure that they can obtain expert advice on how best to minimise the risk of injury and public nuisance.
- 4.39 The application may involve the preparation of a substantial Event Management Plan which may take some time to complete. We recommend applicants engage with the SAG process a minimum of 3 months prior to the proposed event starting date.

### **Disapplication of Certain Mandatory Conditions for Community Premises**

- 4.40 An amendment to the Act 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.
- 4.41 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 will be 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.

### **Licence Reviews**

- 4.42 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.

4.43 Following receipt of a review application, a 28 day consultation period will begin. The application will then be determined by the Licensing Sub-Committee who 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 Licensing Authority include:

- Take no further action
- Issue a warning to the licence holder
- Modify the conditions of the Premises Licence
- Exclude a licensable activity from the scope of the Licence
- Remove the Designated Premises Supervisor
- Suspend the Licence for up to 3 months
- Revoke the Licence

4.44 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 reviews that 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 Health in relation to noise nuisance or the police in relation to crime and disorder) to establish whether there is other action(s) that can be taken to resolve the problem.

4.45 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, except 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.

- 4.46 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 infringements of licensing regulations, failure to comply with licence conditions and/or of failure to promote the licensing objectives.
- 4.47 In cases of serious crime and disorder at premises, the Police may apply for a summary review. On receipt of such an application, the Authority has 48 hours to determine whether any interim steps are required. Further information about this process can be seen in S182 guidance.
- 4.48 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.

### Licensing Fees

- 4.49 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.
- 4.50 It is the practice of this Authority to issue an invoice for annual fees approximately a month before the due date. 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.
- 4.51 No refund is payable for any withdrawn or refused application / notification. In accordance with the Act, the fee for a minor variation is refundable, but only when the application is not determined within the statutory time period.

### Late Night Levy (LNL)

- 4.52 A Late Night Levy (LNL) is an optional power available to Local Authorities to raise a contribution towards the costs of policing the night time economy. The power was introduced through the Police Reform and Social Responsibility Act and enables the authority to charge a levy to holders of Premises Licences and Club Premises Certificates authorised to sell alcohol. A LNL must apply across the whole of the local authority area and applies to all on and off licences. Temporary Event Notices are exempt.

- 4.53 A LNL would require that a levy be paid by those persons who are authorised to sell alcohol between the periods specified in the LNL (the late night supply period) regardless of whether they are actually open during that period. This can be no earlier than 00:00 hrs and no later than 06:00 hrs and must be the same period every day. 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.
- 4.54 At least 70% of the Levy must be paid to the Police and Crime Commissioner. The local authority's portion can be used to tackle alcohol related crime and disorder and to support management of the night time economy in line with the reduction of crime and disorder, promotion of public safety; prevention of public nuisance and street cleansing.
- 4.55 The implementation of a LNL is subject to public consultation and, if it is to be introduced, must be adopted at a meeting of the Council.
- 4.56 At the time of preparing this Policy, this authority has taken no decision and has no plans to implement a LNL but is aware that it is a power which it may use if it considers it appropriate for the promotion of the licensing objectives.
- 4.57 The authority will, however, consider the introduction of a LNL at any time if circumstances change and evidence supports this course of action.

### **Early Morning Restrict Orders (EMROs)**

- 4.58 Early Morning Restriction Orders (EMROs) enable a Licensing Authority to prohibit the sale of alcohol for a specified time period between 00:00 hrs and 06:00 hrs in the whole or part of its area if it is satisfied that this would be appropriate for the promotion of the licensing objectives.
- 4.59 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. Unlike the Late Night Levy there are no powers to charge a fee in connection with making an EMRO.
- 4.60 The decision to implement an EMRO must be evidence based. Evidence will be considered from partners including Responsible Authorities and the Community Safety Partnership alongside the authority's own evidence to determine whether an EMRO is appropriate for the promotion of the licensing objectives.

- 4.61 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
  - other mechanisms designed for controlling cumulative impact
  - encouraging licence or certificate holders to make variations with respect of hours for licensable activities.
- 4.62 The only exemptions relating to EMROs are premises which are authorised to sell alcohol between 00:00 hrs and 06:00 hrs 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.
- 4.63 At the time of preparing 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.

