



**Notice of a public meeting of
Gambling, Licensing & Regulatory Committee**

- To:** Councillors Boyce (Chair), Cuthbertson, Douglas, Funnell, Gillies (Vice-Chair), Hyman, Horton, King, Looker, McIlveen, Orrell, Richardson, Riches, Taylor and Watt
- Date:** Monday, 17 March 2014
- Time:** 4.00 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

AGENDA

1. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. Minutes

(Pages 1 - 8)

To approve and sign the minutes of the meeting held on 21st October 2013 and 27th January 2014.

3. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00 pm on Friday 14th March 2014.**

Filming or Recording Meetings

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (whose contact details are at the foot of this agenda) in advance of the meeting.

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4. Statement of Licensing Policy - Review of the Saturation and Cumulative Impact Zone. (Pages 9 - 72)

This report seeks Members support for the review of the council's Statement of Licensing Policy. It advises of the consultation undertaken and of the amendments made as a result changes to legislation and revised guidance.

5. A Consultation on Fees under the Licensing Act 2003. (Pages 73 - 132)

This report asks Members to approve the licensing authorities response to the Home Office consultation on fees under the Licensing Act 2003.

6. The Licensing Act 2003 - (Mandatory Licensing Conditions) Order 2014. (Pages 133 - 162)

This report informs Members of the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 which comes into force on 6th April 2014. The order relates to the banning of the sale of alcohol below the cost of duty plus VAT.

7. Any other business which the Chair considers urgent under the Local Government Act 1972

Democracy Officer:

Name: Laura Bootland

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For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.


我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی میا کی جاسکتی ہیں۔ (Urdu)

 (01904) 551550

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City of York Council

Committee Minutes

Meeting	Gambling, Licensing & Regulatory Committee
Date	21 October 2013
Present	Councillors Boyce (Chair), Cuthbertson, Douglas, Gillies (Vice-Chair), Looker, McIlveen, Orrell, Richardson, Riches and Watt
Apologies	Councillors Funnell, Hyman, Horton, King and Taylor

6. **Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal or prejudicial interests they may have in the business on the agenda. None were declared.

7. **Minutes**

Resolved: That the minutes of the last meeting held on 16th September 2013 be approved and signed by the Chair as a correct record.

8. **Public Participation**

It was reported that there had been no registrations to speak under the Council's Public Participation Scheme.

9. **Statement of Licensing Policy - Review of the Saturation and Cumulative Impact Zone.**

Members considered a report which sought approval to formally consult on changes to the boundary of the Saturation and Cumulative Impact Zone (CIZ). This followed a request from North Yorkshire Police to review the current boundary based on changing patterns of crime and disorder and public nuisance in the City Centre.

The Licensing Manager outlined the report in particular that the area currently included in the CIZ would not be changing as it is

working well as it is. The boundary would be extended to include the Back Swinegate area which includes 54 licensed premises. In addition, Spurriergate which was being developed when the CIZ was originally introduced would also now be incorporated. The Police had also requested that off-sales for alcohol be included in the CIZ and it not be restricted to late night drink led entertainment premises. The Police had also asked Members' opinion on the inclusion of the Fossgate/Goodramgate area in order to future-proof the CIZ. This was due to the areas displaying similar warning signs as the Back Swinegate area did 3 years ago.

Chief Inspector Mark Henderson addressed the Committee. He advised that he had put in the request to extend the CIZ and that in hindsight the Back Swinegate area should of been included back in 2010. He advised that the extension was based on evidence but also Police knowledge and experience.

Members endorsed the inclusion of Fossgate/Goodramgate as in recent years, Members on both the Planning and Licensing Committees had seen more Licensed premises move into these areas, particularly into units which were previously used for retail.

The Vice-Chair of the Committee suggested that the Licensing Manager inform the Planning Department of the proposed extensions to the CIZ. This would enable the Planning Department to notify individuals making planning applications in the boundary area that the CIZ is out for consultation. It was confirmed that the planning department would be notified as well as being one of the consultees.

- Resolved: (i) That Members approved Option 1 and instructed Officers to consult on the proposals to amend the boundary of the Cumulative Impact Zone, based on evidence and supporting information provided in relation to the Back Swinegate and Spurriergate areas.
- (ii) That Members endorsed future proofing the zone in relation to Goodramgate and Fossgate areas following the receipt of further information from the Police.

- (ii) That Members noted that the results of the consultation would be reported back to the committee.

Reason: To assist with the effective implementation of the Licensing Act 2003 in the city and contribute to the reduction of alcohol related crime and disorder in the city centre.

Councillor Boyce, Chair

[The meeting started at 4.00 pm and finished at 4.30 pm].

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Meeting	Gambling, Licensing & Regulatory Committee
Date	27 January 2014
Present	Councillors Boyce (Chair), Cuthbertson, Douglas, Funnell, Gillies (Vice-Chair), Hyman, Horton, King, Looker, McIlveen, Orrell, Richardson, Taylor and Watt
Apologies	Councillor Riches

10. **Declarations of Interest**

At this point in the meeting, Members were asked to declare any personal, prejudicial or pecuniary interests they may have in the business on the agenda. None were declared.

11. **Exclusion of Press and Public**

Resolved: That the press and public be excluded from the meeting during consideration of annex 4 on the grounds that it contains information relating to individuals.

12. **Public Participation**

It was reported that there had been no registrations to speak under the Council's Public Participation Scheme.

There had been two registrations to speak in respect of agenda item 5, details of which are under the relevant minute item.

13. **Renewal of Sex Establishment Licence for Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ.**

Members considered a report which asked them to determine an application for the renewal of a Sex Establishment Licence for a Sexual Entertainment Venue which had been made under the Local Government (Miscellaneous Provisions) Act 1982,

Schedule 3 Control of Sex Establishments in respect of Mansion (Upstairs), 53-55 Micklegate, York, YO1 6LJ.

In coming to their decision, Members took into consideration all the evidence and submissions that were presented to them including:

1. The application form.
2. The Licensing Managers report and her comments made at the hearing, including that the application was for the renewal of a sex establishment licence in line with Section 27 of the Policing and Crime Act 2009 which allowed local authorities to regulate lap dancing clubs and similar venues. Members were advised that the establishment had been operating for a number of years without incident.
3. The comments made by the applicant at the hearing. He advised that the club is operated responsibly and discreetly and that no complaints had been received from local residents.
4. The comments made in writing and at the hearing by representatives of York Feminist Network. They asked that Members considered the Council's obligations under the Equality Act 2010 and argued that the licence should not be granted due to sensitive nearby premises such as charity offices and a church. They also advised that they were aware of women feeling threatened in the Micklegate area.

The Chair advised the representors that if any crimes against females are taking place in the Micklegate area then they should be reported to the Police in order for an evidence base to exist.

Members were presented with the following options:

- Option 1 Renew the Licence.
- Option 2 Renew the licence with modified/additional conditions imposed by the Licensing Gambling and Regulatory Committee.

Option 3 Reject the renewal application.

Resolved: That Members agreed Option 1 to renew the Licence.

Reason: The premise has operated as a lap dancing venue since September 2006 without any reported incidents.

Councillor Boyce, Chair

[The meeting started at 4.00 pm and finished at 5.20 pm].

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Gambling, Licensing & Regulatory Committee

17 March 2014

Report from the Assistant Director – Housing and Community Safety

Statement of Licensing Policy**Review of the Saturation & Cumulative Impact Zone****Summary**

1. This report seeks members support for the review of the council's Statement of Licensing Policy. It advises of the consultation undertaken and of the amendments made as a result changes to legislation and revised guidance.
2. This report seeks members support for the review of the special policy on saturation and cumulative impact for part of the city centre, known as the cumulative impact zone (CIZ). It advises of the consultation undertaken, following a request from North Yorkshire Police that the boundary area of the CIZ be amended to reflect current patterns of crime and disorder in the City.
3. The report seeks a recommendation to full council that the revised policy be approved.

Background

4. In September 2013 North Yorkshire Police (NYP) submitted a report requesting that the boundary of the CIZ be amended to reflect the current patterns of crime and disorder in the city centre, and also to include the off sale of alcohol. A report regarding this request was brought to committee on 21 October 2013. Members authorised officers to go out for formal consultation on the proposed CIZ boundary.
5. Section 5 of the Licensing Act 2003 (the 2003 Act) requires licensing authorities to determine and publish a Statement of Licensing Policy (Policy), every 5 years. The City of York Council current Policy was published on 7th January 2011.

6. The Act requires that, before determining its Policy, the licensing authority must consult:
 - a) the chief officer of police
 - b) the fire authority
 - c) persons representative of premises licence and club premises certificate holders
 - d) person representative of personal licence holders
 - e) persons representative of businesses and residents
7. In April 2012 the Police Reform and Social Responsibility Act 2011 and the Licensing Act 2003 (Description of Entertainment) (Amendment) Order 2013 made a wide range of changes to the 2003 Act. Due to these changes, it was agreed to also carry out a formal consultation on the full Policy as well as the CIZ.
8. The consultation asked respondents if they wish to see any changes to the current policy and for their views on the proposed CIZ.
9. The draft revised policy, including the CIZ, is attached at Annex 1.

Consultation

10. A 12 week consultation was carried out on the Statement of Licensing Policy and the proposed CIZ between November 2013 & February 2014. The process for the consultation involved direct mailing and use of the council's website.
11. The council consulted over 50 organisations/individuals as part of the consultation process (see Annex 2 for list of consultees), and every licensed premises within the authorities area. One response was received to the consultation; however the issues raised were not related to the questions asked as part of the consultation.

Options

12. Option 1 – approve the revisions and CIZ as indicated in the draft policy.
13. Option 2 – amend the draft policy.

Analysis

14. The council's first Policy was published in January 2005. The Policy has been fully reviewed and published on a further two occasions, January 2008 and January 2011.

15. At the request of NYP, the council's Policy has included a special policy on saturation and cumulative impact (CIZ) since April 2005. The boundary for the first CIZ was based on patterns of crime and disorder prior to that date. The first zone included the main drinking areas on the west of the river Blossom Street, Micklegate, George Hudson Street, Rougier Street and Bridge Street, only including Low Ousegate, Spurriergate and Clifford Street on the east of the river.
16. In July 2010, at the request of NYP, this boundary was updated to include Coney Street, Lendal, Museum Street, Blake Street, Davygate, New Street, Feasegate and Market Street, due to the changes in patterns of crime and disorder.
17. Due to the changes in crime and disorder patterns, in September 2013 NYP made a request to committee that the CIZ boundary be updated to include the Back Swinegate, Goodramgate and Fossgate areas. The draft Policy has been updated to include these areas.
18. Officers have spoken to / communicated with representatives from the organisation listed below with regards to the content of the Policy. Where appropriate relevant changes have been made to the draft Policy with regards to information received.
 - a) Public Health
 - b) Children Services
 - c) NYP
 - d) Safer York Partnership
 - e) Environmental Protection
 - f) Planning
 - g) Policy, Performance and Change
 - h) Tourism
19. The policy has been updated to include the changes to legislation following the introduction of the Police Reform and Social Responsibility Act 2011 and the Licensing Act 2003 (Description of Entertainment) (Amendment) Order 2013, these include:
 - a) mandatory licensing conditions
 - b) responsible authorities
 - c) early morning restriction orders
 - d) late night levy
 - e) temporary event notices
 - f) regulated entertainment

Council Priorities

20. The Licensing Act 2003 has 4 objectives: the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. Successful application of the Act will contribute in promoting these objectives and reduce the perceived impact of violent, aggressive and nuisance behaviour on people in York.
21. The promotion of the licensing objectives will support the Council's priorities to protect vulnerable people, build strong communities, and protect the environment.

Implications

22. The implications arising from this report are:
 - **Financial:** There are no direct financial implications associated with this report.
 - **Human Resources:** There are no Human Resources implications associated with this report.
 - **Equalities:** There are no equalities implications associated with this report.
 - **Legal:** It is a legal requirement of the Licensing Act 2003 that the Council is required to publish a statement of licensing policy every 5 years. Failure to do so would result in the Licensing Authority being unable to discharge its legal duty under the Act.
 - **Crime and Disorder:** The CIZ promotes the licensing objective "the prevention of crime and disorder".
 - **Information Technology (IT):** There are no IT implications associated with this report.
 - **Other:** There are no other implications associated with this report.

Risk Management

23. There are no known risks associated with this report.

Recommendations

24. The Committee is asked to:
 - Approve option 1 and recommend to full council that the draft statement of licensing policy be adopted.

Reason: To reflect the result of the consultation and meet legislative requirements.

Contact Details

Author:

Lesley Cooke
Licensing Manager
Phone: 551515

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director (Housing and Community Safety)

**Report
Approved**



Date 7th March 2014

Specialist Officer Implications: None

Wards Affected:

All



Background Papers:

Statement of Licensing Policy 2011

Annexes

Annex 1: Draft Statement of Licensing Policy 2014

Annex 2: List of consultees

Glossary of Abbreviations

CIZ – Cumulative Impact Zone

NYP – North Yorkshire Police

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Draft
Statement of Licensing Policy
2014

Licensing Act 2003

Important Note

In producing this Statement of Licensing Policy the Licensing Authority is aware of the government's proposals to amend certain aspects of the Licensing Act 2003 and subordinate legislation.

Any such revisions made in the future will be incorporated into this policy which will be published on the Council's website.

Readers of paper versions of the policy are advised to check on the website to ensure they have the latest information.

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1. Licensing Vision

1.1 Licensing Vision

Vision Statement

We seek to ensure City of York Council continues to offer a wide choice of high quality and well managed entertainment and cultural venues within a safe, orderly and attractive environment. Valued by those who live in, work in, and visit, the city.

The Council believes a properly balanced application of the Licensing Act 2003 offers a range of opportunities to progress the objectives of the Council by:

- improving the quality of life for local residents through a reduction in alcohol related crime and disorder, disturbance and anti-social behaviour;
- giving businesses greater freedom and flexibility to meet their customers' expectations;
- improving quality of life by bringing greater choice to residents, consumers, tourists and businesses about where, when and how they spend their leisure time;
- encouraging more family-friendly premises where younger children can be free to go with the family;
- further developing a rich culture of live music, dancing and theatre in our area;
- encouraging a variety and mix of premises that will appeal to a broad spectrum of people, including a well used city centre, day and night, that is safe and accessible to all;
- encouraging responsible retailing and consumption of alcohol and preventing alcohol related health issues.

1.2 How to Read This Policy Statement

The text of the statements in bold type indicates the Statements of Policy with the reason, where appropriate, for each policy shown immediately after in *bold italics*.

It is not intended that this statement reiterates legal requirements, however, the statement may include such matters where appropriate.

This policy is supported by a number of Appendices that provide important information aimed at helping those reading or referring to it. The information provided in the Appendices is outside the scope of the policy and may be subject to technical change in the light of the Government Guidance, from time to time. Any such changes will not invoke the procedures for revisions to the licensing policy in Section 5 of the Act.

2. Purpose and Scope of the Licensing Policy

2.1 Purpose

City of York Council is the Licensing Authority for the purposes of the Licensing Act 2003 (the Act) for the administrative area of the City of York.

The Act specifies the licensing objectives that the Council's licensing function must address and these are;

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

Section 5 of the Act requires the Licensing Authority to produce and publish a licensing policy in respect of each 5 year period to address the licensing objectives. The policy will be subject to interim reviews, as necessary, to ensure the statutory licensing objectives are being met and a statement of the revisions will be published. This current licensing policy, agreed by City of York Council, has been produced having regard to the Guidance issued by the Secretary of State under Section 182 of the Act (as amended), and the views of people and organisations consulted in its determination.

The purpose of this policy document is to set out the policies the City of York Council, as the Licensing Authority, will apply to meet the licensing objectives when making decisions on any licence application under the Act. This policy does not replicate the statutory requirements of the Act. The purpose behind the policy is to provide applicants for licences and all other stakeholders with details of those adoptive and discretionary matters that the Licensing Authority considers necessary to meet the aims of promoting the licensing objectives in the City of York Council area. The policy is to inform licence applicants of the parameters under which the authority will make licence decisions and how a licensed premise is likely to be able to operate within the City of York Council area. The policy is also to inform residents and businesses of the parameters under which the authority will make licence decisions and how their needs will be addressed. The policy will guide the Licensing Authority in its decision-making processes.

2.2 Scope of Policy

The Licensing Authority is responsible under the Act for the licensing of the following licensable activities:

- the "supply" of alcohol, that is the sale by retail of alcohol, in public houses, hotels, restaurants, off licences, retail shops, guest houses (**premises licence**);
- the supply of alcohol by qualifying clubs (**club premises certificate**);

- the provision of regulated entertainment (**premises licence**), including:
 - ❖ Film exhibitions;
 - ❖ Performances of a play;
 - ❖ Indoor sporting events;
 - ❖ A boxing or wrestling entertainment (indoors and outdoors);
 - ❖ A live music performance;
 - ❖ Playing of recorded music;
 - ❖ Dance performances;
- the provision of late night refreshment, that is the supply of hot food or drink to the public on or from premises between 11.00pm and 5.00am (**premises licence**);
- the permitting of certain licensable activities on a temporary basis (**temporary event notice**);
- the licensing of individuals for the retail sale of alcohol (**personal licence**);
- authorising of premises supervisors in premises supplying alcohol (who must hold a personal licence) (**designated premises supervisor**).

In general a reference in this policy to a premises licence, unless otherwise specified, will include a club premises certificate and/or a Temporary Event Notice.

Any reference in this policy to guidance or regulations includes those where the Secretary of State has used his powers contained in the Act to make Regulations (Section 5) and issue Guidance (Section 182).

2.3 Duration of Policy & Review

This policy shall have effect from XX March 2014 to xx March 2019 unless otherwise reviewed by the Council and shall be in force for no more than a period of five years (or any other period subsequently specified in legislation).

The special policy referred to in paragraphs 6.2 and 6.3 was approved by Council on XX March 2014 and shall have effect until XX March 2019.

A formal review of these policies will take place towards the end of the 5 year period involving further consultation with the parties detailed in 1.4 above. The policies will be revised in line with the outcomes of the consultation, any changes in legislation and in guidance from Government.

The Licensing Authority will keep the policy statement under constant review and make such revisions it feels appropriate. Where revisions are made, the Licensing Authority will publish a statement of revisions or a revised licensing policy statement.

3. Profile of York

3.1 Profile of York

York is a nationally and internationally prominent city for a range of reasons. Not only is it an historical centre for England, it is also one of the most visited tourist destinations in the UK. York has excellent rail links across the country, is a centre of academic excellence, and is an important location for the Church of England. Each year around 22,000 higher education students make up approximately 11% of York's population in term time.

The City of York Council covers an area of 105 square miles and comprises the urban area of York which is surrounded by many small rural and semi-rural settlements covered by parish councils. Approximately 198,000 people live in the council area (2011 est.) which includes a small black and minority ethnic population (9.12%).

Tourism and leisure are important industries for York attracting 7 million visitors a year who spend £606 million annually in the city. Over £125 million a year is spent on eating out and evening entertainment. Over 20,000 jobs have been created in the tourism sector.

This level of tourism can, however, present challenges to the city in balancing the requirements of residents against the economic benefits that tourism can bring.

Historically York was known for having one public house for each day of the year. This is no longer the case, but there are 930 premises of various types licensed to sell alcohol in the city.

The city has a wide range of premises selling or supplying alcohol and providing regulated entertainment. There are many outstanding restaurants, licensed entertainment venues, including 3 cinemas and 5 theatres, numerous high quality traditional and historic public houses, and bars. Other premises, such as village and community halls and bingo halls, provide alcohol and entertainment as part of their overall activities. In addition, there are a significant number of retail premises selling alcohol, including the large supermarkets, off-licences and small convenience shops.

3.2 General Approach to Licensing

City of York Council is the Licensing Authority for the application of the Licensing Act 2003 (the Act) within its administrative area.

The Licensing Authority recognises the positive developments that have occurred in the licensed sector in the city over previous years. Many of the licensing initiatives that were generated in York are cited as good practice in the Guidance to the Act.

The Licensing Authority accepts the importance of licensed businesses to the culture, economy and vitality of the city.

The Licensing Authority is using the opportunity presented by the Act and through its

licensing policy to enhance the opportunities for businesses, residents and visitors while at the same time safeguarding residents and business amenities through the promotion of the licensing objectives.

Under the legislation the Licensing Authority has a range of duties and functions but its prime role is to promote each of the licensing objectives by making licensing decisions and the enforcement of licensing legislation. The licensing objectives are:

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

Licensing is concerned with regulating licensable activities in licensed premises including public houses, nightclubs, theatres, cinemas, retail outlets (ie supermarkets), off-licences, qualifying clubs and other venues. Licensing covers temporary events that are providing entertainment and/or selling alcohol. Late night refreshment premises, selling hot food between 11pm and 5am, are also included within the terms of the Act. The range of activities covered by the Act is diverse and not solely restricted to businesses but also cover charitable and non-profit making activities.

The Act is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are beyond the direct control of the individual business holding the licence or certificate. However, the Act is a key aspect of such control and the exercise of licensing functions is part of a wider approach to the management of anti-social behaviour and the night time economy with particular regard to the city centre. The Licensing Authority has a duty to do all that it reasonably can to prevent crime and disorder under Section 17 of the Crime and Disorder Act 1998. To this end this policy should be read in conjunction with the Community Safety Plan for the City of York Council area.

The Licensing Authority will apply the requirements of the Act in such a way, so far as is possible, to avoid duplication with other regulatory regimes.

Within this general framework the Licensing Authority would like to specifically address its policy in the following way:

3.2.1 Diversity

The Licensing Authority strongly supports a mix of the different types of licensed premises, particularly in areas where there is a high density of such premises. It believes diversity will attract a broader range of customers from local residents and visitors, also giving greater choice for different age groups. It gives potential for positively changing and improving the ambience of the city. This in turn may have a positive effect in increasing the number of evening visitors to the city centre while improving safety and reducing nuisance, crime and disorder.

3.2.2 Use of Public Spaces

The Licensing Authority wishes to continue to promote a broad range of entertainment within the city including live music, dancing, theatre and other entertainment. To promote this policy the Council has obtained premises licences for a number of public spaces within the community. These include such spaces as city centre event areas, foot streets and several parks. This will encourage these activities in that, at these venues, performers and entertainers will not need to acquire a licence to perform but would need the permission of the licence holder (eg City of York Council as the premises licence holder). The City Council will still apply the Council policy on the prohibition of circuses involving animals. The Council will continue to assess areas which may be suitable for licensing.

3.2.3 Local Business

Through its policy the Licensing Authority will encourage the development of local businesses recognising the benefits to the local economy, by supporting local enterprise to the benefit of residents.

3.2.4 Premises Serving Food & Drink in the Open Air

The Licensing Authority wishes to respond appropriately to applications from public houses, bars and restaurants requesting to serve food and alcohol in areas adjacent to or immediately outside their premises. Approvals may also be required from the planning and highway authority.

3.2.5 York's Licensed Heritage

The Licensing Authority recognizes the important part traditional and historic public houses play in our cultural and tourism heritage and would seek to preserve and enhance those assets for future generations.

3.2.6 Live Entertainment & Performing Arts

The Licensing Authority encourages the development of venues for the provision of live entertainment and performing arts, recognizing the contribution made to the vitality of the city.

3.2.7 Impact of Alcohol on York

Violent crime related to alcohol continues to decrease across the city centre and the suburbs of York. Monthly and yearly crimes of violence and criminal damage which are associated with excessive alcohol consumption are predicted to be at their lowest recorded level within the last ten years in 2012/14. Residents have identified through the councils' Big York Survey that "low crime levels" are the most important factor in making somewhere a good place to live.

Residents have identified that 'young people being drunk, rowdy, or a nuisance' as the second highest priority within the anti-social behaviour indicator set that needs to be addresses and alcohol related anti social behaviour carried out by adults and young people is a real issue for residents and businesses in certain parts of our City Centre and some of our neighbourhoods.

Alcohol is a causal factor in crime and disorder in York. We know for example that;

- 45% of offenders that are engaged with probation in York, have cited their current alcohol use as being a problem and a causal factor in committing criminal behaviour. Of these 45% over half revealed that they would like to "tackle their alcohol misuse".
- 46% of all offenders that are engaged with probation in York, admitted to engaging in "binge drinking" within the last six months and within the group of individuals who had committed a violent crime this rises to 60% of individuals.

Regularly drinking more than the recommended limits of alcohol increases the risk of a number of health problems that are strongly related to health inequalities, including liver disease, cardiovascular disease and diabetes. The excessive use of alcohol is an important public health problem in York, not only because of the health conditions associated with long term alcohol misuse, but also the immediate effects such as accidental injuries, violence, and antisocial behaviour.

The North West Public Health Observatory provides 23 statistical indicators of alcohol related harm across local authorities in England. The City of York performs better than the regional average across many indicators including alcohol specific hospital admissions. Although alcohol specific hospital admissions are lower in York than nationally, an increasing number of people in York are drinking at levels which may be harmful to their health.

An estimated 29.7% of adults in York binge drink ie drink at least twice the daily recommended amount of alcohol in a single drinking session; this is significantly higher than the national average, ranking York 320 out of 326 local authorities. Furthermore, an estimated 20.9% of adults who drink reported engaging in increasing risk drinking, which for males is between 22 and 50 units per week, and for females is between 15 and 35 units per week.

Excessive alcohol consumption is not just an issue for individuals, families and communities, but it has a significant impact on our public services, including the police and health services.

Whilst York has a lower rate of alcohol specific hospital admissions compared to the national average, amongst males, admissions continue to increase year on year. In 2006/2007 there were 280.56 alcohol specific admissions per 100,000 population – this rose to 373.60 per 100,000 in 2010/2011. Amongst females the rise in hospital admissions has slowed, but the current rate of admissions remains higher than five years ago (in 2006/2007 there were 166.71 alcohol specific admissions per 100,000 compared to 2010/2011 in which there were 186.72 admissions per 100,000).

Alcohol misuse also has a significant impact on our ambulance service and emergency departments. A recent audit showed that an estimated 10% of attendances at A&E are alcohol related attendances, with this proportion likely to be higher at weekends.

Over the last 5 years drinking behaviour has changed in that more people consume alcohol in the home and purchase alcohol from supermarkets and shops. More alcohol is purchased from the off-trade such as supermarkets and shops than in the on-trade such as pubs, bars, clubs and restaurants. A growing number of drinkers are more likely to drink at home before a night out, commonly known as 'pre-loading'. This change in drinking patterns is largely driven by low cost alcohol available from the off trade.

As the consumption of alcohol in the home increases then the impact of alcohol is more hidden, a number of domestic violence assaults and child protection cases are related to alcohol.

The availability of high strength alcohol products, such as high strength lager and cider, usually favoured by 'street / problem drinkers' from the off-trade also has an impact on anti social behaviour, crime and disorder and public health.

3.2.8 Decision Process

The ability of the Licensing Authority to take decisions is limited either by provisions in the Act, Regulations made under the Act, or to a lesser extent by Guidance from the Home Office. The Licensing Authority may, if it considers it appropriate, deviate from the Guidance but would need justifiable reasons for doing so. This policy has taken full account of the current Guidance from the Home Office and regulations made under the Act in respect of licence applications and the hearings process.

The Licensing Authority has reviewed its constitution and scheme of delegation to officers to ensure effective implementation of the Act. Licensing Committee and Sub-Committees have been set up to deal with licensing issues and the determination of applications in certain cases, namely those where representations have been made or where premises licences require review. Full details of matters to be dealt with by the Licensing committee and subcommittee are set out in Appendix A.

Non contentious applications, ie those where no representations have been made, will be delegated to officers. All matters dealt with by officers will be reported regularly to the Licensing Committee.

3.3 Consultation on Producing City of York Council Licensing Policy

In developing City of York Council's 2014-2019 licensing policy the Licensing Authority has carried out consultation in accordance with the principles set out in the Cabinet Office Code of Practice on Consultation. The Licensing Authority has consulted a wide range of organisations and stakeholders, including statutory consultees as follows:

- Chief Officer of Police for North Yorkshire;
- Chief Fire Officer for North Yorkshire;
- Representatives of local holders of premise licences;
- Representatives of local holders of club premises certificates within the meaning of the Act;
- Representatives of local holders of personal licences;
- Representatives of businesses and residents in the area;

The Licensing Authority has also consulted a range of non-statutory consultees including:

- The Safer York Crime and Disorder Reduction Partnership;
- British Transport Police;
- Local Accident and Emergency Department;
- Yorkshire Ambulance Service;
- Bodies representing consumers eg CAMRA, Chamber of Trade;
- Officers within the City of York Council responsible for regeneration, tourism, cultural strategy, planning, transport, health and safety, trading standards, pollution control, protection of children and racial equality;
- Alcohol Task Group;
- Groups and organisations who have a stake in the leisure and hospitality industries;
- Representatives of parish councils;
- Ward committees;
- Residents associations;
- Representatives of village and community halls;
- Local bodies representing the tourist industry;
- Representatives of the hackney carriage, private hire trade and other transport providers;
- Organisations representing disabled persons;
- Elderly persons forum;
- Citizens Advice Bureau;
- CVS.

3.4 Future changes in legislation

The Licensing Authority will consult (if required) and make comment on any proposed future changes in legislation.

The Licensing Authority will notify relevant licence holders of changes in legislation, if required.

3. Links to Other Policies, Strategies, Legislation & Guidance

POLICY

The Licensing Authority will normally expect that all applicants for premises licences, club premises certificates, variations and provisional statements will, where relevant, participate in the matters set out in the following as they relate to achieving the licensing objectives.

Integration with other City of York Council adopted policies and national strategies are a key part of this policy, as elements of these contribute to achieving the licensing objectives. The Council has taken a number of initiatives to prevent anti-social behaviour, noise and degradation of the street environment often associated with late night entertainment. Using a combination of licensing and planning powers and effective management of the street environment will lead to tackling these problems. Applicants for premises licences, or substantial variations to existing licences should, therefore, consider these local policies when compiling an operating schedule.

This section sets out existing policies/strategies, locally and nationally, which link to the achievement of the licensing objectives.

Additionally, many other statutory requirements apply to licensed premises such as health and safety, fire safety, planning, building control, public health, food hygiene, and trading standards. City of York Council is committed to avoiding duplication with other regulatory regimes as far as possible. Other relevant legislation is listed in Appendix B which will be applied by the responsible enforcement authorities.

POLICY

The Licensing Authority will aim to ensure that this policy and any future revisions will refer to any strategies and policies necessary for an applicant to have regard to in meeting the licensing objectives.

Local Policy and Strategy Issues

4.1 Planning (Development Control)

The use of premises for sale or provision of alcohol, provision of entertainment or late night refreshment is subject to planning control. Such use will normally require planning permission or must otherwise be lawful, ie have a lawful development certificate under planning legislation. Planning permission is usually required for the establishment of new premises or change of use of premises.

While there is no obligation for an applicant to have planning permission before applying for a premises or provisional licence or for a substantial variation, it is strongly recommended that lawful planning use be obtained initially. The planning authority is a responsible authority under the Act to whom applicants are required to give notice of applications.

POLICY

Applicants need to be aware there are also circumstances when as a condition of planning permission; a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

Reason: To ensure that all licensed premises have lawful planning permission and that no conflicts arise between the Council acting as Planning and Licensing Authorities.

It should be noted that any decision made by the Licensing Authority does not relieve an applicant of the need to apply for building control authorisation.

4.2 Crime & Disorder

Under the Crime and Disorder Act 1998 local authorities must have regard to the likely effect of the exercise of their functions on, and do all they can to prevent, crime and disorder in their area. The Licensing Authority will have particular regard to the likely impact of licensing on related crime and disorder in the City of York Council area, particularly when considering the location and impact of the operation and management of all new licence applications and variations to existing licences.

The Licensing Authority will take into account matters contained in York's Community Safety Plan and Anti-Social Behaviour Strategy in relation to the four main licensing objectives.

4.3 Counter Terrorism

Crowded places have been targets of act of terrorism across the world. The National Counter Terrorism Security Office has produced guidance to operators of bars, pubs, clubs, cinemas, theatres, hotels, restaurants, stadia and other entertainment venues giving advice to operators to reduce the threat of attached. This can be found at www.nactso.gov.uk/CrowdedPlaces.

Applicants and licence holders are encouraged to have regard to this guidance in the design and operation of their premises.

4.4 City of York Council Community Plan & Corporate Strategy

The Local Government Act 2002 requires all local authorities to produce a community plan within the framework of the UK Sustainable Development Strategy and relevant regional strategies.

The Strategy for York 2011-2015 and the City Action Plan 2011-2015 identify key areas that will inform and shape the policies within this policy statement.

These strategies provide a crucial focal point for the identification of local issues. It is sought to improve the quality of life for everyone in York through these strategies.

The Licensing Authority will integrate and co-ordinate its licensing policy with the Without Walls Partnership Theme Areas in the community strategy.

The City of York Council Plan 2011-2015 details the strategic direction of the Council. The plan gives a rounded overview of our position and ambitions for improvement.

4.5 Tourism

In developing this Statement of Licensing Policy the Licensing Authority has taken into account York: A Vision for Tourism, prepared by Visit York in consultation with partners and stakeholders, including the Council. The Vision seeks to deliver long-term, sustainable growth in the value of the visitor economy for the benefit of visitors, businesses and residents by building on York's distinctiveness, enhancing the quality of the visitor experience and promoting York as a world class visitor destination. Amongst the ambitions for tourism is the development of partnerships with businesses, stakeholders and residents, increasing York's position as a leading European cultural centre (combining a unique heritage with a modern outlook) and enhancing York's public realm so it becomes the most special in England. Licensed establishments, entertainment and cultural venues all have a vital role to play in achieving these goals.

National Strategies

4.6 Alcohol Harm Reduction Strategy

In 2004 the Government published its Alcohol Harm Reduction Strategy for England which outlined how the Act can be used to address some of the social health and crime and disorder issues raised by the misuse of alcohol when considering applications for Premises or Personal Licences. This strategy will be taken into account specifically with regard to the sale of alcohol to under 18's and the necessary steps to tackle anti-social behaviour.

5. Applications for Premises Licences, Club Premises Certificates and Variations

POLICY

All applications for premises licences, club premises certificates, variations, and provisional statements must be submitted in accordance with the Act and associated Regulations.

Reason: To ensure the timely and efficient determination of the application and to avoid unnecessary formal hearings.

As part of the normal application process there is a requirement for the submission of an operating schedule. A fully detailed operating schedule will be required for club premises certificates, premises licences, and provisional statements covering all four licensing objectives.

POLICY

The operating schedule should include information which is necessary to enable responsible authorities, or other persons, to assess whether the steps to be taken to promote the licensing objectives are satisfactory and have been fully addressed.

The Licensing Authority will normally expect the operating schedule to have regard to the nature of the area where the premises are situated, the type of premises concerned, the licensable activities to be provided, operational procedures, and the needs of the local community in addressing the four licensing objectives.

Applicants are strongly recommended to undertake a thorough and appropriate risk assessment of their business in order to arrive at a detailed operating schedule which identifies and meets all necessary steps to promote the licensing objectives in relation to the application made. Matters detailed in this document in relation to other policies and strategies should, where appropriate, be taken into account when preparing the operating schedule and form part of the overall risk assessment.

The concept of developing an operating schedule for all premises is recognised as good practice whether applying for a variation or otherwise and all licensees are recommended to do so.

POLICY

The Licensing Authority encourages new applicants to discuss their proposals informally with licensing officers and other responsible authorities before an application is submitted.

Reason: To ensure the timely and efficient determination of the application and to avoid unnecessary formal hearings.

5.1 Consultation on New Premises Applications, Club Premises Certificates, Variations and Provisional Statements.

POLICY

Applicants are legally obliged to give notice of their application in two ways, by displaying a blue notice at the premises for a period of 28 days and placing a notice in a local newspaper. Each notice must clearly state the date by which representations must be received, where the application can be viewed in full and where representations must be sent.

Reason: To ensure that all who are affected by an application, and have rights under the Act to make representations, are aware of the application being made.

Representations may be received from the responsible authorities. These include North Yorkshire Police, North Yorkshire Fire and Rescue, Environmental Protection Unit, any organisation representing those responsible for, or interested in, matters relating to the protection of children from harm, local authority professionals in health and safety, planning and the Primary Care Trust or Local Health Board. Representations may be received from other persons who live, or are involved in a business in the Council's area, and who are likely to be affected by the application. Elected members may make representation in their own right. They may also make representation on behalf of the residents or the applicant; in both cases the elected member may not take part in the decision process.

"Relevant representations" are representations as defined by Section 18 of the Act, which are:

- (a) about the likely effect of the application on the promotion of the licensing objectives;
- (b) made by a responsible authority or other person and have not been withdrawn and, in the case of representations made by other person, are not, in the Council's opinion irrelevant, frivolous or vexatious.

There is no requirement for a responsible authority or other person to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises.

POLICY

Unless relevant representations are made by responsible authorities and other persons licences will be granted on the terms set out in the application.

Reason: The licensing authority has no discretion on the granting of licences unless representations are made.

5.2 General Principles for Determination of Applications

The Licensing Authority will consider each application on its own merits whilst having regard to this policy statement.

POLICY

In determining a licence application where relevant representations are made, the overriding principle adopted by the Licensing Authority will be that each application will be determined on its individual merits.

Reason: Overriding principle of the Licensing Act 2003 and Guidance.

Any delegated decisions made by the Licensing Authority will be carried out in accordance with the Scheme of Delegation as shown in Appendix A.

Many of the decisions and functions of the Licensing Authority are largely administrative in nature such as the grant of non-contentious applications, including for example, those licences and certificates where no representations have been made. These will be delegated to council officers. All such matters dealt with by officers will, for information, be reported to the Licensing Committee meetings.