### **Cumulative Impact**

- 4.64 The cumulative impact of licensed premises on the promotion of the licensing objectives is a matter which the Licensing Authority can take into account. 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.
- 4.65 A cumulative impact assessment (CIA) may be published by a Licensing Authority to help it to 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. CIAs relate to applications for new premises licences and club premises certificates and applications to vary existing premises licences and club premises certificates in a specified area.
- 4.66 Section 5A of the 2003 Act sets out what a Licensing Authority needs to do in order to publish a CIA and review it, including the requirement to consult with the persons

listed in section 5(3) of the 2003 Act. The 2003 Act does not stipulate how the CIA should be used once published, because the requirements for determining applications for new licences or variations are the same in areas with a CIA as they are elsewhere, as set out in sections 18, 35, 72 and 85 of the Act. However, any CIA published by a Licensing Authority must be summarised in its statement of licensing policy. Under section 5(6D) a Licensing Authority must also have regard to any CIA it has published when determining or revising its statement of licensing policy.

- 4.67 The Licensing Authority will not operate a quota of any kind, which would pre-determine any application, nor will it seek to impose general limitations on trading hours in particular areas. Regard will be given to the individual characteristics of the premises concerned within a given area. It is recognised that pubs, nightclubs, restaurants, hotels, theatres, and other clubs all sell alcohol, serve food and provide entertainment, but with contrasting styles and characteristics. Proper regard will be made to those differences and the impact they are likely to have on the local community. This may result in the amenity of local residents being placed under severe pressure; it will not always be possible to attribute a particular problem to customers of particular premises. This means that whilst enforcement action to ensure conditions are complied with is taken, this may not resolve all problems.
- 4.68 Local Community Safety Partnerships and responsible authorities, such as the police and environmental health, may hold relevant information which would inform licensing authorities 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 specific area to be covered by the CIA. Information which licensing authorities 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
  - evidence obtained through local consultation.
- 4.69 The 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.
- 4.70 If a CIA is published the Licensing Authority must, within three years, consider whether it remains of the opinion set out in the assessment. In order to decide whether it remains of this opinion it must again consult the persons listed in section 5(3).
- 4.71 Having published a CIA a Licensing Authority must have regard to the assessment when determining or revising its statement of licensing policy. It is therefore expected that, in respect of each relevant application in the area concerned, the Licensing Authority will be considering whether it is appropriate to make a representation to its committee as a responsible authority in its own right. The CIA does not, however, change the fundamental way that licensing decisions are made. It is therefore open to the Licensing Authority to grant an application where it considers it is appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in areas covered by a CIA should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives.
- 4.72 The Licensing Authority recognises that as well as the licensing function there are a number of mechanisms for addressing issues of unruly behaviour that occurs away from licensed premises. These include:
- planning control

- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority, including best practise schemes such as Best Bar None, Pubwatch or Business Improvement District
- Community Protection Notices
- the provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly
- the confiscation of alcohol from adults and children in designated areas
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices
- prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale)
- Raising a contribution to policing the late night economy through the Late Night Levy
- Early Morning Alcohol Restriction Orders

4.73 Additional information on CIA can be found in S182 guidance. This Authority has not published a CIA at the time of writing this policy.

### **Public Spaces Protection Order (PSPOs)**

4.74 The Designated Public Place Order (DPPO) has been replaced by the Public Spaces Protection Order (PSPO) in the Anti-social Behaviour Crime and Policing Act 2014. PSPOs can be used to restrict the drinking of alcohol in a public space where this has or is likely to have a detrimental effect on the quality of life on those in the locality, be persistent or continuing in nature, and unreasonable. Before making a PSPO, a council must consult the local police.

4.75 At the time of preparing this policy, Mid Devon District Council have no PSPOs.

## Licensing register

- 4.76 The Act requires the Licensing Authority to keep a register containing a record of each premises licence, club premises certificate and personal licence issued, along with the temporary event notices received. Our register may be accessed online at the following link:

<https://www.middevon.gov.uk/business/licensing/online-licensing-register/>.

- 4.77 Alternatively, the register may be viewed at Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP during normal opening hours. It is recommended that any person wishing to view the register in person should contact the Licensing Team in advance to ensure that your request can be catered for at the time of visit.