When representations are received the Licensing Authority will consider whether they are relevant, frivolous, vexatious or repetitious.

Applications where there are relevant representations will be dealt with by a Licensing Sub-Committee, unless the Licensing Authority, the applicant and everyone who has made representations agree that a hearing is not necessary.

Unless there are compelling reasons to the contrary, the Council will require the Licensing Committee or its Sub-Committee to meet in public, although Members can retire into private session to consider their decision.

POLICY

Officers from the Licensing Authority will act to mediate between applicants and persons making relevant representations to resolve issues, thereby preventing unnecessary hearings.

Where relevant representations remain unresolved, the Licensing Authority will determine the application by way of a hearing.

When determining an application in respect of which representations have been received relating to the prevention of crime and disorder and/or prevention of public nuisance, particular consideration will be given to the following by way of promoting the licensing objectives:

- **Location and impact of licensed activity;**
- **The type of use and the numbers likely to attend the premises;**
- **The proposed hours of operation;**
- **The scope for mitigating any impact;**
- **How often the activity occurs;**

and in considering any application that is already licensed, the Licensing Authority will take into account any evidence:

- Of past good operation of the premises;
- Of past demonstrable adverse impact from the activity especially on local residents or businesses;
- That, where adverse impact has been caused, the appropriate agreed measures have been put into effect by the applicant to mitigate the adverse impact.

Reason: The purpose of this part of the policy is to achieve the licensing objectives of preventing public nuisance and crime and disorder. In furtherance of this aim the policy lists particular matters that the Licensing Authority will take into account in considering whether a licensed activity is likely to cause an adverse impact, particularly to local residents.

POLICY

In considering imposing conditions as a result of relevant representations following a hearing there should be openness, transparency and reasonableness. Licence conditions will be tailored to the individual application and only those deemed necessary to meet the licensing objectives, following representations, will be applied.

Reason: With the aim of achieving a mutually agreeable level of protection for the public and fulfilment of the licensing objectives.

In making its decisions, the Licensing Authority accepts the difficulty a licence holder has in preventing anti-social behaviour by individuals once they are beyond the direct control of that licence holder. However, it will also take into account that the licensing objective of preventing public nuisance will not be achieved if patrons from licensed premises regularly engage in activities to the detriment of nearby residents or businesses. Premise licence and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises, for example on the pavement, in a beer garden or in a smoking shelter, where and to the extent that these matters are within their control. Furthermore the Licensing Authority will also take into account its responsibility under the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder.

Therefore, the aim of the policy is to achieve a balanced approach to these difficult issues.

5.3 Composition of a Licensing Sub-Committee

A Licensing Sub-Committee shall comprise of any three elected members who serve on the Licensing Committee. Where such a member has a personal or prejudicial interest, as defined in the members code of conduct, he/she must declare such interest and be disqualified from being involved in determining that application **and making any representations to the panel.**

6. Guidelines for Applicants

These policy guidelines are intended to help applicants by setting out criteria and considerations that they should have in mind when drawing up an operating schedule. Not all the criteria or considerations necessarily apply, or apply equally, to all applications. These considerations have been developed with reference to the licensing objectives following consultation with the responsible authorities and other persons as they relate to the section 182 Guidance produced by the Home Office. They therefore alert applicants to the matters which responsible authorities will be likely to consider when deciding whether to make representations on an application or whether to call for a review. They also draw the attention of applicants to matters that are likely to be the subject of conditions designed to promote the licensing objectives that may be attached to the grant of a licence if representations are made. They are based on experience and good practice established over the years in the city. The overriding principle remains that each application will be considered on its own merits.

6.1 Prevention of Crime and Disorder

Prevention of crime and disorder is both an objective of the Act and an important responsibility of the City of York Council under the Crime and Disorder Act 1998. It is important, therefore, that applicants are able to demonstrate to the Licensing Authority the practical steps that will be taken to further this objective.

Applicants should also have due regard to the pool conditions for crime and disorder produced by the Home Office.

The Licensing Authority will also have particular regard to the location and character of premises and the impact of the operation and management of all proposed licence applications, renewals and variations of conditions.

In interpreting any of the following matters with any reference to the city centre, regard should be had to the map attached at Appendix C. The Licensing Authority has provided this indicator to assist applicants, but reserves the right to vary from this delineation having regard to the particular merits of the application.

CCTV

The Licensing Authority and the relevant responsible authorities, where appropriate, would normally expect the installation of closed circuit television surveillance (CCTV) within all nightclubs, city centre public houses and city centre late night refreshment venues. Where queuing occurs at these premises, CCTV should be provided to cover the queue. Off-licences, restaurants and other premises anywhere in the city area may consider the benefits of such systems in providing deterrents against crime and to safeguard their own interests.

It is recommended that CCTV should be a digital system covering all areas where the public can purchase and consume alcohol. Recordings should display the correct

time/date, be available within 48 hours of the request from any responsible authority and kept for a minimum of 28 days.

Applicants are encouraged to participate in any future initiatives to further promote the crime and disorder objectives by the use of CCTV.

Reason: The use of CCTV acts as a deterrent to crime and disorder and assists the police and other agencies in effective enforcement in identifying potential offenders.

Excessive Alcohol Consumption

The Licensing Authority and the relevant responsible authorities would normally expect operating schedules to indicate the measures proposed to reduce the possibility of excessive consumption of alcohol by individuals in the premises, especially measures that address issues relating to irresponsible drink promotions.

In April 2010 mandatory conditions came into effect which:

- Ban irresponsible promotions;
- Ban the dispensing of alcohol directly into the mouth; and
- Ensure that customers have access to free tap water so that they can space out their drinks and not get too intoxicated too quickly.

The legislation makes it clear that an irresponsible promotion is one that is “carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children”.

Staff training provisions should also be provided in this regard.

Licensees are encouraged to participate in any voluntary schemes to promote the responsible consumption of alcohol.

Reason: Excessive or binge drinking is a direct contributor to crime, disorder and anti-social behaviour.

Underage Sales

In April 2010 mandatory conditions came into effect which:

- The premise licence holder or club premise certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

The recommended acceptable proof of age identification is photocard driving licences, current passports, identification carrying the PASS logo (holographic mark). The Licensing Authority is aware of changing technology with regards to identification such as thumb print or pupil recognition. The Licensing Authority

would encourage all businesses to have internal management systems in place to prevent the sale of alcohol to children and to provide adequate training to staff.

Reason: The law provides age restrictions for certain activities, ie sale of alcohol, admission to films and participation in gaming activities.

York Nightsafe Night-Time Economy Radio Scheme

The Licensing Authority and the relevant responsible authorities would normally expect all nightclubs, city centre public houses and city centre late night refreshment venues to participate in the York Nightsafe Night-Time Economy Radio Scheme as agreed with the police. Other premises in the city are encouraged to join the scheme if, on examination of risk or history of incidents, it is considered beneficial.

This radio link covers both the day-time and night-time economies, giving participating venues a link to the CCTV room and the chance to share “real time” information with each other.

Reason: Early warning schemes advising licensees of incidents and potential problems that may affect their operations are seen as an effective crime prevention measure.

Door Supervisors

The Licensing Authority and the relevant responsible authorities would, where appropriate, normally expect the operating schedule to indicate if door supervisors are to be provided on the premises and at what level. Whenever security supervisors are employed at licensed premises to carry out the security function they must be licensed by the Security Industries Authority (SIA).

Venues that operate into the late night-time economy are encouraged to deploy door supervisors, on weekends, bank holidays and race days, especially if the venue is drink led.

Venues that operate into the early hours would also be encouraged to deploy door supervisors on a daily basis.

Reason: The value of a high standard of door security cannot be overestimated in the control of crime and disorder.

Control of Drugs

The Licensing Authority and the relevant responsible authorities will normally expect all nightclubs, city centre premises providing alcohol and music/dance entertainment, city centre public houses, dedicated dance venues, and other premises where appropriate to address the use and sale of illegal substances (drugs) in their premises in operating schedules and produce a written drugs policy to the Licensing Authority.

Reason: The use and sale of illegal substances (drugs) does occur in licensed premises. In order to promote the objective of preventing crime and disorder the

holders of all premises licences are encouraged to produce a drugs policy tailored to their operations.

Strengthened Glassware

The Licensing Authority and the relevant responsible authorities would normally expect all premises serving alcohol to provide strengthened or tempered glassware. The operators of high volume premises, and temporary or outdoor events, will also be encouraged to serve drinks in polycarbonate or plastic drinking containers.

Reason: There is a history of glass drinking vessels being used in acts of violence associated with the consumption of alcohol. Provision of strengthened glassware at high volume premises and large outdoor events also contributes towards public safety.

Dispersal

The Licensing Authority and the relevant responsible authorities would normally expect, as good practice, that the operating schedules relating to all premises licences (excluding guesthouses supplying alcohol to residents only and premises supplying alcohol as off sales only) and club premises certificates set out how they intend to manage the dispersal of customers from the premises. The aim should be to disperse people gradually either prior to, or immediately following, the final hour of operation of the licence. The hours the premises are open to the public, appropriate to the nature of the activities in the premises, should be determined. Signage visible from outside the premises indicating the operating hours and proposed drinking up times should be displayed in order that customers are aware when the premises are likely to close. The provision of quiet areas and departure lounges is encouraged as a means of quieting the mood of customers prior to departure and deterring the waiting on streets for taxis and private hire cars. Prominent signage should be displayed to remind customers to leave quietly. Other means should also be considered to aid effective dispersal.

Reason: Difficulties in encouraging customers to leave premises licensed to sell alcohol at the end of trading has been associated with violent disorder. Therefore holders of premises licences must have management plans in place to advise customers of the opening hours etc to effectively disperse customers. This contributes to the crime and disorder objective and potentially contributes to the reduction of public nuisance.

Prevention of Queuing

The Licensing Authority and the relevant responsible authorities will normally expect operating schedules for all nightclubs, city centre premises providing alcohol and music/dance entertainment, city centre public houses, dedicated dance venues and other like premises to demonstrate steps to be taken to avoid the build up of queues and the likelihood of disorder or violence and to avoid obstructing the highway.

Reason: The Licensing Authority will not encourage the development of premises where queuing is likely to occur outside. The potential for crime, disorder and public nuisance will thus be reduced in the immediate area of the licensed premises.

6.2 Public Safety

The licensing system should protect the safety of those visiting and working in licensed premises whilst also protecting residential and business amenity. All licensed premises within the City of York Council area should therefore be safe, well managed and maintained. It is important that applicants are able to demonstrate to the Licensing Authority the practical steps that will be taken to further this objective. To achieve this the following will be taken into account when determining applications.

POLICY

In preparing an operating schedule to address the public safety objective, the Licensing Authority will normally expect applicants to give due consideration to the pool conditions in for public safety produced by the Home Office.

Management of Premises

The Licensing Authority will normally expect the operating schedule to detail how the premises will be properly managed and maintained to ensure public safety at all times. In order to achieve this it is recommended, as good working practice, to carry out within the risk assessment recommendations in section 5.

Reason: Public safety is an important licensing objective. It is the intention of the Licensing Authority that anyone visiting a licensed venue in the city can do so in safety, in well managed and maintained premises.

Occupancy

The Licensing Authority and the relevant responsible authorities would normally expect applicants in certain classes of licensed premises to state in their operating schedules a maximum safe capacity for their premises and the management arrangements to ensure it is not exceeded. This can be achieved through a risk assessment of the premises and should take into account numbers of staff on the premises.

Those classes of premises will include:

- **Theatres, cinemas, nightclubs, high volume city centre premises offering the sale of alcohol or the provision of regulated entertainment;**
- **Premises which include a function room to be available for hire by others;**
- **Large scale outdoor events;**

Small venues which by virtue of their limited capacity are seeking the relaxation of conditions under Section 177 of the Act will also be required to state the maximum capacity and the method employed to ensure compliance with that limitation.

Venues which intend to hold live music in accordance with the requirements of the Live Music Act 2012.

Reason: A safe capacity is necessary for the promotion of public safety and, in particular, to ensure the building can be safely evacuated in the case of an emergency. A safe capacity also contributes towards the Crime and Disorder objective by ensuring reasonable space is available for customers.

Conditions relating to public safety may, in appropriate cases, be attached to licences following representations or following review of a licence, where the operating schedule does not address these issues. Conditions will not duplicate the requirements of other legislation that applies.

POLICY

The Licensing Authority and the relevant responsible authority would normally expect those premises best described as large capacity vertical drinking premises to ensure that there are adequate seating facilities for customers who would prefer to be seated at a table.

Premises considered as such are likely to be located in the city centre and have a capacity exceeding 200 persons.

The Licensing Authority will indicate to applicants if they consider their premises meet this definition. Cases will be considered on merit.

The Licensing Authority considers that seating should be provided for a minimum of 30% of the agreed capacity or other such figure as determined on the individual merit of the application.

Reason: Research shows that the environment in this type of drinking establishment can have significant bearing on the likelihood of crime and disorder.

6.3 Prevention of Public Nuisance

Responsible applicants will wish to ensure their operations do not disturb their neighbours or give rise to representations being made against a licence application. To achieve this the following will be taken into account when determining applications. It is important that applicants are able to demonstrate to the Licensing Authority the practical steps that will be taken to further this objective.

POLICY

Hours of Operation

The Licensing Authority would expect licence holders to consider hours of operation when compiling their operating schedules.

Reason: The tolerance to disturbance is likely to be reduced at certain times and days. The later into the night the operation continues the greater the likelihood of public nuisance being caused. Particular consideration should be given to minimise disturbance during the night-time hours of between 11:00pm and 7:00am.

Customer Management

The Licensing Authority and the relevant responsible authorities would normally expect operating schedules to address steps to be taken to avoid disturbance being

caused by persons entering and leaving licensed premises. The following measures should be considered:

- Erecting prominent notices at the exits to premises asking customers to leave quietly and not slam car doors;
- At appropriate times making announcements to the same effect. Instructing door staff to ask customers leaving the premises to leave the area quietly;
- Banning from the premises people who regularly leave in a noisy fashion;
- Directing customers away from noise sensitive areas where appropriate;
- The means to ensure customers are taken away without delay. The Licensing Authority would encourage the forming of partnerships with local transport providers, and the provision of telephone points and public transport information;
- Steps taken to reduce the impact of any parking on local residents or businesses where appropriate.

Reason: Many complaints arise from nuisance caused by patrons and staff entering and leaving premises.

Operation of Premises and Clubs

The Licensing Authority and the relevant responsible authorities would normally expect licence holders to consider the following matters when compiling their operating schedules in relation to the public nuisance objective:

- Installation of soundproofing, air conditioning, acoustic lobbies or sound limitation devices, or simply the closing of windows and doors;
- The hours of operation that may involve the provision of entertainment likely to give rise to complaint and the reduction of volume at certain times;
- The areas of the building where entertainment is provided particularly outside areas;
- The timing of the disposal of waste, particularly the emptying of bottle bins;
- The management of the general use of outside areas such as beer gardens and smoking areas;
- Carrying out regular noise monitoring of noise levels coming from inside the premises and noise from customers outside the venue;
- Training of staff regarding noise management control procedures and measures;
- Providing a direct contact number for the duty manager to residents living in the vicinity of the premises on request;
- Provision of a procedure for investigating noise complaints.

(further information on these issues can be found in the leaflet produced by the environmental protection unit which is on the council website at:

[http://www.york.gov.uk/downloads/download/1620/guidance leaflet on controlling noise from pubs small licensed venues and clubs](http://www.york.gov.uk/downloads/download/1620/guidance%20leaflet%20on%20controlling%20noise%20from%20pubs%20small%20licensed%20venues%20and%20clubs)):

Reason: Noise nuisance to residents can be caused due to loud music escaping from licensed premises, the noise of customers outside of the premises and also noise associated with the premises after closing time.

Outdoor Music Events

The Licensing Authority and the relevant responsible authorities would normally expect licence holders to consider the following matters when compiling their operating schedules where events include outdoor music events in relation to the public nuisance objective:

- The timing of the event, considering the day of the week and the finish time;
- The number of noise sources and whether they will compete to create a louder overall noise;
- The number of days the event covers;
- The type of music to be provided. Low frequency associated with bass orientated music travels further;
- The size of the event;
- The proximity of the venue to local residents.

Further information on this is available in the Code of Practice and Guidance Notes on Noise Control for Concerts and Outdoor Events produced by the environmental protection unit in January 2014 on [WEB-LINK] or by contacting the environmental protection unit on 01904 551555.

Reason: Noise nuisance to residents can be caused due to loud music from outdoor events.

Queuing

The Licensing Authority and the relevant responsible authorities would normally expect operating schedules to demonstrate steps to be taken to avoid disturbance and nuisance being caused by customers queuing outside licensed premises. Supervision of queues formed later in the evening will assist to keep noise to a minimum. Door supervisors will generally carry out this role, but they must be given clear instructions as to their duties and responsibilities and be adequately managed. CCTV should also cover patrons queuing outside the premises.

Reason: Queuing outside premises leads to inevitable noise, disturbance and nuisance.

Litter

The Licensing Authority and the relevant responsible authorities would regard as good working practice, the inclusion within the operating schedule, measures which address and prevent public nuisance being caused by the generation of litter from the premises or operation particularly in relation to premises which primarily provide late night refreshment (takeaways).

Reason: Excessive litter is generated from licensed premises in various forms, particularly takeaway food wrappers and event/venue promotion leaflets (flyers) and cigarette butts.

6.4 Protection of Children from Harm

The Act provides specific protection for children from the sale or provision of alcohol and the provision of regulated entertainment. The protection of children from harm is, therefore, an important licence objective. The Licensing Authority will not normally impose conditions requiring or prohibiting the admission of children to any premises as it believes that this should remain a matter of discretion of the licence holder. It has taken account of the view of Department of Culture, Media and Sport that the use of licensed premises by children should be encouraged. However, the Licensing Authority may consider imposing conditions designed to protect children, where necessary, following representations on applications and the following will be taken into account when determining an application.

The matters detailed below are ones which will be considered by the responsible authority during the consultation process on new applications, variations and licence reviews in respect of the protection of children from harm. These matters are designed to allow flexibility for the licensee to ensure that, where appropriate, licensed premises are suitable for children but will also ensure that children are adequately protected from physical, moral or psychological harm.

Areas of Direct Concern

The Licensing Authority and the relevant responsible authorities will not impose any conditions that specifically require access, or prohibit access, of children to premises. However, there are areas that will give rise to particular concern in respect of children and where additional controls are likely to be necessary. These include:

- **Where there have been convictions for serving alcohol to minors;**
- **Where the police have objections on the grounds of existing drug problems;**
- **Where there is a strong element of gambling on the premises;**
- **Where entertainment of an adult or sexual nature is provided.**

These areas of concern will be taken into account when an application for a premises licence is being determined, varied or reviewed following representation.

Control of Children on Premises

The Licensing Authority and the relevant responsible authorities would normally expect operating schedules to indicate the following matters regarding the entry and control of children and may, as appropriate, impose a complete prohibition on entry of children or condition the licence if satisfied that problems would not be adequately controlled by the operating schedule.

- **Limitations on the hours when children may be present;**
- **Arrangements to ensure age limits for admission or the sale of alcohol are controlled;**
- **Age limitations below 18;**
- **Limitations or exclusions when certain activities are taking place;**
- **Requirements for accompanying adults or stewarding.**

Furthermore, for example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.

Supervision

Where there is provision of entertainment specifically for children (eg a children's disco) the Licensing Authority and the relevant responsible authorities will normally expect the presence of sufficient adults to control the access and egress of the children and ensure their safety.

Age Restriction Films

Where the exhibition of films is permitted, the age restrictions of the British Board of Film Classification (BBFC) in respect of the films to be exhibited should be complied with. Only in exceptional cases will variations of this general rule be granted by the Licensing Authority and then only with appropriate safeguards.

With respect to films with 'U' classification, which are suitable for audiences aged 4 years and over, children under 4 may be admitted at the discretion of the accompanying parent/adult.

Reason: These policies are designed to allow flexibility for the licensee to ensure that where appropriate licensed premises are suitable for children. They also aim to ensure children are adequately protected from physical, moral or psychological harm.

6.5 Entertainments of a Sexual Nature

The Policing & Crime Act 2009 brings certain premises offering entertainment of a sexual nature under the controls of the Local Government (Miscellaneous Provisions) Act 1982. Sexual entertainment held on an infrequent basis can fall outside this legislation and such infrequent entertainment will be considered under the Licensing Act 2003 and take into account the increased risk to the licensing objectives.

POLICY

Where representations are received to an application, the Licensing Authority will impose conditions designed to ensure that children are not admitted to and cannot witness these activities, and to control crime and disorder problems. Particularly if premises are located in the vicinity of schools, churches, hospitals, youth clubs or other premises where significant numbers of children are likely to attend.

Reason: These matters are designed to further the licensing objective of protecting children by preventing them being exposed to unsuitable material or acts, and for the protection of performers from risk of assault.

7. Saturation & Cumulative Impact

7.1 Saturation and Cumulative Impact

Cumulative impact is defined in the Guidance to the Act as ‘the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area’.

Where, after considering evidence and consulting relevant persons, the Licensing Authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in a particular area, it will adopt a special policy to be included in the statement of licensing policy

The effect of adopting a special policy is to create a rebuttable presumption that applications for new premise licences or material variations will normally be refused, if relevant representations to that effect are received. That is, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already experienced.

POLICY

The Licensing Authority may consider a specific policy on cumulative impact if it proves necessary to meet the licensing objectives in any area. The Licensing Authority, in considering whether to adopt such a special policy, will take the following steps:

- a) Identification of concern about crime and disorder. This must be evidence-based and supported by the North Yorkshire Police and Safer York Partnership;**
- b) Consideration of whether it can be demonstrated that crime and disorder is occurring, and is caused by customers of licensed premises in an area, or that the risk factors are such that the area is reaching a point when cumulative impact is considered unacceptable;**
- c) Consultation carried out with those persons indicated in paragraph 1.4 of this policy;**
- d) Subject to that consultation, the inclusion of a special policy about future premises licences or club premises certificate applications in the statement of licensing policy;**
- e) Publication of the special policy.**

Reason: The saturation of licensed premises can attract high numbers of customers who adversely impact on the surrounding area beyond the control of an individual licence holder or the police.

7.2 Special Cumulative Impact Policy York City Centre

The North Yorkshire Police has made representation with respect to the formulation of a special policy with regard to the city centre. This is made up of three areas identified as:

- Micklegate Area
- Coney Street Area
- Back Swinegate / Fossgate Area

These areas have been identified as being under stress because the cumulative effect of the significant number of premises being concerned in the sale and/or consumption of alcohol has led to serious problems of disorder and/or public nuisance affecting residents, visitors and other businesses.

City of York Council has consulted further on the application of a special policy with respect to these areas.

7.3 City Centre Special Policy Statement

This Special Policy was approved by the City of York on XX March 2014 and shall have effect until XX March 2019 unless otherwise reviewed by the Council.

This Special Policy is a supplement to the Council's Statement of Licensing Policy and must be read in conjunction with this document.

This Special Policy includes the following streets:

Micklegate Area:

- | | | |
|-------------------|------------------------|------------------|
| • All Saints Lane | • George Hudson Street | • Tanner Row |
| • Bar Lane | • Holgate Road | • Tanner Street |
| • Barker Lane | • Low Ousegate | • Tanners Moat |
| • Blossom Street | • Lyneham Road | • The Crescent |
| • Bridge Street | • Micklegate | • Toft Green |
| • Duxford Close | • Museum Street | • Trinity Lane |
| • East Mount Road | • North Street | • Wellington Row |
| • Gavray Drive | • Nunnery Lane | |

Coney Street Area:

- | | | |
|---------------------|-----------------|---------------------|
| • Blake Street | • Friargate | • Nessgate |
| • Borough Avenue | • High Ousegate | • New Street |
| • Castlegate | • Jubbergate | • Parliament Street |
| • Church Lane | • Judges Court | • Peckitt Street |
| • Clifford Street | • King Street | • Peter Lane |
| • Coney Street | • Kings Staith | • South Esplanade |
| • Cumberland Street | • Lendal | • Spurriergate |
| • Davygate | • Low Ousegate | • St Helens Square |

- Duncombe Place
- Feasegate
- Esplanade
- Lower Friargate
- Market Street
- Museum Street
- St Sampsons Square
- Stonegate
- Tower Street

Back Swinegate / Fossgate Area:

- Aldwark
- Back Swinegate
- Bedern
- Castle Walk
- Castlegate
- Church Street
- Clifford Street
- Coffee Yard
- Colliergate
- Coppergate
- Coppergate Walk
- Duncombe Place
- Finkle Street
- Fossgate
- Franklins Yard
- Friargate
- Goodramgate
- Grape Lane
- High Ousegate
- High Petergate
- Jubbergate
- Kings Court
- Kings Square
- Lady Pecketts Yard
- Little Shambles
- Little Stonegate
- Low Petergate
- Merchantgate
- Milldown Avenue
- Minster Gates
- Minster Yard
- Monk Bar Court
- Nessgate
- Newgate
- Parliament Street
- Patrick Pool
- Pavement
- Peter Lane
- Piccadilly
- Precentors Court
- Pump Court
- Shambles
- Silver Street
- Spurriergate
- St Marys Square
- St Sampsons Square
- St Saviourgate
- Stonegate
- Strakers Passage
- Swinegate
- The Stonebow
- Three Cranes Lane
- Tower Street
- Walmgate
- Whip-Ma-Whop-Ma-Gate

(see Appendix D, Maps of Special Policy Areas).

These areas have been identified as requiring additional licensing controls to promote the licensing objectives due to the cumulative effect of the concentration of:

- drink led premises – pubs, bars and nightclubs;
- entertainment premises – pubs, bars and nightclubs providing entertainment, especially late at night into the early hours of the morning;
- late night refreshment premises – takeaways; and
- off licence premises – supermarkets and convenience stores;


on crime, disorder and/or public nuisance affecting residents, visitors and other businesses.

A statistical, evidence based report was submitted by North Yorkshire Police to substantiate this statement and was considered by the City of York Council in approving this policy.

Consultation on the Special Policy was carried out in accordance with Section 5(3) of the Licensing Act 2003.

Effects of the Special Policy

1. This policy relates to applications for the grant and/or variation of premises licences or club premises certificates or the issue of provisional statements.

- 
2. Each application will be considered on its own merits.
 3. Where no representations are received any application will be granted in terms consistent with the operating schedule.
 4. Applications for the grant of a new premises licence or club premises certificate or provisional statement:

Where relevant representations are received there will be a presumption against the grant of such a licence or certificate unless the applicant can rebut the presumption that the granting of such a licence or certificate would undermine the licensing objectives.

5. Application for the variation of a premises licence or club premises certificate due to a change of style of operation:

Any application for the variation of style of operation which is subject to relevant representations will be considered on its own merits having regard to the promotion of the licensing objectives.

6. Application for the variation of a premises licence or club premises certificate resulting in an extension of the premises and increased capacity:

There will be a presumption to refuse such applications, where relevant representations are received and where the increase in capacity would undermine the licensing objectives unless the applicant can rebut the presumption that the granting of such a variation would undermine the licensing objectives.

7. Application to vary the hours of operation attached to a premises licence or club premises certificate:

All applications that seek to extend the licensed hours will be considered on an individual basis. No different policy will apply in this area as opposed to the rest of the city.

8. Licensing Hours

In 2003 the Government expressed a view that “more flexible opening will help address the issue of large numbers of patrons leaving at the same fixed time and as such will reduce disorder and disturbance whilst helping promote business and cultural development”. The Government also wishes to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and local employment and attractive to domestic and international tourists.

The Licensing Authority acknowledges these principles but believes that full consideration should be given to the risk of disturbance to local residents and possibly to businesses when licensable activities continue late at night and into the early hours of the morning.

Any activity involving public entertainment and eating or drinking on the premises has the potential to impact adversely on the surrounding area due to disturbance or crime and disorder. Customers may also be noisy when leaving, leave litter, or use on-street car parking spaces needed by residents. The impact of noise generated by these activities, especially customers departing, is particularly intrusive at night when ambient noise levels are much lower.

The Licensing Authority recognizes that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when potentially large numbers of people tend to leave licensed premises at the same time. Longer licensing hours with regard to the sale of alcohol may, therefore, be considered as an important factor in reducing friction at late night food outlets, taxi ranks and in the street.

However, the same effect may be seen where the closing time of a number of licensed premises coincide and, as stated, one of the aims of the licensing regime is to prevent the mass exodus of patrons at fixed times with its knock-on effect on services and policing.

Therefore, the Licensing Authority recognises that there is no general presumption in favour of lengthening licensing hours and believes that the licensing objectives should be paramount to considerations at all times. Where there are representations to an application and it is believed that changing the licensing hour would undermine the licensing objectives, the Licensing Authority may reject the application or grant it with appropriate conditions and/or different hours from those requested. Consideration will be given to the individual merits of an application.

POLICY

Providing consumers with greater choice and flexibility is an important consideration, but should always be carefully balanced against the duty to promote the licensing objectives and the rights of local residents to peace and quiet. It is the aim of the Licensing Authority to strike a fair balance between the needs of a licensed business and the risk of disturbance and nuisance to local residents. The Licensing Authority may, upon receipt of relevant representation, restrict the hours of operation where it is considered necessary to avoid unreasonable disturbance to local residents or businesses.

Reason: To achieve the licensing objectives of preventing public nuisance and crime and disorder that have been eroded by fixed licensed hours.

Licensing Hours - Off Sales

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, subject to representation, in the case of individual shops that are known to be a focus of disorder and disturbance, a limitation on licensing hours may be appropriate.

Licensing Hours - Late Night Refreshment Houses

Premises providing late night refreshment generally serve the customers of other premises. The closing times of such premises should reflect the terminal hours of other premises operating in the area. The impact of people gathering at these premises after other premises have closed is a significant factor to be considered in the prevention of public nuisance and crime and disorder.

Subject to representation, the Licensing Authority will have regard to the closing times of other premises in the area when considering the terminal hour of premises providing late night refreshment. The operation of such premises should not attract persons into an otherwise quiet area to obtain food if it has the potential to cause disturbance to residents.

Dispersal

The Licensing Authority have received representations from the police expressing a view that disorder is most likely where crowds gather to queue or wait after leaving licensed premises.

The effectiveness of dispersal of customers away from premises will be a consideration to the Licensing Authority when it is required to determine licensing hours.

Reason: The time at which licensed activities take place has a significant impact on the potential for public nuisance and disturbance to occur and is also a factor in the prevention of crime and disorder. A licensed activity may be acceptable at certain times and not others. Generally the later the activity takes place the greater the potential for problems to occur. The Licensing Authority has a duty to promote the licensing objectives.

9. Early Morning Restriction Orders (EMROs)

The power conferred on licensing authorities to make, vary or revoke an EMRO (or propose to take any of these steps) is set out in sections 172A to 172E of the Licensing Act 2003. This power came into force on 31st October 2012 and the Government provided guidance as part of the S182 Guidance to Licensing Authorities.

This power enables a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of 12am and 6am in the whole or part of its area, if it is satisfied that this would be appropriate for the promotion of the licensing objectives.

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 is not directly attributable to specific premises.

An EMRO:

- Applies to the supply of alcohol authorised by premises licences, club premises certificate and temporary event notices;
- Applies for any period beginning at or after 12am and ending at or before 6am. It does not have to apply on every day of the week and can apply for different time periods on different days of the week;
- Applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
- Applies to the whole or any part of the licensing authority's area
- Will not apply to any premises on New Year's Eve (defined as 12am to 6am on 1 January every year);
- Will not apply to the supply of alcohol to residents by accommodation providers between 12am and 6am, provided the alcohol is sold through mini-bars/room service; and
- Will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the Licensing Act 2003.

Before a licensing authority determines to recommend that the full council make a proposed EMRO, it should be satisfied that it has sufficient evidence to demonstrate that making the EMRO would be appropriate for the promotion of the licensing objectives. The requirement to take an evidence-based decision to promote the licensing objectives should enable licensing authorities to draw on the experience from other licensing decisions they make under the Licensing Act 2003. The licensing authority should consider evidence from partners, including responsible authorities and local Community Safety Partnerships, alongside its own evidence, to determine whether an EMRO would be appropriate for the promotion of the licensing objectives.

An EMRO is a powerful tool which will prevent licensed premises in the area to which the EMRO relates from supplying alcohol during the time at which the EMRO applies. The licensing authority should consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO. These measures might include:

- Introducing a cumulative impact policy;
- Reviewing licences of specific problem premises;
- Encouraging the creation of business-led best practice schemes in the area.

It is the intention of the licensing authority to support businesses, whilst ensuring the promotion of the licensing objectives. However where this has deemed to fail then an EMRO could be considered as a possible solution.

There are currently no EMROs in place in this area.

10. Personal Licences

The sale of alcohol carries with it a great responsibility because of its impact on the wider community and on crime and anti-social behaviour. A personal licence is required by individuals who may be engaged in making and authorising such sales and supplies of alcohol.

A personal licence authorises an individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence. The licensing authority for the area where the applicant resides issues a personal licence.

The council recognises it has no discretion regarding the granting of personal licences where

- the applicant is 18 or over,
- possesses a licensing qualification,
- has not had a licence forfeited in the last five years, and
- has not been convicted of a relevant offence.

An application for a personal licence must be made in the form specified in Government Guidance or Regulation. The application must be accompanied by the requisite fee. The applicant should also be able to produce evidence of the relevant qualification.

Applicants should produce a Disclosure and Barring Service certificate which must be less than one calendar month old on submission.

Applicants from foreign jurisdictions are expected to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or a similar offence.

The police may make an objection on the grounds of an unspent relevant or foreign offence. If an objection is lodged, a hearing has to be held unless otherwise agreed by all parties.

POLICY

At any hearing that may be necessary, following a representation from the police, the Licensing Authority will consider whether the grant of the licence will be in the interests of the crime prevention objective. It will consider the seriousness and relevance of the conviction(s), the period that has elapsed since the offence(s) were committed, and any mitigating circumstances. The Licensing Authority will grant the application unless it is satisfied that doing so will be against this objective.

Reason: Prevention of crime is both an objective of the Act and an important responsibility of City of York Council under the Crime and Disorder Act 1998. A person holding a personal licence should be a person who is not only properly qualified but a person who will assist in the prevention of crime. Granting a licence to a known criminal will in many cases undermine rather than promote the crime prevention objective.

10.1 Designated Premises Supervisor, Authorisation

A designated premises supervisor must be a personal licence holder. They are a specified individual who can be readily identified for the premises where a premises licence is in force. The premises licence holder will have given this person day-to-day responsibility for running the premises.

POLICY

There should always be a designated premises supervisor, specified for the premises, selling or supplying alcohol. The Licensing Authority expects the designated premises supervisor to be in such a position as to exercise day-to-day control over the premises. The designated premises supervisor must be specified on the premises licence. The sale and supply of alcohol, because of its impact on the wider community and on crime and antisocial behaviour, carries with it greater responsibilities than the provision of regulated entertainment or late night refreshment. For effective control, enforcement officers must be able to immediately identify the person responsible for the sale of alcohol at any premises.

Reason: Section 19 of the Act requires that no supply of alcohol may be made under a premises licence at a time when there is no designated premises supervisor in respect of the premises licence.

10.2 Authorising the Sale of Alcohol

If a designated premises supervisor is not present on the premises the Licensing Authority would normally regard it as appropriate for a personal licence holder to be present on the premises at all times alcohol is sold, and particularly where alcohol is sold late in the evening or early hours of the morning. It is a legal requirement that every supply of alcohol made under a premises licence must be made or authorised by a person who holds a personal licence (not necessarily the designated premises supervisor). "Authorisation" does not imply direct supervision by a personal licence holder of each sale of alcohol. The Licensing Authority strongly suggest that personal licence holders give specific written authorisation to any individuals that they are authorising to supply alcohol. It is recommended that the form of authorisation should include the following criteria;

- there should be an overt act of authorisation, for example, a specific written statement given to the individual being authorised;
- the person(s) authorised to sell alcohol should be clearly identified;
- the authorisation should specify the acts which may be carried out by the person being authorised.

Also each and every sale or supply of alcohol by someone under 18 years must be specifically approved by a responsible person; unless the alcohol is sold or supplied with a table meal in a designated area, and the consumption of alcohol is ancillary to a meal.

Reason: This should assist personal licence holders in demonstrating due diligence should issues arise with any of the enforcement authorities; and may protect employees if they themselves are challenged in respect of their authority to sell alcohol.

11. Review of Licences and Enforcement

11.1 Review of Licences

The Licensing Authority may review premises licences when representations are received from a responsible authority (such as the police, fire authority or environmental protection unit), or other person (such as local residents), to indicate that problems associated with crime and disorder, public safety, public nuisance or protection of children from harm are occurring.

Before undertaking a review the Licensing Authority must first consider whether the complaint made is not relevant, vexatious, frivolous or repetitious.

Any review will be considered by a Sub-Committee of the Licensing Authority which has a range of options available to it under the Act. These include:

- To modify the conditions of the licence including imposing new conditions, altering existing conditions or removing conditions (permanently or temporarily)
- To exclude a licensable activity from the scope of the licence (permanently or temporarily)
- To remove the Designated Premises Supervisor
- To suspend the licence for a period not exceeding three months
- To revoke the licence

Licence holders should be aware that the Violent Crime Reduction Act 2006 and the Licensing Act 2003 (Summary Review of Premises Licences) Regulations 2007 provides the police and local communities with new powers in the specific area of alcohol-related violence. The summary review procedure allows the police to initiate an expedited review of a premises licence if a senior officer is of the opinion that the premises in question are associated with serious crime, serious disorder or both.