## 5. Responsible Authorities and Representations

### Responsible Authorities

- 5.1 Responsible Authorities are public bodies that must be notified of applications under the Licensing Act 2003. All Responsible Authorities are entitled to make representations in respect of grant, variation and review applications.
- 5.2 The Responsible Authorities are as follows:
- Licensing Authority, Mid Devon District Council
  - Environmental Health Services, Mid Devon District Council
  - Planning Services, Mid Devon District Council
  - Devon & Cornwall Constabulary
  - Devon Fire & Rescue Service
  - Local Safeguarding Children's Board, Devon County Council
  - Devon Trading Standards (Weights and Measures)
  - Health and Safety Executive
  - Director of Public Health (Devon DAAT)
  - Home Office (Alcohol Licensing Team)
- 5.3 Complete details for Responsible Authorities, including contact addresses is available in Appendix A.

### Licensing Authority

- 5.4 Section 103 of the Police Reform and Social Responsibility Act 2011 amended the 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.
- 5.5 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.
- 5.6 The Licensing Authority is unlikely to make representations on behalf of other parties such as individuals, local councillors etc., as these persons can make representations in their own right. Similarly, the Licensing Authority will expect other Responsible Authorities to make representations on issues falling within their own remit. For

example, the Licensing Authority is unlikely to make representations purely based on crime and disorder as this falls within the remit of the Police.

## Other Persons

- 5.7 The Licensing Act 2003 allows any “other person” to make representations about a licensing application provided that it is relevant to one or more of the licensing objectives.
- 5.8 “Other persons” means any individual, body or business affected by the operation of licensed premises regardless of their geographical location. The term also includes local councillors who can make representations in their own right or on behalf of a named “other person”, such as a resident or local business if specifically requested to do so.

## Making Representations

- 5.9 When an application is made for the grant or the variation of a premises licence or club premises certificate a Responsible Authority under the Act or any other person may make a representation about the application.
- 5.10 Representations must be made to the authority in writing within the 28 day consultation period. For this purpose, a representation can be made using the form available on our website or by letter or e-mail.
- 5.11 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 following licensing objectives:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 5.12 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.

- 5.13 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 to review a licence. The authority has established its own hearing procedures as provided for by regulations made under the Act and this is included as Appendix B.
- 5.14 Any party to a hearing may expand on their representation but may not introduce new or different representations.
- 5.15 Representations which are deemed by the authority to be repetitious, frivolous or vexatious will be disregarded.
- 5.16 Where relevant representations have been made against an application the Licensing Authority will normally try to see if any mediation is possible between the applicant and any objectors. The purpose of mediation is to allow each party to express their concerns or views in an attempt to come to an agreed position. A positive mediation result saves time and money as the Licensing Authority and parties involved may not have to attend a contested hearing before a licensing sub-committee.

### **Anonymous Representations and petitions**

- 5.17 The Licensing Authority cannot accept anonymous representations. Full details of all representations must be made available to the applicant, including names and addresses. However, 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.
- 5.18 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.
- 5.19 Alternatively, the authority may advise the individual to request their local councillor 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.
- 5.20 Persons making representations should be aware that their personal details will normally be disclosed during the hearing process.

5.21 Any petitions received will be treated as one representation from the person sending it in, supported by the other signatories. Petitions will not be treated as individual representations from everyone who has signed them.

## 6. Decision Making

### Determining applications

- 6.1 Where relevant representations are received about an application, a hearing will be held unless the Licensing Authority, the applicant and everyone who has made representations agree that a hearing is not necessary. Applicants and those making representations should seek in advance of any hearing to try and reach agreement or narrow the areas in dispute, particularly where both are professionally represented.
- 6.2 The authority has established its own hearing procedures as provided for by regulations made under the Act and this is included as Appendix B.
- 6.3 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.
- 6.4 The authority will expect applicants to demonstrate in their applications active steps for the promotion of 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. It might be that the applicant has considered all of this and decides that no measures will be appropriate to cover the promotion of one or more of the licensing objectives but that consideration will need to be made by the applicant.
- 6.5 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, antisocial behaviour, littering and noise, particularly late at night and in the early morning.
- 6.6 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, if considered appropriate, to include in their Operating Schedules adequate and effective steps to control noise and disturbance from their premises.