11.2 Enforcement

Where necessary, enforcement action will be taken in accordance with the principles of the Regulators Compliance Code and the Licensing Authority's Licensing Enforcement Policy. Effective enforcement is needed to meet the licensing objectives and to support local residents and businesses.

In particular, regard will be given to the fundamental principles recommended by the Hampton Report for good enforcement:

- Targeting - ie focusing on activities that give rise to the most serious risks or where hazards are least well controlled.
- Consistency - ie similar approaches in similar circumstances to achieve similar ends;
- Transparency - ie helping duty holders to understand what is expected and distinguishing between statutory requirements and guidance;

- Proportionality - ie action taken should be proportional to the risk presented.

The Licensing Authority recognises that the effectiveness of its licensing policy will be determined by enforcement action undertaken. The Licensing Authority will undertake routine monitoring of licence conditions on a risk based programme. The Licensing Authority will work with the police, fire authority, environmental protection unit and other agencies to produce joint working practices.

12. Temporary Event Notices (TENs)

The Act does not require the issue of a licence for a temporary event. It is a notification process. The police and environmental protection unit are the only parties permitted to make representations. A person over 18 may use a premise for one or more licensable activities for a period not exceeding 168 hours under authority of a TEN. Notice must be given to the Licensing Authority and Chief Officer of Police in the form prescribed no later than 10 clear working days before the event is due to start. This will include temporary indoor or outdoor theatre productions or cinema screenings. The Licensing Authority will not normally accept a TEN which is submitted more than 6 months prior to the event. This is to allow for any material changes which may occur prior to the event which could affect the venue thus providing the police and environmental protection unit with grounds to object to the TEN if they feel that holding the event will undermine the licensing objectives.

Temporary event notices can only be used where the maximum number attending is less than 500. In all other cases a full premises licence must be applied for.

The Police, Reform and Social Responsibility Act 2011 introduced Late TENs. A late notice is given not before nine and not later than five working days before the event. However, it should be noted that if an objection is received from the police or environmental protection unit to a late TEN the event will not go ahead. In these circumstances there is no scope for a hearing or for the modification of a late TEN as is possible in relation to a standard TEN.

POLICY

It is the expectation of this authority that the 10 day period be regarded as a minimum and would encourage applicants to give at least 28 days notice of an event in order that the earliest possible notice of an event is made. This will allow time for any issues raised to be addressed before the event.

The extended period allows the Licensing Authority to provide advice on concerns of local residents, of other legislative requirements and other necessary permissions, including local byelaws. It also allows time for full advice to be given in respect of the law relating to the sale of alcohol and the powers of police to close down events with no notice on grounds of disorder or public nuisance caused by noise. Finally, the extended period enables the Licensing Authority to establish the statutory limitations relating to TEN's are being fully observed.

In addition to standard application procedure the Licensing Authority would encourage applicants to notify the event to residents in the immediate vicinity of the proposed activity. The telephone number of an appointed person, who is able to be contacted during the event and take control should problems be experienced, should be provided.

Reason: Early notification and keeping residents informed is likely to reduce the cause for complaint of disturbance during and after an event.

The limitations on TENS was amended by the Police, Reform and Social Responsibility Act 2011. An individual can submit a maximum of 5 TENS per calendar year, unless the applicant holds a personal licence, when the limit is 50 per calendar year. An individual can submit a maximum of 2 late TENS per calendar year, and a personal licence holder can submit a maximum of 10 late TENS per calendar year. However, it should be noted that late TENS count towards the total permitted number of TENS an individual is allowed to submit

Only 12 notices may be granted in respect of the same premises and in respect of those premises there is an overriding maximum aggregate duration of 21 days. A TEN can be used, in respect of the sale of alcohol, for a period beyond the normal hours during which alcohol may be sold at the premises under its premises licence for an ad hoc occasion.

The police and council's environmental protection unit may object to an event proposed under a TEN by serving an objection notice to the Licensing Authority and the applicant on the grounds that one or more of the licensing objectives will be undermined. An objection notice must be issued within 3 working days of being notified, therefore it is advisable that a minimum of 28 days notice of an event is given to allow the police to duly consider the event. Failing to give advanced notice may lead to the event being shut down by the police if time is not allowed to advise the applicant of any issues to address

The Licensing Authority may issue a counter-notice to the applicant if it considers it necessary for the promotion of the licensing objectives..

If no counter-notices are served the event will be able to go ahead.

An intention notice for a temporary event must be made in the form specified by Government Guidance or Regulation. Notices can be requested from this service or can be downloaded from either the CYC website or DCMS website.

The notice must be accompanied by the requisite fee.

13. Policy Matters to be Considered by the Licensing Committee

13.1 Tourism and Employment

Arrangements will be made for the licensing committee to receive reports on the needs of the local tourist economy for the city. This is to ensure that these are reflected in the considerations of the licensing panels and committee.

The Council will similarly make arrangements to keep the licensing committee apprised of the employment situation in the area and the need for new investment and employment where appropriate.

Links, where possible, will be made to the Economic Development Program (sic) and to York: A Vision for Tourism (the city's Tourism Strategy).

13.2 Planning

Arrangements will be made to ensure that proper integration with the planning function is achieved. This will include, where appropriate, providing reports on licensed premises in the area.

13.3 Community Safety: Crime and Disorder

Arrangements will be made to ensure that proper integration with the Safer York Partnership is achieved including, where appropriate, links to the Crime and Disorder Strategy for York. Where appropriate, this will include providing reports to the Safer York Partnership.

13.4 Health

The Licensing Authority recognises the substantial impact on health that alcohol has in the city.

The authority will take every opportunity to promote education and prevention to tackle binge drinking and alcohol misuse.

APPENDIX A - DELEGATION

Schedule of Delegated Functions

Matter to be Dealt with	Sub-committee	Officers
Application for Personal Licence	If a police objection	If no 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 to vary Designated Personal Licence Holder	If a police objection	All other cases
Request to be removed as a Designated Personal Licence Holder		All cases
Application for transfer of Premises Licence	If a police objection	All other cases
Application for Interim Authorities	If a police objection	All other cases
Application to review Premises Licence/Club Premises Certificate and in the case of Summary Reviews the application of interim steps	All cases	
Decision on whether a complaint is irrelevant, frivolous or 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 a police objection to a Temporary Event Notice	All cases	
Agreement of amendment to the original application submitted in an appeal court	Where the Chair of the decision making subcommittee is present or another member of the subcommittee in his/her absence.	Where no member of decision making sub committee is present, the licensing officer and legal adviser in consultation

APPENDIX B - OTHER RELEVANT LEGISLATION & GUIDANCE TO APPLICANTS

1. Planning Legislation and Building Regulations

The planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. Licensing applications will not be a re-run of the planning application. The granting by the Licensing Committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building regulation control where appropriate.

2. Health and Safety at Work Act 1974 and associated legislation

The City of York Council is the authority for this legislation for [most licensed](#) premises in the area.

3. Human Rights Act 1998

The City of York Council has a duty under the European Convention on Human Rights to protect both the rights of a resident to privacy and family life (Article 8) and the rights of a licensee to operate their business without undue interference (Article 1 of the First Protocol). These policies are intended to reflect the balance to be struck between these interests where they conflict.

4. Disability Discrimination Act 2005

The Disability Discrimination Act introduced measures to tackle discrimination encountered by disabled people. It is recommended that licensees make themselves familiar with the requirements of this Act for the access and provision of services to disabled people.

5 Crime and Disorder Act 1998 Section 17

This Act requires local authorities and others to consider crime and disorder reduction while exercising all of their duties. It states, *“Without prejudice to any other obligation imposed upon it, it shall be the duty of each authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”*.

This reflects the reality that there are crime and/or disorder implications in decisions made across the full range of local authority services. The consideration of the specific licensing objective of the prevention of crime and disorder fulfils the requirement under this Act.

6. Criminal Justice and Police Act 2001

This Act introduces provisions for combating alcohol related disorder giving the local authority and/or the police the powers to prohibit alcohol consumption in designated public places, to close certain licensed premises due to disorder or disturbance and to close unlicensed premises.

7. Violent Crime Reduction Act 2006

This Act introduces new measures to tackle alcohol-related violence. These measures include;

- An amendment to the Licensing Act to introduce a new offence of persistently selling alcohol to children. The offence will be committed if, on three or more different occasions in a period of three consecutive months, alcohol is unlawfully sold to a minor on the same premises.
- New powers for local authorities and the police to designate Alcohol Disorder Zones (ADZs) to tackle alcohol related crime and disorder. The designation of an ADZ will empower local authorities to charge licensees for additional enforcement activity affecting all licensed premises within the zone.
- An amendment to the Licensing Act which will enable Licensing Authorities on the application of a senior police officer in cases of serious crime and disorder, to attach interim conditions to licences pending a full review.

8. Policing and Crime Act 2009

This Act introduces measures to tackle alcohol misuse.

9. Police, Reform and Social Responsibility Act 2011

This Act introduces provisions under the Licensing Act 2003 in relation to:

- Responsible authorities
- Removing the vicinity test
- Reducing the evidential burden on licensing authorities
- Temporary event notice
- Underage sales
- Early morning restriction orders
- Fees

It also introduces provision for local authorities in relation to:

- Late night levy
- Alcohol restriction zones

9. Environmental Protection Act 1990

This covers a wide range of types of pollution including noise pollution.

10. The Clean Neighbourhoods and Environment Act 2005

This provides local authorities with an additional power to issue a fixed penalty notice to any licensed premises emitting noise that exceeds the permitted level between the hours of 11.00pm and 7.00am.

11. Anti-Social Behaviour Act 2003

Sections 40 and 41 of the Act provides that if the noise from a licensed premise is causing a public nuisance, an authorised environmental health officer will have the power to issue a closure order effective for up to 24 hours. This compliments the police powers under Part 8 of the 2003 Act to close licensed premises for temporary periods.

12. Health Act 2006 (Workplace Smoking Ban)

The ban on smoking in all enclosed work places and public places came into force on the 1 July 2007. The ban includes smoking in pubs, restaurants and members clubs where bar or other staff are employed.

13. The Regulatory Reform (Fire Safety) Order 2005

North Yorkshire Fire and Rescue Service enforce fire safety legislation. The Regulatory Reform (Fire Safety) Order 2005 ('the Fire Safety Order') replaces previous fire safety legislation.

14. Race Relations Act 1976 (as amended 2000)

Local authorities have a legal obligation to have regard to the elimination of unlawful discrimination; promote equality of opportunity and good relations between persons of different racial groups.

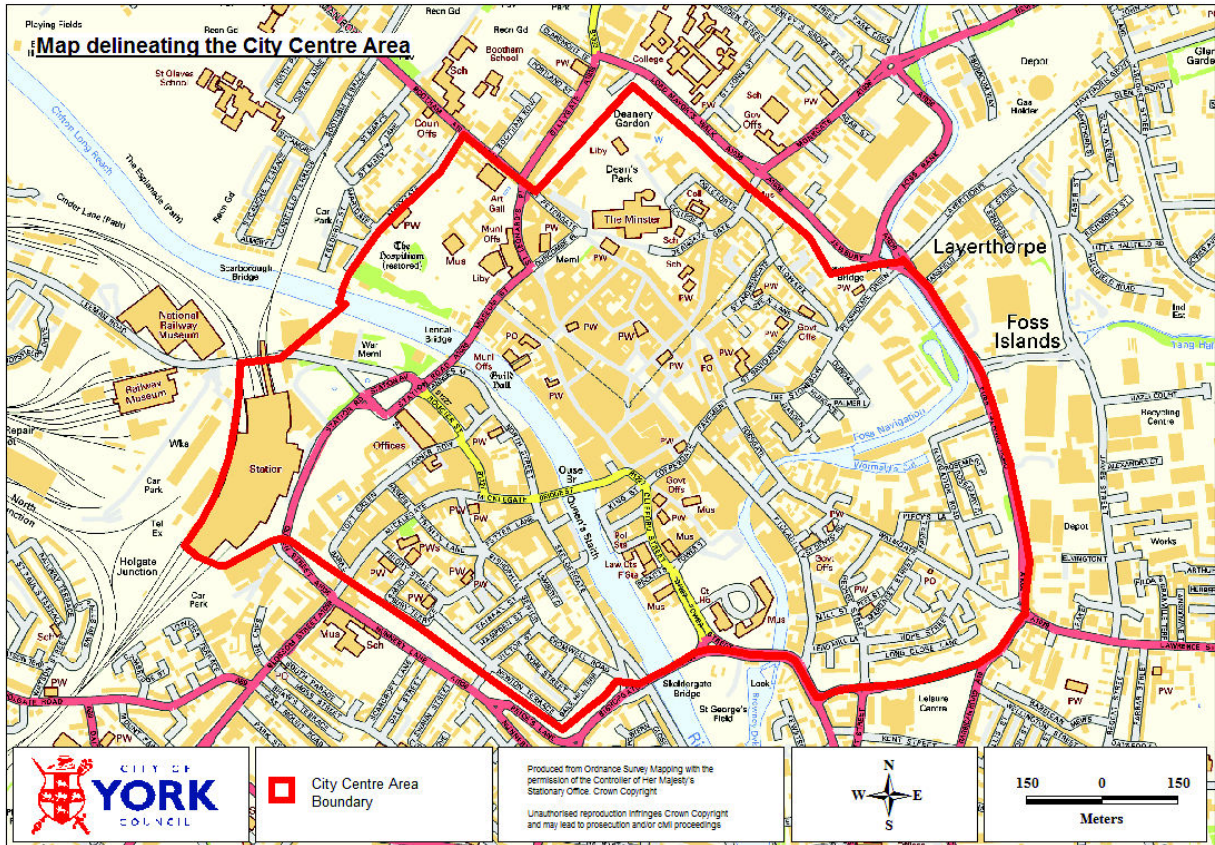
15. Data Protection Act 1998

Applicants should have regard to the provisions of the Data Protection Act 1998 in relation to their premises and in particular to the Information Commissioners Code of Practice on CCTV.

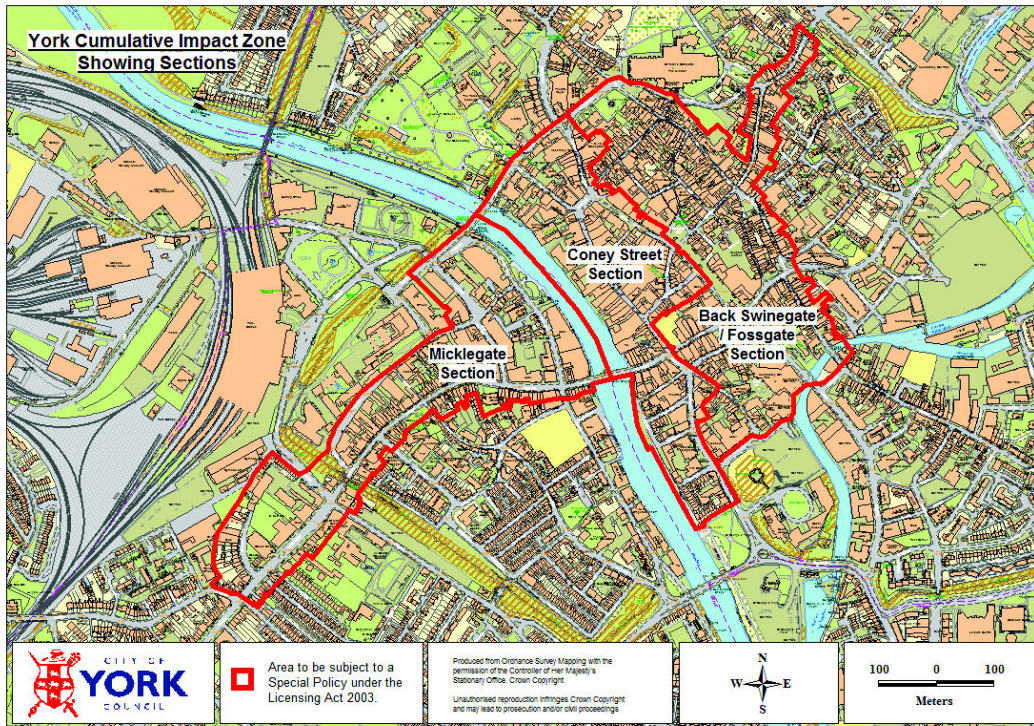
Guidance Documents *for Applicants and Licence Holders*

- The Event Safety Guide - a guide to health, safety and welfare at music and similar events (HSE 1999) ("The Purple Book") ISBN 07176 24536;HSG 195-7.
- Managing Crowd Safety (HSE 2000) ISBN 07176 1834X;
- 5 Steps to Risk Assessment - case studies (HSE 1998) ISBN 07176 15804;
- The Guide to Safety at Sports Grounds (The Stationery Office 1997) ("The Green Guide") ISBN 011 3000952;
- Safety Guidance for Street Acts, Carnivals, Processions and Large Scale Performances published by the Independent Street Arts Network, copies may be obtained through www.streetartnetwork.org.uk
- Equality and Human Rights Commission www.equalityhumanrights.com
- Home Office Supporting Guidance pool conditions www.gov.uk/government/publications/pools-of-conditions-supporting-guidance
- Home Office Guidance on persistently selling alcohol to children www.gov.uk/government/publications/guidance-on-persistently-selling-alcohol-to-children

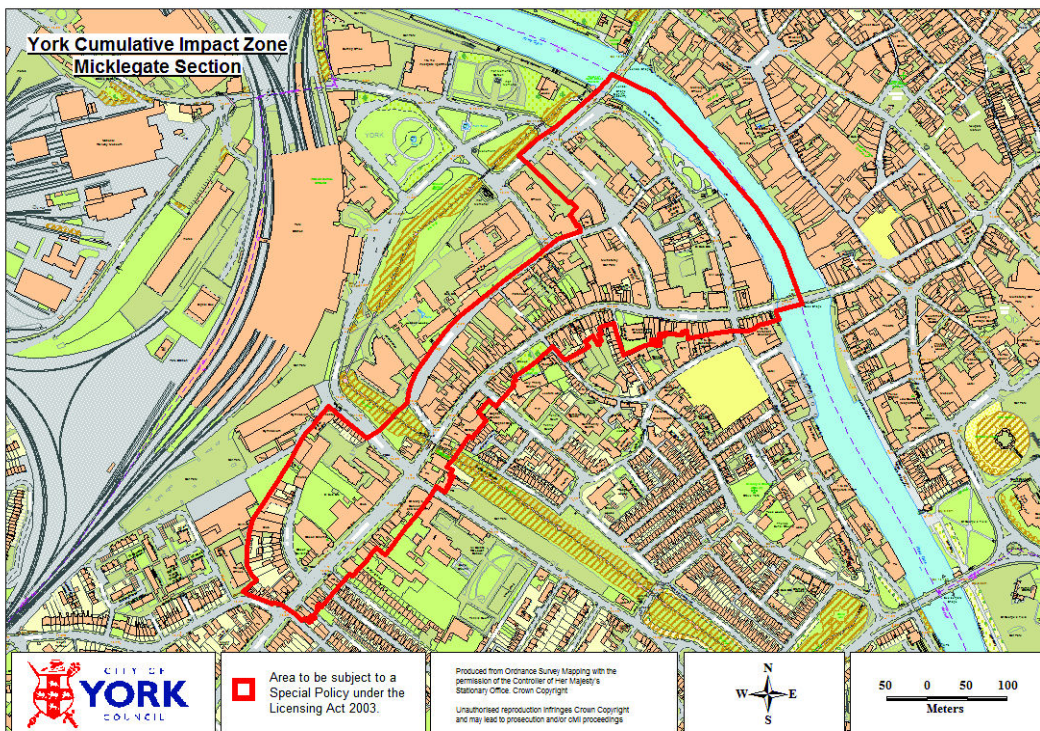
APPENDIX C - MAP DELINEATING THE CITY CENTRE AREA



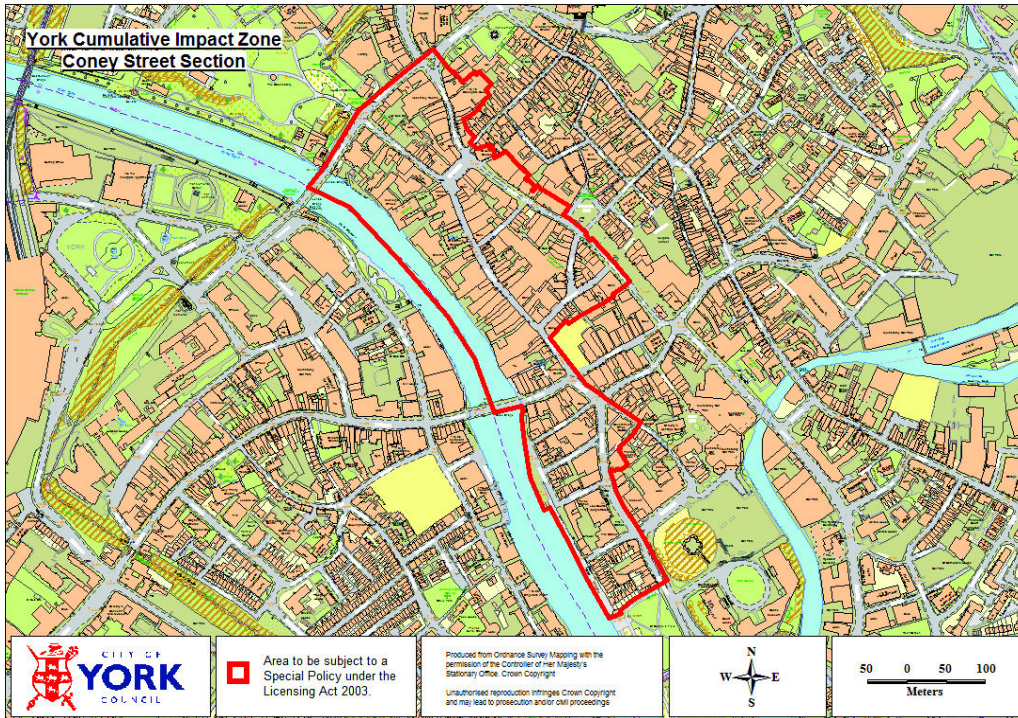
APPENDIX D - MAPS OF THE SPECIAL POLICY AREA



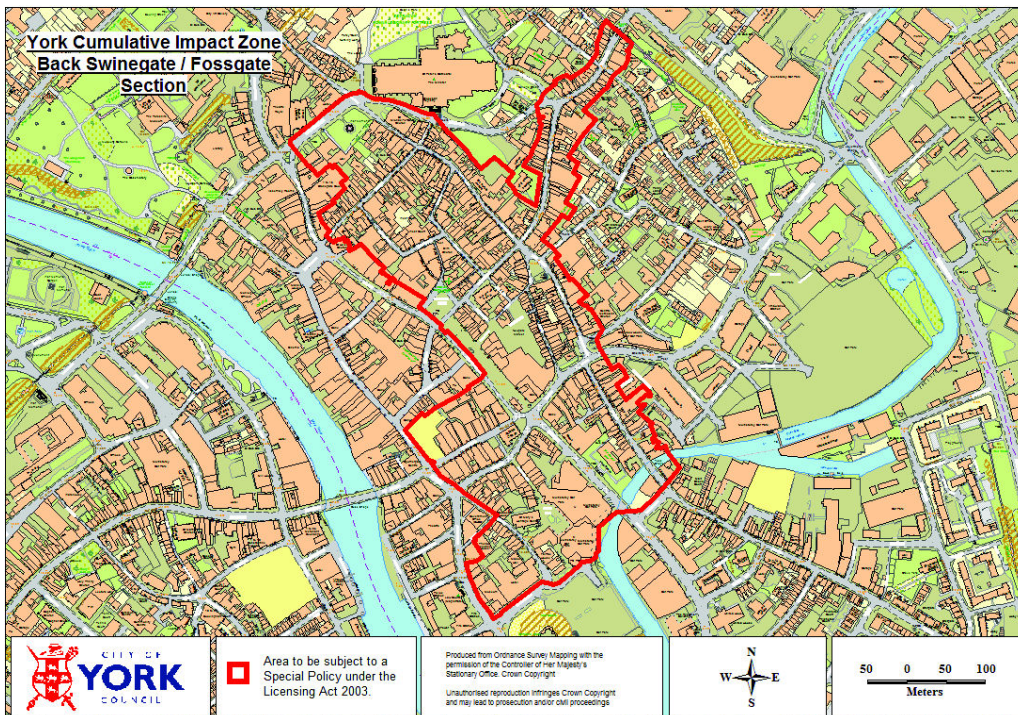
Micklegate Area Map



Coney Street Area Map



Back Swinegate / Fossgate Area





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2014 - Licensing Policy Consultees

Licence Victuallers Association
Coppergate Centre
Stonegate Traders
Chamber of Commerce
Leeds, York & North Yorkshire Chamber of Commerce,
York Retailers Forum
Citizen Advice Bureau
CVS
York Hospitality
Older Citizens' Advocacy York,
Older People's Forum
Age Concern
York District Hospital, Accident & Emergency
Alcohol Task Group (YAAS)
British Institute of Innkeepers
Visit York
British Beer & Pub Association
Club and Institute Union (CIU)
Working Men's Club & Institute Union
York Private Hire Association
York Taxi Association
Independent Taxi Association
British Transport Police
Yorkshire Ambulance Service
CAMRA York (Secretary)
York Older Peoples Assembly
Parish Councils
Ward Councillors
Tenants & Residents Associations
All Licensed premises within the authority area

Chief Superintendent, North Yorkshire Police (York)
City of York Group Manager, North Yorkshire Fire & Rescue Service
Safer York Partnership
Crime Reduction Manager

City of York Council Head of Public Protection
City of York Council Trading Standards Unit
City of York Council Environmental Protection Unit
City of York Council Health & Safety Unit
City of York Council Assistant Director of Planning & Sustainable
Development

City of York Council Assistant Director Life Long Learning & Leisure
City of York Council Head of Arts & Culture
City of York Council Head of Parks & Open Spaces
City of York Council Assistant Director for Strategic Planning & Transport
City of York Council Assistant Director of Children & Families
City of York Council Safeguarding Children Board Unit Manager
City of York Council Director of City Strategy
City of York Council Assistant Director Communities & Neighbourhoods
City of York Council Director of Health & Wellbeing
City of York Council Substance Misuse Pathways Officer
City of York Council Equality Officer



Gambling, Licensing & Regulatory Committee

17 March 2014

Report from the Assistant Director – Housing and Community Safety

A Consultation on Fees under the Licensing Act 2003**Summary**

1. This report asks Members to approve the licensing authorities response to the Home Office consultation on fees under the Licensing Act 2003.

Background

2. The Government is committed to cutting red tape in the licensing regime for responsible businesses. They have already reduced the burden of licensing regulation on live music, and have recently brought forward further proposals for the further deregulation of entertainment. They are also giving local government powers to remove licensing burdens on late night refreshment providers and reducing the burden of the personal licence regime.
3. However, the Government is very clear about its commitment to curbing excessive drinking and the problems it causes, especially alcohol related crime and disorder that costs round £11 billion annually in England and Wales. The Government have legislated to rebalance the Licensing Act 2003 (the 2003 Act) in favour of local communities, ensuring that local authorities have significant enhanced powers to tackle alcohol-related crime and disorder, the introduction of legislation relating to the late night levy and early morning alcohol restriction zones.
4. As part of the Governments proposals to rebalance the 2003 Act, they have also recognised arguments from some licensing authorities that they face significant deficits in carrying out their licensing function, given that fee levels have been unchanged since they were set in 2005. The Government therefore introduced provisions in the Police Reform and Social Responsibility Act 2011 to enable locally-set fees based on cost recovery. The Government has decided against setting

fees centrally as they recognise that costs vary for legitimate reasons in different areas, so that raising fees to recover the costs in one area would mean fee payers paying too much in another.

5. Locally-set fees cannot be used to raise extra revenue. Nor are they tools to tackle crime. Fees must be based on recovering the costs that licensing authorities incur in carrying out their licensing functions. Fee payers need to know that locally-set fees will be set transparently and be based on evidence. The Government do not wish to impose excessive duties or complex processes that will increase the costs of the licensing system for everyone. Therefore, the Government are seeking views on how to create a proportionate system of fees that follows these principles.
6. The Government will introduce caps on the level of each fee to reassure fee payers.

Consultation

7. The Home Office is consulting a wide range of persons and organisations with regards to this consultation. The consultation runs for eight weeks from 13 February until 10 April 2014. A copy of the consultation document can be found at Annex 1.
8. The Council has not carried out a formal consultation regarding this response. A copy of the response can be found at Annex 2.

Options

9. Option 1 – approve the proposed response.
10. Option 2 – amend the proposed response.

Analysis

11. Fees under the 2003 Act are currently set nationally and have not changed since they were introduced in 2005.
12. The current fee regulations prescribe different fee amounts for the main fees (grants, full variations, annual fee) depending on the national non-domestic rateable value (NNDR) band of the premises. These fees are currently:

National non-domestic rateable value	Grant / full variation fee	Annual fee
A – £0-£4300	£100	£70
B – £4301 - £33000	£190	£180
C – £33001 - £87000	£315	£295
D - £87001 - £12500	£450	£320
E - £125001 – and above	£635	£350
Dx2 premises that primarily or exclusively sell alcohol	£900	£640
Ex3 premises that primarily or exclusively sell alcohol	£1905	£1050

Other fees are also payable under the 2003 Act, these are:

Applications/Notices	Current fee
Provisional statement	£315
Vary premises licence to specify designated premises supervisor	£23
Vary a premise licence to remove requirement for a designated premises supervisor	£23
Transfer of a premises licence	£23
Interim authority notice	£23
Grant or renewal of a personal licence	£37
Replace stolen, lost etc, premise licence or certificate	£10.50
Change of name and address of premises licence holder	£10.50
Minor variation	£89
Change of name and address or change of club rules	£10.50
Temporary event notice	£21
Replace stolen, lost etc temporary event notice	£10.50
Replace stolen, lost etc, personal licence	£10.50

Change of name or address of personal licence holder	£10.50
Interest of freeholder etc in premises	£21

13. The consultation proposes variable fee amounts; licensing authorities may be able to apply different fee amounts across their area for the main fees, if the Government move away from the use of NNDR bands.

14. The proposed cap levels for fees is:

Applications/Notices	Proposed cap level
Grant for a premises licence / certificate	£2400
Provisional statement	£2400
Vary a premise licence / certificate	£2400
Vary a premises licence to specify designated premises supervisor	£105
Vary a premises licence to remove requirement for a designated premises supervisor	£105
Transfer of a premises licence	£65
Interim authority notice	£114
Annual fee payable by premises licence holders	£740
Annual fee payable by club premises certificate holders	£720
Grant or renewal of a personal licence	£114
Replace stolen, lost etc, premise licence or certificate	£46
Change of name and address of premises licence holder	£46
Minor variation	£244
Change of name and address or change of club rules	£46
Temporary event notice	£100
Replace stolen, lost etc temporary event notice	£38
Replace stolen, lost etc, personal licence	£59

Change of name or address of personal licence holder	£59
Interest of freeholder etc in premises	£50

15. The administration costs to the council in processing a number of licensing applications / notices is as follows (all figures are approximate and do not include the costs of appeals, inspections, enforcement and producing policies):

- a) Grant / full variation premise licence applications - £420.00
- b) Vary designated premises supervisor / Transfer premise licence applications - £100.00
- c) Personal licence application - £80.00
- d) Temporary event notice - £90.00

Council Priorities

16. The Licensing Act 2003 has 4 objectives: the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
17. By setting their our own fees the council will be able to recover the cost incurred in implementing the 2003 Act, this will assist in the promotion of the licensing objectives and will support the Council's priorities to protect vulnerable people and build strong communities.

Implications

18. The implications arising from this report are:

- **Financial:** There are no direct financial implications associated with this report.
- **Human Resources:** There are no Human Resources implications associated with this report.
- **Equalities:** There are no equalities implications associated with this report.
- **Legal:** There are no legal implications arising directly from this report.
- **Crime and Disorder:** There are no crime and disorder implications associated with this report.

- **Information Technology (IT):** There are no IT implications associated with this report.
- **Other:** There are no other implications associated with this report.

Risk Management

19. There are no known risks associated with this report.

Recommendations

20. That Committee approves option 1 and instruct officers to submit the response to the Home Office.

Reason: To provide an appropriate response to the consultation.

Contact Details

Author:

Lesley Cooke
Licensing Manager
Phone: 551515

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director (Housing and Community Safety)

**Report
Approved**

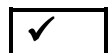


Date 7th March 2014

Specialist Officer Implications: None

Wards Affected:

All



Background Papers:

None

Annexes

Annex 1: Consultation Document

Annex 2: City of York Council response.



Home Office

A consultation on fees under the Licensing Act 2003

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Ministerial foreword

The Coalition Government is committed to cutting red tape in the licensing regime for responsible businesses. For example, we have already significantly reduced the burden of licensing regulation on live music, and have recently brought forward further proposals for the further deregulation of entertainment. We are also giving local government powers to remove licensing burdens on late night refreshment providers and reducing the burden of the personal licence regime.

However, the Coalition Government is very clear about its commitment to curbing excessive drinking and the problems it causes, especially the alcohol-related crime and disorder that costs around £11 billion annually in England and Wales. We have legislated to rebalance the Licensing Act in favour of local communities, ensuring that local authorities have significantly enhanced powers to tackle alcohol-related crime and disorder. For example, we have introduced the late night levy, giving licensing authorities the power to ensure that businesses selling alcohol late at night contribute to the police costs and wider council spending it causes. We have enabled licensing authorities to prevent alcohol sales late at night in problem areas through Early Morning Alcohol Restriction Orders (EMROs). We have also lowered the evidence threshold for decision-making, making it easier for licensing authorities and the police to refuse, revoke or impose conditions on licences.



Norman Baker

As part of our proposals to rebalance the Licensing Act, we also recognised arguments from some licensing authorities that they face significant deficits in carrying out their licensing functions, given that fee levels have been unchanged since they were set in 2005. We therefore introduced provisions in the Police Reform and Social Responsibility Act 2011 to enable locally-set fees based on cost recovery. We could have set fees centrally, but we recognise that costs vary for legitimate reasons in different areas, so that raising fees to recover costs in one area would mean fee payers paying too much in another.

Locally-set fees cannot be used to raise extra revenue. Nor are they tools to tackle crime. The late night levy, EMROs, and other strengthened licensing powers can be used for these purposes. Fees must be based on recovering the costs that licensing authorities incur in carrying out their licensing functions. Fee payers need to know that locally-set fees will be set transparently and be based on evidence. However, we do not wish to impose excessive duties or complex processes that will increase the costs of the licensing system for everyone. Therefore, we are seeking views on how to create a proportionate system of fees that follows these principles.

Additionally, we will introduce caps on the level of each fee to reassure fee payers. We are consulting on the level of each cap. I emphasise that the caps are intended to represent the maximum costs of licensing authorities. They will not be a “guide” to fee levels. Nor should they prevent licensing authorities from recovering legitimate costs.

Alongside this consultation, we are conducting a survey of the costs incurred by licensing authorities in performing each licensing function. The information will be important to us in developing the details of the regime. In addition, the information required to complete the survey will form a vital part of the calculations necessary to set fees locally in due course. I therefore urge all licensing authorities to complete and return the survey.

We look forward to hearing the views of all those with an interest as part of this consultation.

A handwritten signature in black ink that reads "Norman Baker". The signature is written in a cursive, slightly slanted style.

Norman Baker MP
Minister of State for Crime Prevention

1. Introduction

- i. The regulatory regime of the Licensing Act 2003 (“the 2003 Act”) affects hundreds of thousands of businesses and many millions of us as workers, residents and consumers. It regulates the sale of alcohol, the provision of late night refreshment and regulated entertainment in England and Wales, and therefore influences activities that are central to many people’s lives. For instance, community pubs are often at the heart of neighbourhoods, providing employment and a focus for community engagement and social life. Licensable activities also support profitable industries which enhance the economy and promote growth. The majority of people who take part in regulated activities do so in an entirely responsible way. Nevertheless, these activities can sometimes have a less positive side, from which the licensing regime is designed to protect the public. Many agencies, such as the police, have a role. However, licensing functions under the 2003 Act are primarily implemented by local authorities – in their capacity as “licensing authorities” - and this role is funded through fees.
- ii. Licensing fees are intended to recover the costs that licensing authorities incur in implementing the 2003 Act, within the context of the transparency and accountability mechanisms to which licensing authorities are subject (see Chapter 8). Fees levels were set nationally in 2005, but have not been revised since then¹. The Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) introduced a power for the Home Secretary to prescribe in regulations that these fee levels should instead be set by individual licensing authorities.
- iii. Fees are payable to licensing authorities by holders of licences and certificates, and those making applications or issuing notices². Those paying fees, therefore, come from a wide variety of groups. They include businesses that sell alcohol and provide late night refreshment, not-for-profit organisations (including private members’ clubs, such as political or British Legion clubs) and individuals (such as personal licence applicants). In addition over 120,000 Temporary Event Notices (TENs) are given each year by a variety of businesses, not-for-profit groups and individuals to authorise licensable activities on an occasional basis.

Scope of this consultation

- iv. This consultation invites views on a number of specific aspects of the regulations that will introduce locally-set fees under the 2003 Act. These are:
 - The future of the current variable fee “bands” based on the national non-domestic rateable value (NNDR) of the premises.
 - Whether the basis on which fees are determined should include new discretionary mechanisms to apply different fee amounts depending on whether or not premises are:
 - authorised to provide licensable activities until a late terminal hour and/or
 - used exclusively or primarily for the sale of alcohol for consumption on the premises.
 - If licensing authorities are able to apply different fee amounts, whether they should have further discretion to exclude certain classes of premises from liability for the higher amount.