- 6.7 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 will 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.
- 6.8 It should be noted that, when determining an application, the authority is making a judgment 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.
- 6.9 Licence conditions will be tailored to the individual application and only those considered appropriate to meet the licensing objectives will be imposed. Licence conditions will not be imposed where other regulatory regimes provide sufficient protection, for example Health and safety at work, fire safety legislation etc.
- 6.10 The Licensing Authority will also take into account when making its decision that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour, especially once individuals have left licensed premises and are therefore beyond the direct control of licensees. However, when making a decision, the authority will focus on the direct impact of the activities taking place on the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- 6.11 The 'need' or demand for a licensed premises of any kind or the commercial damage that competition from a new licensed premises would do to other licensed premises in an area will not be matters that the authority will consider when discharging its decision making function.
- 6.12 In the majority of hearings a summary of the decision will be given verbally on the day. A full written decision notice will be provided to the applicant and anyone who has made a relevant written representation within 5 working days of the hearing; this will include details on how to appeal a decision.

- 6.13 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.
- 6.14 In reaching a decision on whether or not to grant a licence, the Licensing Authority, if relevant representations are made, 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 adequate to protect the public from harm or nuisance.

### Licensing hours

- 6.15 The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. When the authority's discretion is engaged consideration will be given to the individual merits of an application but the presumption will be to grant the hours requested unless there are objections to those hours raised by Responsible Authorities or Other Persons on the basis of the licensing objectives.
- 6.16 In general, applications for licensed premises located in residential areas wishing to open beyond 23.00, and those operating a beer garden or outside area beyond 21:00, will be expected to have a higher standard of control included within their operating schedule to address any potential public nuisance issue.
- 6.17 Where representations are received, stricter conditions relating to noise control may be appropriate and necessary in sensitive locations such as residential areas.
- 6.18 Shops and public houses will generally be permitted to sell alcohol during the hours they intend to open. Entertainment providers will be encouraged to provide and promote a range of entertainment during their operating hours including live music, dancing and theatre for the wider cultural benefit of the community. It will be a matter for individual applicants to address the licensing objectives in their operational schedule within the context of the nature of the location, type of premises, entertainment to be provided, operational procedures and the needs of the local community.
- 6.19 In considering relevant representations, the Licensing Authority will consider the adequacy of measures proposed to deal with the potential for nuisance and/or public disorder having regard to all the circumstances of the case.

6.20 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.

## Conditions

6.21 The Licensing Authority cannot impose conditions of its own volition. Conditions will only be attached in the following circumstances:

- Mandatory conditions under the Licensing Act 2003 or introduced by regulation under the Act which will have effect in all circumstances regardless of if they appear on the Licence
- If they are consistent with the applicant's operating schedule, or agreed/offered by the applicant during the application process
- When considered appropriate, reasonable and proportionate after relevant representations have been received and not withdrawn

6.22 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:

- be appropriate, reasonable and proportionate
- be enforceable
- not duplicate other statutory requirements
- be relevant to the particular type, location and character of the premises concerned
- not be standardised
- should be justifiable and capable of being met



- not replicate offences set out in the Act or in other legislation
  - be written in a prescriptive format
- 6.23 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.
- 6.24 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, this authority has compiled a Pool of Conditions and this is Appendix C.
- 6.25 The Pool of Conditions is not intended to form an exclusive or exhaustive list of conditions which should be included on a licence or certificate. Applicants should consider offering conditions that are appropriate, necessary and proportionate in the circumstances of their particular application. Moreover, the pool does not restrict any applicant, responsible authority, or other person from proposing any alternative conditions, nor does it restrict the Council's Licensing Sub-Committee from imposing any reasonable condition on a licence it considers appropriate for the promotion of the licensing objectives (after representations have been received to an application and by way of a hearing).
- 6.26 Any conditions offered in the Operating Schedule in wording that is not compliant with the principles outline above will be suitably reworded by the Licensing Authority.
- 6.27 The Authority will pay particular attention to the effect (or potential effect) 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.
- 6.28 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.
- 6.29 The Authority will not impose inappropriate or over-burdensome conditions on licences. The Authority may, however, if its discretion is engaged, 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.

6.30 When determining the appropriate set of conditions the Licensing Authority will focus primarily on the individual style of the premises and the licensable activities proposed. Consideration should also be given to the following:

- The size, nature and style of operation
- Whether the premises is part of a multiple operator's chain and therefore more likely to have an operating schedule that is tried and tested
- The cumulative effect of conditions in terms of cost and practical implementation
- The likely cost of the condition(s) for the operator
- Whether a simpler or better way of dealing with a perceived problem could be found
- Whether there is an actual risk of undermining an objective, as opposed to a conceivable risk. In the latter case, there is no need for the condition
- Whether the condition will be enforceable, if it is not specific or could be considered subjective it may not be enforceable

## 7. Enforcement and Code of Good Practice

- 7.1 It is the role of the Licensing Authority to protect the public from any harm that might arise from the provision of licensable activities at licensed premises. As part of this role licensing officers conduct visits to licensed premises to monitor compliance with the requirements of the premises licence and ensure the promotion of the licensing objectives.
- 7.2 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.
- 7.3 In general, action will be taken in accordance with the Authority's Environmental Health Enforcement Policy. This document can be viewed here:  
<https://www.middevon.gov.uk/residents/public-health/public-health-enforcement-policy/>
- 7.4 Each enforcement action will be considered on its own individual merits.
- 7.5 In Mid Devon we aim to visit all premises licensed under the Licensing Act 2003 in accordance with an allocated risk rating. The premises risk rating is based on factors such as the nature of the premises, the range of licensable activities authorised, the times of activities and confidence in the management of the business.
- 7.6 It is strongly recommended that those responsible for the day to day management of licensed premises carry out regular licence compliance checks themselves. To ensure compliance levels, the relevant person(s) should consider the following matters:
- Is the listed Designated Premises Supervisor (DPS) current?
  - Has the DPS authorised staff in writing to sell alcohol on their behalf?
  - Do you have a written age verification policy?
  - Are your staff familiar with, and trained in licensing requirements?
  - Can you show records of relevant staff training?
  - Are your staff training records up to date?
  - Is your Part A licence (or certified copy) available for inspection at the premises?
  - Is your Part B (licence summary) prominently displayed at the premises?
  - Is the premises plan accurate and up to date?

If the answer to any of these questions is 'no', remedial actions need to be taken.

## Code of good practice for licensed premises

- 7.7 In order to assist in the general management of licensed premises, the Licensing Authority has created a 'Code of good practice for licensed premises' which is available as Appendix D. It includes some templates of standard documents, as well as some links to useful information and resources. Completing these templates and using the resources provided will help premises to promote the licensing objectives.
- 7.8 The information in the Code of Good Practice should not be considered as standard requirements for all premises. It is very important that each premises is considered on its own individual merits and only relevant and required actions are requested and / or expected of them. Having said that, it is hoped that the document will be used by the following:

### Applicants and licence holders

- 7.9 It is important to take a proactive and preventative approach to managing a licensed premises as this will ensure problems either do not occur to begin with, or if they do, are dealt with quickly.
- 7.10 Applicants should therefore read this document before submitting an application. It is considered a good starting point in assessing the potential risks of your premises. The identification of a risk will not necessarily warrant a condition on a licence. Additionally, licence holders should be familiar with this document as it will highlight any additional operational measures they may need to put in place.

### The Licensing Authority and Responsible Authorities

- 7.11 This code is not a statutory document but it may be taken into consideration and used:
- When offering advice to applicants pre-application
  - When offering advice to licence holders in general
  - As a starting point to dealing with licensed premises encountering problems, in order to promote the licensing objectives and address issues
  - When enforcement action is required as a result of continued issues with premises not promoting the licensing objectives i.e. reviewing a premises licence

### Dealing with premises not promoting the four licensing objectives

- 7.12 Where problems or concerns are identified at a licensed premises this will be addressed as early as possible by the Licensing Authority. We aim to work in partnership with licence holders to address issues and we will offer guidance and advice where we can.
- 7.13 The Licensing Authority and Responsible Authorities will agree appropriate measures with licensed premises and this may include points within this code of good practice. This may be in the form of an 'action plan' and will provide a clear framework for actions to be undertaken. The ultimate aim of this code and its application is to try and avoid the need for more formal enforcement action such as a prosecution or review.