¹ Licensing Act 2003 (Fees) Regulations 2005 (S.I. 2005/79). The only substantive amendment has been the addition of new fees for new processes, such as for an application for a “minor variation”.

² A full list of the fees is available in Chapter 7.

- The proposed cap levels that will apply to each fee category.
 - What guidance will be needed on setting fees and on efficiency and the avoidance of “gold-plating” (by which we mean activities that go beyond the duties of the 2003 Act and are not justified by proportionality).
 - Whether there should be a single annual fee date.
 - The transition process to locally set fees.
- v. This consultation is primarily aimed at fee payers and licensing authorities, although we welcome responses from all those who have an interest.

Legal context

- vi. The power to make fees regulations is set out in primary legislation³. These provisions are designed to reflect wider Government policy on fees, in particular, the need to distinguish “fees” from “taxation”. The primary legislation enables licensing authorities to charge different amounts for different “classes of case” (or criteria) specified in the regulations, but does not enable them to introduce new “classes of case” themselves.
- vii. In other words, the legislation enables the Home Secretary to prescribe that licensing authorities set fee levels, but not that they determine their own fee structure. This will be specified in regulations and will therefore remain the same across England and Wales. This fee structure is one of the issues on which we are consulting.
- viii. The primary legislation enables the Home Secretary to apply constraints on licensing authorities’ power to determine the amount of any fee. The Government has signalled its intention to use this power to set caps on fee levels. Chapter 7 seeks views on proposed caps.
- ix. It should also be noted that these regulations cannot introduce new circumstances where a fee becomes payable⁴. For example, they cannot add a fee for applications for review.
- x. There are a number of objectives that have shaped our approach to the consultation. These are set out below.

Cost recovery

- xi. As described above, licensing authorities should, as nearly as possible, achieve cost recovery for the discharge of functions under the 2003 Act⁵. Cost recovery is best achieved by setting fees locally because the variations in actual costs between licensing authority areas make it difficult to achieve a close approximation to cost recovery with nationally-set fees. Locally-set fees should remove unintended public subsidy of the administration of the 2003 Act when a licensing authority’s costs are higher than current fee income. This should benefit tax payers. It should also mean that fee payers do not pay more than the licensing authority’s costs in areas with lower costs.
- xii. Alongside this consultation, the Government is seeking further evidence on variations in costs between licensing authority areas. An estimate of licensing authority costs, based on a small initial survey, is reflected in the accompanying Impact Assessment. We would welcome estimates of the costs of administering the 2003 Act from all licensing authorities to fully

³ This will be sections 197A and 197B of the 2003 Act (see Appendix A).

⁴ A list of fee categories is contained in Chapter 7.

⁵ Chapter 8 of this consultation contains a description of licensing authority costs.

assess the likely impact of locally-set fees and to ensure that costs reported are nationally representative. This will enable the Impact Assessment to be revised at final proposal stage, taking into account evidence received from the consultation. Further information about the cost survey is available at www.gov.uk/government/consultation/locally-set-licensing-fees.

Avoiding cross-subsidisation

- xiii. Fees (unlike taxes) must avoid “cross-subsidisation”. This is where one class (or type) of fee payer is charged at higher than cost-recovery so that another class can be charged less. An example might be charging big firms more as an economic deterrent, or so that charities or small firms can be charged less. This could be regarded as an unfair form of taxation on those that are charged more.
- xiv. Evidence suggests that the current sources of fee income are not properly aligned to licensing authority costs, either in terms of categories of fees (such as TENs or annual fees) or between the ‘classes’ of fee payers (for example at present the fee amount charged for an application for a premises licence is higher for premises with higher non-domestic rateable value, but the evidence does not support such variations in costs within licensing authority areas). This is discussed further in the impact assessment published alongside this consultation at www.gov.uk/government/consultation/locally-set-licensing-fees and in Chapter 5.
- xv. This consultation therefore contains proposals to change the basis on which variable fee amounts may be chargeable locally, with the intention that licensing authorities can reduce cross-subsidisation in their areas in efficient and practical ways.

Caps

- xvi. As mentioned above, the Government has signalled its intention to set a “cap” (or highest permitted fee level) for each fee category. The caps are intended to reassure fee payers that locally-set fees are not a blank cheque for local government. They should not prevent licensing authorities in areas with the highest actual costs from recovering these costs, and should not be treated as indicative fee levels. It is expected that, in all but the most exceptional cases in the highest cost areas, fee levels set by licensing authorities will be well below the caps. This consultation invites views on the levels of the caps. This consultation also seeks views on the other potential mechanisms by which fee payers could be reassured that the fee levels they are paying are fair.

Single national payment date for annual fees

- xvii. Annual fees for premises licences and club premises certificates are currently paid on the anniversary of the date on which the licence or certificate was granted. Holders of premises licences, particularly operators who hold multiple licences granted at different times, have argued that it would be more efficient for them to be able to pay all their annual fees on the same date.
- xviii. This consultation therefore seeks views on whether there should be a single national payment date for annual fees. However, it is not proposed to implement this change at the same time as the regulations governing locally-set fees are introduced, because it would increase the complexity of the forthcoming change to the fees regime.

Out of scope

Additions to or exemptions from fees

- xix. The only basis on which licensing authorities will be able to charge fees is cost recovery. The regulations cannot enable fees to be charged for processes or activities for which fees are not already chargeable, nor can they exempt premises or activities from the licensing regime. The Government is looking more widely at how to reduce the burdens on businesses and not-for-profit groups affected by the 2003 Act. Recent Government consultations on its Alcohol Strategy and on regulated entertainment have invited views on a number of de-regulatory proposals, alongside proposals to tackle alcohol-related harms.
- xx. In the case of regulated entertainment, the Government has proposed changes that will see many activities removed from the scope of licensing entirely⁶. This will mean, for example, that many temporary events that formerly required a TEN (such as community concerts) will not require one in future. Likewise, many licences or certificates that authorise regulated entertainment only will not be required in the future. The Government intends to align the introduction of locally-set fee levels locally with these changes, so that operators whose activities are set to be de-regulated (subject to Parliamentary approval) will not be subject to locally-set fees in the interim.
- xxi. Following the consultation on the Alcohol Strategy, the Government has brought forward proposals to:
- simplify the system of personal licences;
 - introduce a new form of authorisation, the “community and ancillary sales notice” (CAN), which will reduce the burdens on community groups that sell small amounts of alcohol and on businesses, such as small accommodation providers, that only sell limited amounts of alcohol alongside a wider services; and
 - enable licensing authorities to de-regulate late night refreshment in their area⁷.

These proposals (as in the case of the CAN) are expected to result in new lighter touch processes with correspondingly low fees or (in the case of late night refreshment) exemptions from the licensing regime.

- xxii. As a consequence of the principles of cost recovery and the avoidance of cross-subsidisation, this consultation does not propose any nationally-imposed exemptions from the requirement to pay fees where activities remain within the licensing regime. Therefore, exemptions from fees such as those currently applicable to community premises and similar premises that hold a licence only for regulated entertainment, are not proposed. It should be emphasised that the Government’s de-regulatory proposals for entertainment will exempt the types of premises and activities that the fee exemption is currently intended to benefit from the requirement to hold a licence.

6 E.g. “Consultation on a proposal to use a Legislative Reform Order to make changes to entertainment licensing”: <https://www.gov.uk/government/consultations/legislative-reform-order-changes-to-entertainment-licensing>

7 “Consultation on delivering the Government’s policies to cut alcohol fuelled crime and anti-social behaviour”. The Government’s response was published on 17 July 2013: <https://www.gov.uk/government/consultations/alcohol-strategy-consultation>

Large events

xxiii. The “additional fees” for large event fees are not addressed in the current consultation. The Government intends to revisit this topic after licensing authorities have developed expertise in setting fees under the 2003 Act. In the meantime, fees for large events will remain as they are.

Impact Assessment

xxiv. An Impact Assessment has been prepared to accompany this consultation, available at www.gov.uk/government/consultations/locally-set-licensing-fees. In addition to seeking views on the proposals, the Government is also seeking views on the Impact Assessment.

2. About this consultation

Geographical Scope

This consultation applies to England and Wales. We continue to work with the Welsh Government on these proposals.

Impact Assessment

A consultation stage impact assessment is published alongside this consultation document.

Who is this consultation aimed at?

We are particularly keen to hear from everyone who will be affected by these measures, especially those who pay licensing fees (such as those who own or work in pubs, clubs, supermarkets and shops, or issue Temporary Event Notices); and licensing authorities, although we will welcome responses from all those with an interest.

Duration

The consultation runs for eight weeks from 13 February 2014 until 10 April 2014.

Enquiries:

AlcoholStrategy@homeoffice.gsi.gov.uk

How to respond:

Information on how to respond to this consultation can be found on the Home Office website at www.gov.uk/government/consultations/locally-set-licensing-fees

All responses will be treated as public, unless the respondent states otherwise.

Responses can be submitted online through the Home Office website. Alternatively you can submit responses by email at AlcoholStrategy@homeoffice.gsi.gov.uk or by post by sending responses to:

Alcohol Fees Consultation,
Drugs and Alcohol Unit,
Home Office,
4th Floor Fry Building,
2 Marsham Street,
London,
SW1P 4DF

If responding by email or by post, please follow the word limits in the consultation for each question. If you wish to provide additional information, please do so in an annex to your response, which can be emailed to the address above.

Additional ways to become involved:

Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio. The Department is obliged to both offer, and provide on request, these formats under the Equality Act 2010. We can also offer a version of the consultation in Welsh on request.

After the consultation:

Responses will be analysed and a 'Response to the Consultation' document will be published. This will explain the Government's final policy intentions.

Background

Getting to this stage:

The Government published its "Rebalancing the Licensing Act" consultation in July 2010. Following this, the Police Reform and Social Responsibility Act 2011 introduced the necessary power for the Home Secretary to prescribe that the level of fees under the 2003 Act are set by the authority to which they are payable, based on cost recovery.

3. Information about you

The following questions ask for some information about you. The purpose of these questions is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing these responses you are giving your consent for us to process and use them in accordance with the Data Protection Act 1998.

Company Name or Organisation (if applicable):

Which of the following best describes you or the professional interest you represent? Please select one box from the list below:

Individual involved in licensed premises	<input type="checkbox"/>
Individual involved in or managing club premises	<input type="checkbox"/>
Small or medium sized enterprise involved in licensed premises (up to 50 employees)	<input type="checkbox"/>
Large business involved in licensed premises (more than 50 employees)	<input type="checkbox"/>
Business or trade body involved in the production of alcohol	<input type="checkbox"/>
Trade body representing licensed premises	<input type="checkbox"/>
Association representing club premises	<input type="checkbox"/>
Person or organisation specialising in licensing law	<input type="checkbox"/>
Voluntary or community organisation	<input type="checkbox"/>
Licensing authority <i>[If you are from a licensing authority please specify which licensing authority in the box below:]</i>	<input type="checkbox"/>
Licensing authority officer	<input type="checkbox"/>
Local Government (other)	<input type="checkbox"/>
Police and Crime Commissioner	<input type="checkbox"/>
Police force	<input type="checkbox"/>
Police officer <i>[If you are from a police force specify which police force in the box below]</i>	<input type="checkbox"/>
Bodies representing public sector professionals (e.g. Local Government Association, Institute of Licensing)	<input type="checkbox"/>
Central Government	<input type="checkbox"/>
Member of the public	<input type="checkbox"/>
Other <i>[specify in the box below]</i>	<input type="checkbox"/>

4. Consultation principles, confidentiality and disclaimer

Consultation Principles

- 4.1 The Government has recently introduced a more proportionate and targeted approach to consultation, so that the type and scale of engagement is proportionate to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focusing on real engagement with key groups rather than following a set process. The key Consultation Principles are:
- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
 - departments will need to give more thought to how they engage with and consult with those who are affected;
 - consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and the principles of the Compact between Government and the voluntary and community sector will continue to be respected.

The full consultation guidance is available at:

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Responses: Confidentiality & Disclaimer

- 4.2 The responses you send us may be passed to colleagues within the Home Office, the Government or related agencies. The Department will process your personal data in accordance with the Data Protection Act 1998 (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
- 4.3 Responses to this consultation may be published as part of the analysis of the consultation, or subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 4.4 Please tick the box below if you want your response to be treated as confidential. Please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence.
-
- 4.5 If you have ticked the box, it would be helpful if you could explain to us why you regard your response as confidential. If we receive a request for disclosure of your response we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
-

5. Variable fee amounts: the national non-domestic rateable value “bands”

Introduction

- 5.1 It is the Government's intention that cost recovery is achieved without cross-subsidisation. Therefore, unless there is evidence that one class (or type) of fee payer leads to higher average costs to the licensing authority than others, everyone should pay the same.
- 5.2 The current fee regulations prescribe different fee amounts for the “main fees”⁸ depending on the national non-domestic rateable value (NNDR) “band” of the premises (see the existing fees at Appendix B). NNDR represents the open market annual rental value of a business or non-domestic property - the rent the property would let for if it were offered on the open market.
- 5.3 The “bands” are:
- Band A: no NNDR to £4,300;
 - Band B: £4,301 to £33,000;
 - Band C: £33,001 to £87,000;
 - Band D: £87,001 to £125,000; and
 - Band E: £125,001 and above.
- 5.4 The fee amounts charged increase substantially for premises in higher bands. For example, the fee for an application for a premises licence is £100 for premises in Band A and £635 for premises in Band E. The only basis on which the Government would propose retaining the use of such bands under a system of locally-set fees would be if the higher bands were, on the basis of local evidence, related to higher costs to the licensing authority.
- 5.5 As described in the Impact Assessment, a study of licensing authority costs by the Home Office (referred to as the LA Sample survey) did not support NNDR as a criterion for variable costs because the costs incurred by premises within each band in an area were not significantly linked to cost differences for the licensing authority. This means, therefore, that retention of the bands would not assist in reducing cross-subsidisation. As noted in the Impact Assessment, however, it would add marginally to the cost of setting fees because of the need to determine costs for the members of each NNDR band.

⁸ The “main fees” are the fees paid in respect of: applications for new premises licences and club premises certificates; applications for full variations to premises licences and club premises certificates; and annual fees in respect of premises licences and club premises certificates.

The Government therefore proposes to abandon the use of NNDR as a criterion for variable fee amounts.

Consultation Question 1:

Do you agree or disagree that the use of national non-domestic rateable value bands as a criterion for variable fee amounts should be abandoned?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 2:

If you disagree, please provide evidence that higher national non-domestic rateable value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

6. Variable fee amounts: alternative classes

6.1 This chapter focuses on alternative classes (or types) of premises in respect of which licensing authorities may be able to apply different fee amounts across their area for the “main fees”⁹, if the Government does move away from the use of NNDR bands. There are a number of different options to consider. The Government could prescribe that there be a ‘flat’ fee for the main fees in each area. However, some licensing authorities may consider that this would neither reflect costs nor reduce cross-subsidisation. For example, they may have evidence that, in their area, licensed restaurants or premises that close early consistently result in lower costs than premises used mostly for drinking or those which open until late.

Principles of alternative classes

- 6.2 The proposed discretion to charge different fee amounts for different classes of premises should enable licensing authorities to more closely achieve the objective of the avoidance of cross-subsidisation in their respective areas. These ‘classes’ would only be implemented locally as the basis for variable fee amounts if there was evidence that (and to the extent that) they were linked to costs in that area. They would apply throughout the licensing authority’s area.
- 6.3 Any classes proposed must of course be compatible with the fees provisions in the 2003 Act. In addition, they should also be practical and efficient to implement locally so that they do not significantly increase licensing authority costs.

Alternative classes proposed in pre-consultation discussions

- 6.4 During pre-consultation discussions, local government representatives and fee payers proposed a variety of different approaches. These included methods that seek to place a larger proportion of the fee burden on existing premises perceived as problematic or high risk. Proposals include basing the “main fees” on
- risk assessment of each premises; and
 - “polluter pays” approaches, with payments for interventions (such as inspections) or different amounts dependent on whether there were problems during the year.
- 6.5 A common feature of these methods is that they would require classification of premises in categories that are currently not a formal part of the licensing regime. They would therefore be likely to result in additional costs and burdens (for example, in conducting a risk assessment). They may also increase the likelihood of dispute between licensing authorities and fee payers about the classification that emerged or whether premises were at fault for an incident that led to the assessed risk increasing. Furthermore, they may involve retrospective decisions that could not apply to applications or variation applications. For these reasons, the Government is not proposing these mechanisms.

⁹ The “main fees” are the fees paid in respect of: applications for new premises licences and club premises certificates; applications for full variations to premises licences and club premises certificates; and annual fees in respect of premises licences and club premises certificates.

- 6.6 The proposed criteria on which we are consulting are whether or not premises are:
- a. authorised to provide licensable activities until a late terminal hour and/or
 - b. used exclusively or primarily for the sale of alcohol for consumption on the premises.

These are described in more detail below. However, in Question 18 below, we invite evidence in support of other alternative classes (or types) of premises that are consistently linked to higher or lower average costs to the licensing authority within individual licensing authority areas.

Inter-relationship between the classes

- 6.7 Subject to local evidence of costs, the intention is that a licensing authority will be able to apply neither, only one, or both of the criteria cumulatively; or both of the criteria in combination:
- If neither criterion were applied, there would be a flat rate for all premises.
 - If one was applied (for example, late terminal hour), then this would divide premises into two classes, those that were and were not authorised to provide licensable activities at that hour. Those that were authorised to open later would pay an additional amount.
 - If both criteria were applied, premises that had a late terminal hour and were used primarily for drinking would pay each additional amount cumulatively.
 - To provide additional flexibility for licensing authorities, we also propose that licensing authorities would be able to specify that a higher fee amount would apply only to premises to which both criteria applied in combination. This option is explained in more detail below.

Relationship with caps

- 6.8 We intend that the cap (see Chapter 7) is the highest permitted fee for that fee category. Premises subject to any higher fee amount will still be subject to the cap.

Discretion to vary fee amounts on the basis of late terminal hour

- 6.9 Premises could be charged more or less for the main fees dependent on whether or not the latest time that they are authorised to carry on licensable activities is beyond a set time in the evening. (The exact time is considered further below, paragraph 6.12).
- 6.10 Discussions with licensing authorities suggest that it is likely that premises open late may, in some areas, give rise to higher costs to the licensing authority. This could be as a result of, for example, heightened concern about noise nuisance (which may lead to more representations and applications for review) or the increased costs of inspection late at night.

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

6.11 “Late terminal hour” is a readily understood concept in the current regime, therefore making dispute less likely and implementation relatively simple. It is important that any class that is specified in the regulations does not itself risk incurring costs (such as those arising from a dispute about liability to pay a fee or its amount).

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

6.12 We intend that the terminal hour which triggers the higher fee amount would be set locally but within prescribed criteria set out in regulations. We propose that it should be within the period midnight to 6am. (This is the same time period to which the Late Night Levy and Early Morning Alcohol Restrictions Orders may apply).