## 8. Promotion of the Licensing Objectives

### Introduction

- 8.1 When carrying out its functions and exercising its powers under the licensing Act the Licensing Authority will aim to promote the licensing objectives at all times. In promoting these licensing objectives, the authority aims to encourage a safe, crime free environment where everyone can enjoy the full range of licensable activities offered.
- 8.2 The licensing objectives are:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 8.3 Each licensing objective is of equal importance and they are the only factors that can be taken into account in determining an application and any conditions attached to a licence.
- 8.4 The Authority will require applicants to take appropriate and proportionate measures to promote the licensing objectives. The Council has produced two documents to assist applicants (and existing licence holders) with this and these are the 'Pool of Conditions' (Appendix C) and a 'Code of Good Practice for licensed premises' (Appendix D). Both of these documents are split into different sections covering each of the different licensing objectives. Additional information can also be found in S182 Guidance.

### Prevention of Crime and Disorder

- 8.5 The Authority will endeavour to reduce crime and disorder throughout the district in accordance with its statutory duty under s.17 of the Crime and Disorder Act 1998.

### Partnership working

- 8.6 The Licensing Authority looks to the police as the main source of advice on crime and disorder, but where appropriate, we will also seek to involve the local Community Safety Partnership (CSP). It should be noted however that any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations
- 8.7 In the exercise of its functions, the Licensing Authority seeks to co-operate with the Security Industry Authority (“SIA”) as far as possible and will consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, appear intoxicated by drugs, drug dealers, known sex predators or people carrying firearms do not enter the premises and ensuring that the police are kept informed and / or paramedics called where there are health concerns.
- 8.8 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. The Licensing Authority will work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

### Public Safety

- 8.9 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation.

### Fire Safety

- 8.10 Fire precautions and means of escape from licensed premises are particularly important. Large numbers of people, some of whom may be under the influence of alcohol, must be safely contained, managed and, if necessary, evacuated from premises. The attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc. Act 1974, associated regulations and especially the requirements under the Management of Health and Safety at Work Regulations 1999 and the Regulatory Reform Fire Safety Order 2005 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control these risks.

### Risk Assessments

- 8.11 When addressing public safety, an applicant or licence holder should initially identify any particular issues (having regard to their particular type of premises and/or activities), which are likely to adversely affect the promotion of the public safety objective. Such steps as are required to deal with these identified issues may be suitable to include within the applicant's Operating Schedule.
- 8.12 It is also recognised that special issues may arise in connection with outdoor and large scale events. Risk assessment must be used to assess whether any measures are necessary in the individual circumstances of any premises.

### Disability

- 8.13 Consideration should be given to matters to ensure that:
- when disabled people are present, adequate arrangements exist to enable their safe evacuation in the event of an emergency
  - disabled people on the premises are made aware of those arrangements
  - disabled people may have physical and / or mental problems which should be considered



## Hypnotism

- 8.14 The Licensee shall not allow or permit any person to give at the premises (otherwise than as provided by Section 5 of the Hypnotism Acts 1952) any exhibition, demonstration or performance of hypnotism, mesmerism or any similar act or process which produces or is intended to produce in any other person any form of induced sleep or trance in which the susceptibility of the mind of that person to suggestion or direction is increased or is intended to be increased.

## Prevention of Public nuisance

- 8.15 The Licensing Act 2003 covers a wide variety of premises, including cinemas, concert halls, theatres, nightclubs, public houses, cafes, restaurants, fast food outlets and takeaways. Each of these premises presents a mixture of risks, with many common to most premises and others unique to specific operations. It is important that premises are constructed or adapted and maintained so as to acknowledge and safeguard occupants and neighbours against these risks, as far as is practicable.
- 8.16 Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include issues around nuisance, noise, disturbance, light pollution, noxious smells, vermin and pest infestations and accumulations of rubbish and litter.
- 8.17 The Licensing Authority recommends that applicants and licensees apply a higher standard of control to minimise the potential for any public nuisance that may arise from their operation of the premises where:
- They are located in a residential or noise sensitive area
  - They have or are proposing extended open hours
- 8.18 The Licensing Authority recognises that beyond the immediate vicinity of the premises the control that a licence holder can exert over its customers diminishes and individuals who engage in anti-social behaviour are accountable in their own right. The licensing regime is not a mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the licence holder.

## Protection of Children from harm

- 8.19 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment).
- 8.20 The council expects licensed businesses to work actively to prevent:
- Child sexual exploitation
  - The sale or supply of alcohol to persons under the age of 18
  - The sale or supply of alcohol to adults seeking to purchase on behalf of persons under the age of 18
  - The sale or supply of any other age restricted products to underage persons
  - Access by children to gambling activities
  - Access by children to any entertainment of a sexual nature

### Child Sexual Exploitation

- 8.21 Child sexual exploitation involves children being groomed and then sexually abused. The Council recognises that child sexual exploitation is a major child protection issue across the UK.
- 8.22 The council takes a strict “zero tolerance” approach in respect of child sexual exploitation and expects licensed businesses to do the same. Conditions may be added by way of review of a licence if there is a specific CSE issue at a premise.
- 8.23 Measures designed to prevent underage sales and other harmful activities will have the secondary effect of preventing child sexual exploitation by reducing or removing opportunities for abusers to groom children for sexual purposes.

### Underage Sales and Age Verification

- 8.24 The council expects licenced premises to work rigorously to prevent the sale or supply of alcohol to children. The mandatory licence conditions include a condition which requires all premises which are licensed to sell or supply alcohol to adopt an age verification policy whereby those who appear to be under 18 will be asked to provide photographic ID to prove their age before selling or supplying them with alcohol.

- 8.25 The council encourages licensed businesses to go further than the requirements of the mandatory conditions and asks premises which are licensed for the sale or supply of alcohol to adopt the voluntary “challenge 25” scheme. This scheme requires members of staff who carry out sales of alcohol to request photographic ID from anyone who appears to be under the age of 25 years. This does not preclude anyone over the age of 18 from purchasing alcohol, but does provide a much clearer framework for staff members in deciding when to ask for ID.
- 8.26 Applicants for premises licences or other permissions to sell or supply alcohol are encouraged to include the challenge 25 scheme within their operating schedule and it will be included as a condition, where appropriate.
- 8.27 Holders of premises licences and other permissions to sell or supply alcohol and their designated premises supervisors must ensure that all staff employed at their premises receive regular training. Training must include child protection issues and the prevention of underage sales and proxy sales.

#### Children in licensed premises

- 8.28 The Licensing Authority recognises the great variety of premises for which licences may be sought. Access by children to all types of premises will not be limited unless it is considered necessary to do so in order to protect them from physical, moral or psychological harm.
- 8.29 When deciding whether or not to limit access to children the Licensing Authority will judge each application on its own individual merits. Examples which may give rise to concern in respect of children include premises:
- where entertainment of an adult or sexual nature is provided
  - where there is a strong element of gambling taking place
  - with a known association with drug taking or dealing
  - where there have been convictions of the current management for serving alcohol to minors or with a reputation for allowing underage drinking
  - where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- 8.30 In such circumstances as listed above the Licensing Authority would expect the applicant to suggest restrictions in relation to access for children. If such restrictions

are not contained within the operating schedule and if relevant representations are made, the Licensing Authority will consider applying conditions deemed necessary to meet the licensing objectives.

- 8.31 Conditions may be imposed, if not covered in other legislation, on licences for premises where children will be present at places of regulated entertainment to the effect that sufficient adult staff must be present to control the access and egress of children and to ensure their safety. Where children may be present at an event as entertainers there may be a requirement for there to be a nominated adult responsible for such child performers at such performances.
- 8.32 The options available for limiting access by children would include:
- a limit on the hours when children may be present
  - a limitation or exclusion when certain activities are taking place
  - the requirement to be accompanied by an adult
  - access may be limited to parts of the premises but not the whole
  - an age limitation (for under 18s).
- 8.33 The Licensing Authority will not impose any condition which specifically requires access for children to be provided at any premises. Where no restriction or limitation is imposed the issue of access will remain a matter for the discretion of the individual licence holder or club.

#### Display of Films and theatrical entertainment

- 8.34 In the case of premises giving film exhibitions, the Licensing Authority expects the holders of premises licences or other permissions to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the Licensing Authority itself.
- 8.35 In relation to theatrical entertainment, it may be necessary to impose a condition to restrict the admission of children to theatres which are incorporating adult entertainment in their productions. It may also be necessary where entertainment is provided specifically for children, to consider whether a condition should be attached requiring the presence of a sufficient number of adult staff to ensure the wellbeing of children during an emergency.