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

	From	To
Select hours	<input type="text"/>	<input type="text"/>

6.13 We propose that licensing authorities that impose higher fees for premises that open later have discretion to exclude premises that are authorised to open late only on certain nights per year from the class of premises with a late terminal hour. This could mean that premises that are only authorised to open late on special occasions, such as, for example, New Year’s Eve or St. Patrick’s Day, would be excluded from the class of premises paying a higher fee amount.

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

Discretion to vary fee amounts dependent on whether the premises is primarily used for drinking

- 6.14 Premises could be charged more or less depending on whether or not they are exclusively or primarily used for the sale of alcohol for consumption on the premises. This proposal is similar to the “multiplier”, used as part of the current fee structure, except that it would not be restricted to premises with high rateable value. Also, the amount by which the fee differed would not be a prescribed multiple of the standard fee, but would be determined by the licensing authority to reflect cost differences.
- 6.15 It is likely that premises that operate in this way, in some areas, give rise to higher costs to the licensing authority, given, for example, heightened concern about crime and disorder (which may lead to more representations and applications for review).

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

- 6.16 “Whether a premises is used exclusively or primarily for the consumption of alcohol for consumption on the premises” is an existing concept in the current regime, used in both the fees regulations, and in relation to whether unaccompanied children are allowed on premises.¹⁰ However, there are mixed views on whether this criterion presents practical challenges. Some licensing officers report that all the premises in their area that should pay the current “multiplier” do so, other licensing officers report that there is significant difficulty in applying the definition. For example, they report that there are premises which they consider should pay it, but which (for example) also provide some degree of refreshment or entertainment. It is important that any criterion which is set down in the regulations does not itself result in costs (such as those arising from a dispute about liability to pay a fee).

¹⁰ Section 145 of the 2003 Act.

Consultation Question 13:

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Relationship between the criteria: a combined class

- 6.17 As set out in paragraph 6.7, the Government proposes to give licensing authorities flexibility in the application of these two criteria. This includes the proposal that licensing authorities should additionally have discretion to apply higher amounts only to premises where the two criteria are both applicable. If this discretion were exercised, premises would only be charged a higher amount in that area if they were used primarily for the sale of alcohol for consumption on the premises and open to a late terminal hour. This would, in effect, enable licensing authorities to divide premises into two classes – those that were in the combined class and those that were not.
- 6.18 The benefit of this combined class would be that licensing authorities could exclude from any higher fee amount premises that were open late or used primarily for drinking, but which local evidence shows were not associated with higher average costs. This is an alternative solution to the problem described in paragraph 6.19 and 6.20 below. For example, premises such as accommodation providers, theatres and cinemas and community premises, as well as other relevant premises, could be excluded from any higher amount if this option were exercised in a locality. This alternative approach could be considerably simpler to implement than discretionary exclusions, as estimates of costs would not need to be made for each class of potentially excluded premises.

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Don't know	<input type="checkbox"/>

Discretionary exclusions from classes of premises subject to a higher fee amount

6.19 Alternatively, it has been suggested that licensing authorities that introduce different fee amounts should be able to exclude certain types of premises from the higher amount, if these types are not associated with higher costs¹¹. The types of premises could potentially be similar to those available to licensing authorities as discretionary exemptions from the late night levy, such as: accommodation providers; theatres and cinemas; bingo halls; community amateur sports clubs; and community premises.

6.20 This would require the regulations to specify each premises type that could be excluded. As with the other proposed classes, the only basis on which a licensing authority would be able to exclude these classes of premises from higher fee amounts would be evidence linking them to lower costs. Therefore, licensing authorities would need to classify premises into these classes and estimate costs for each one. Given the possibility of dispute about classification, and increased complexity in determining costs, the “combined” criterion proposed above (see paragraph 6.17-6.18) may achieve the intended objective in a simpler and more cost-efficient way.

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

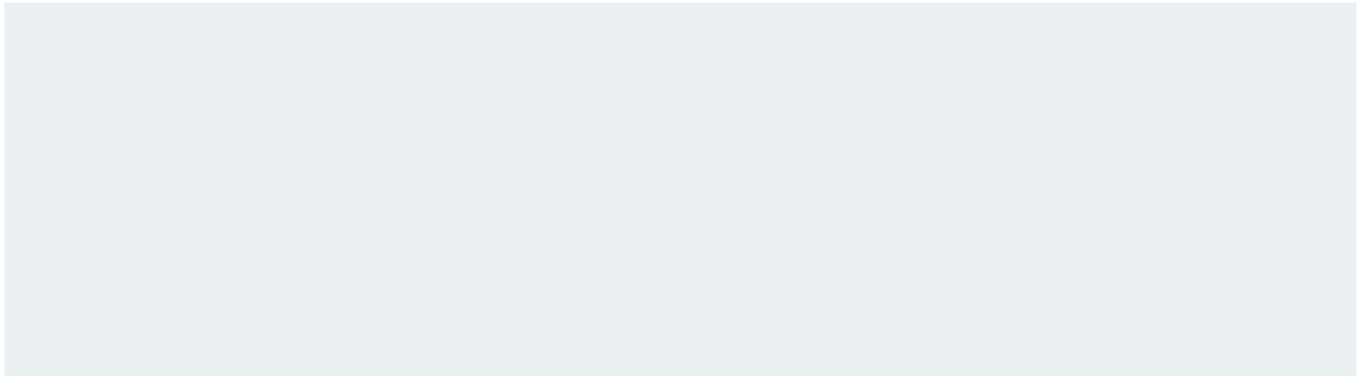
¹¹ Premises excluded from the higher fee amount would instead be subject to the lower fee amount. They would not be exempt from paying a fee at all.

Other Alternative Options

6.21 As discussed above, a range of different approaches to variable fees have been proposed during pre-consultation discussions. Subject to any proposals meeting the constraints imposed by the fees provisions in the 2003 Act and being practical, efficient and cost effective to implement locally, we are interested in what alternative options should be available for licensing authorities to apply different fee amounts in their area.

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.



7. Caps

Introduction

- 7.1 The Government has committed to set “caps” (the highest permitted fee level) for each fee category. The consultation invites views on proposed cap levels. These caps will provide reassurance to fee payers that fees cannot be set at excessive levels to, for example, generate income or be used as an economic deterrent to the undertaking of licensable activities. The Government does not intend to set caps at levels that will prevent cost recovery, however, as costs that are incurred in the discharge of functions under the 2003 Act ought to be recovered. The implementation and level of the cap will be subject to periodic review, in consultation with licensing authorities, and to exceptional review, if there is a case to do so.
- 7.2 It is important to note that the caps are not recommended fee levels: locally-set fee levels should be based on local evidence of what is required for cost recovery in that fee category, and it would be unlawful to merely set them at the level of the cap or at a proportion of the cap, without regard to costs. The caps represent, therefore, an upper limit on the highest costs of licensing authorities in exceptional circumstances. As described in Chapter 8, licensing authorities should continually drive efficiency, whilst ensuring effective delivery of the licensing regime.
- 7.3 The evidence from the LA Sample Survey (described in the Impact Assessment published alongside this consultation) and discussions with licensing authorities indicates that the costs of particular fee categories vary greatly in different licensing authorities. This is particularly true of processes, such as applications for new licences, which can result in hearings. (This could be due, for example, to a greater likelihood of residents’ concerns in one area than another). Similar considerations apply to other duties of licensing authorities that can result in a hearing, such as how often they have received objection notices from the police to an application to vary a licence to specify a new Designated Premises Supervisor, or how often they have received representations on applications to vary licences¹².
- 7.4 Variable costs can apply to other processes. For example, in the case of applications for a minor variation, licensing authorities may decide to invite views from responsible authorities, and be required to consider residents’ representations. The case of TENs is addressed separately below.
- 7.5 The result of these variations in average costs is that areas with the highest costs in any fee category deviate very greatly from the mean. The caps proposed in the consultation are therefore much higher than the estimated average future fee levels and are expected to far exceed cost recovery fee levels in most areas. Chapter 8 provides more information on mechanisms that will guard against “gold plating” and excessive costs, and invites views on practical ways to improve efficiency.

¹² The processes that can potentially result in the need for a hearing (or, in the case of an annual fee, a review) administered by the licensing authority are 19(a) to 19(l) in the list below.

- 7.6 The caps proposed in Table 1 below are based upon the highest reported costs in each fee category¹³ in the LA Sample Survey (see the Impact Assessment accompanying this consultation). Outliers were excluded where, after discussion with licensing authorities that provided data, it appeared that the high estimates may not have been related to legitimate high costs. Outliers¹⁴ were, therefore, excluded for data quality purposes (for example, to exclude calculation errors or anomalies caused by the small sample size), and not to exclude high cost authorities.
- 7.7 For some rare processes, such as applications for a provisional statement and for the grant of a certificate; and applications to remove the requirement for a designated premises supervisor, insufficient information was available to estimate average costs to licensing authorities. In these cases, it was assumed that highest average costs are similar to related processes¹⁵. The costs survey that accompanies this consultation will seek further data on licensing authority costs to augment the LA Sample Survey.

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

Table 1: proposed cap levels

Question	Fee Category	Proposed cap	Current fee or maximum fee (for information only)	Agree/ disagree/ don't know
processes that can result in hearings or include review hearings				
19 (a)	Application for the grant of a premises licence	£2,400	£1,905*	
19 (b)	Application for a provisional statement	£2,400	£315	
19 (c)	Application to vary a premises licence	£2,400	£1,905*	
19 (d)	Application to vary premises licence to specify designated premises supervisor	£105	£23	
19 (e)	Application to vary a premises licence to remove requirement for a designated premises supervisor	£105	£23	
19 (f)	Application for the transfer of a premises licence	£65	£23	
19 (g)	Interim authority notice	£114	£23	
19 (h)	Annual fee payable by premises licence holder	£740	£1,050*	

13 That is, they are based on the licensing authorities whose reported average cost over the year was highest for each process. They do not reflect the highest possible cost of administering a single application or notice.

14 Outliers are defined here as those falling outside two standard deviations from the mean.

15 Application for the grant of a licence and application to vary a licence to specify a designated premises supervisor, respectively.

19 (i)	Application for the grant of a certificate	£2,400	£635*	
19 (j)	Application to vary a certificate	£2,400	£635*	
19 (k)	Annual fee payable by club premises certificate holder	£720	£350*	
19 (l)	Application for grant or renewal of a personal licence	£114	£37	
other processes under the 2003 Act				
19 (m)	Application to replace stolen, lost etc. premises licence	£46	£10.50	
19 (n)	Notification of change of name or address of premises licence holder	£46	£10.50	
19 (o)	Application for minor variation of a licence	£244	£89	
19 (p)	Application to replace stolen, lost etc. certificate	£46	£10.50	
19 (q)	Notification of change of name or change of rules of club	£46	£10.50	
19 (r)	Notification of change of address of club	£46	£10.50	
19 (s)	Application to replace stolen, lost etc. temporary event notice	£38	£10.50	
19 (t)	Application to replace stolen, lost etc. personal licence	£59	£10.50	
19 (u)	Notification of change of name or address of personal licence holder	£59	£10.50	
19 (v)	Notification of interest of freeholder etc. in premises	£50	£21	

*denotes current maximum fee, where fee level is variable

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Temporary Event Notices (TENs)

- 7.8 Setting a cap level for TENs presents a particular challenge for two reasons. Firstly, TENs are used by a wide variety of organisations and individuals. For example, commercial operators may use a TEN to go beyond the terms of their current licence, individuals may wish to sell alcohol to the public at members' clubs, and community or charity groups may wish to sell alcohol at one-off events.
- 7.9 The Government is keen to ensure that the licensing regime is cost-efficient for all, and it is particularly important that costs are kept as low as possible for those working to improve their local community. As described paragraphs xx-xxi above, the Government is already reducing regulation for such groups.
- 7.10 Secondly, reports from licensing authorities suggests that TENs costs vary widely. Our best evidence indicates that the average TENs fee will be approximately £80¹⁶. Most authorities that responded to the LA Sample Survey reported costs below this level, whilst a small number of outliers reported costs significantly above £100. Analysis suggests that setting the cap at £100 would allow cost recovery in at least the significant majority of authorities.
- 7.11 Subject to further evidence, the Government therefore proposes a cap of £100, as this is appropriate for the generality of authorities and will encourage the remainder to keep their costs as low as possible. Although some authorities currently report higher costs, it should be noted that, with the present fee of £21, some operators may risk giving a TEN even though they are aware that it may result in an objection notice and therefore be wasted. We consider that an increase in the TEN fee to recover legitimate costs is likely to have an unintended consequence of deterring this practice and thereby lowering costs in the current highest cost areas. As set out in paragraph 7.1 above, the Government will retain the power to conduct an exceptional review of a cap if a case is made to do so.
- 7.12 We therefore invite evidence from all interested parties on the appropriate level for the TEN fee cap. The local authority cost survey that accompanies this consultation also seeks to strengthen our evidence base further on the average cost of a TEN, the degree of variation between areas, and the reasons for this variation, and we would encourage all licensing authorities to complete it.

¹⁶ See the Impact Assessment published alongside this consultation, Table 7 (page 34) and paragraphs 36 to 44 (page 13).

Consultation Question 21:

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

Agree

Disagree

Don't know

Consultation Question 22:

Please set out evidence for your answer in the box below, keeping your views to a maximum of 200 words.

8. Licensing authority costs, transparency, consultation with fee payers and guidance on setting fees

- 8.1 This chapter considers the costs that licensing authorities incur in discharging functions under the 2003 Act and the mechanisms of transparency and accountability to which licensing authorities are subject. It seeks views on the extent of local consultation on fee levels and how best to provide guidance to licensing authorities so as to ensure that high costs and “gold-plating” (exceeding the requirements of the 2003 Act) are avoided and efficiency encouraged.

Introduction – licensing authority functions and drivers of variable costs

Applications and notices

- 8.2 In administering the 2003 Act, licensing authorities must perform an administrative task of checking and processing a number of different types of application and notice. In respect of many of these processes, representations made by, for example, the police or residents may trigger a hearing, which is held by the licensing authority, so that the application or notice can be considered in more detail in the context of the licensing authority’s duty to promote the licensing objectives. In such cases, licensing officers may conduct an inspection of the premises to which the application relates. In particular, hearings occur in respect of a significant proportion of applications for premises licences and full variation applications. In other cases, such as an application to vary the Designated Premises Supervisor in relation to a premises licence, hearings are less common, but still occur. In rare cases, hearings may lead to appeal procedures involving the licensing authority. Licensing authorities are also responsible for advertising certain licensing applications on their website or by notices and for updating the licensing register.

Existing premises licences and club premises certificates

- 8.3 Licensing authorities must hold hearings to determine applications for the review of existing licences and certificates. A necessary component of fulfilling these responsibilities is the monitoring of compliance with the terms of licences and certificates in their areas. This may comprise inspections of premises, liaison with bodies with whom they work in partnership (such as the police, other departments of local authorities, or licensed premises) and conciliation between parties to avert the need for a review.
- 8.4 Licensing authorities must also carry out other functions under the 2003 Act for which no fee is specifically chargeable. For example, they must determine and periodically update their statements of licensing policy and they are responsible for maintaining a register of licensing information. Under these proposals for locally-set fees, they will also be responsible for setting fee levels. Under section 197A of the 2003 Act, the “general costs” arising from these functions are to be recovered through fees, with a “reasonable share” of these costs included in fee levels.

Responsible authority costs

- 8.5 Fees under the 2003 Act are intended to recover the costs of licensing authorities, and not of other bodies. This entirely excludes the recovery of police costs, for example. However, it includes the costs of the licensing authority exercising functions under the 2003 Act in its capacity as a responsible authority. This can include the environmental health authority, the planning authority; and the weights and measures authority, for example. The Government intends that the marginal costs of administering the 2003 Act (such as the costs of considering applications and making representations) can be recovered through licensing fees, but not other costs. In particular, the costs of inspection, monitoring of compliance or enforcement that arise in respect of the wider duties of responsible authorities under other legislation should not be recovered by fees under the 2003 Act.
- 8.6 It is important that costs that arise in respect of regimes that are funded by tax-payers or through their own fees regimes should not be passed onto licensing fee payers or double-funded.

The Provision of Services Regulations 2009

- 8.7 The fees provisions of the 2003 Act should be read in light of the requirements set out in the Provision of Services Regulations 2009 (the 2009 Regulations), as indeed should the 2003 Act as a whole. The 2009 Regulations provide that: “Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities”. The Government will provide guidance to licensing authorities on the application of this provision to fees under the 2003 Act.

Transparency and local consultation

- 8.8 There are already a number of safeguards in place to ensure that local authorities take a fair, reasonable and transparent approach when developing policies, and this would also be the case when setting fees. Local government is, of course, subject to democratic accountability through councillors and the electorate. Decisions are also subject to challenge through judicial review. Additionally, local authorities are subject to a robust external audit. For example, the Audit Commission Act 1998 places a duty on auditors to ensure that they have made “proper arrangements for securing economy, efficiency and effectiveness in its use of resources”. Licensing authorities should also expect scrutiny from fee payers, particularly on inflationary pressures and the extent to which anticipated efficiency gains are reflected in fee levels. The Government considers, therefore, that these existing mechanisms should reassure fee payers that fees will be set properly, at cost.
- 8.9 However, some fees regimes, such as that which applies to taxi licensing, require local consultation with interested parties when fees are set (especially if they are due to increase). The Government is therefore recommending that licensing authorities should also be required to publish their proposed fees, and the basis on which they have been calculated, and invite comments from interested parties, before they are implemented

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:

23a: publish their proposed fee levels?;

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23b: publish the basis on which they have been calculated?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
--------------------------------	-----------------------------------	-------------------------------------

23c: publish the measures they have taken to keep costs down?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23d: invite comments from interested parties?

<input type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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8.10 As well as the accountability mechanisms outlined above, local government is subject to existing duties with regard to freedom of information. The Government is not minded to specify any further specific requirements on local government with regard to publishing the basis on which they have set fees. However, the Government will give consideration to making data on licensing authority fee levels available centrally to assist fee payers in making comparisons.

Principles of regulation, efficiency and the avoidance of gold-plating

8.11 Licensing authorities are subject to various duties, in addition to the provisions of the 2003 Act, to ensure that they do not impose excessive burdens on those subject to regulatory regimes or incur excessive costs. Democratic accountability and external audit has been mentioned above. Paragraph 13.17 of the Guidance issued to licensing authorities by the Home Secretary under section 182 of the 2003 Act emphasises that:

“The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. Principles of risk assessment and targeted inspection (in line with the recommendations of the Hampton review) should prevail and inspections should not be undertaken routinely but when and if they are judged necessary.”

8.12 The Provision of Services Regulations 2009 requires that powers exercised under an authorisation scheme (including the 2003 Act) must be based on criteria that are:

- a. non-discriminatory,
- b. justified by an overriding reason relating to the public interest,
- c. proportionate to that public interest objective,
- d. clear and unambiguous,
- e. objective,
- f. made public in advance, and
- g. transparent and accessible.

8.13 Additionally, provisions under the Legislative and Regulatory Reform Act 2006¹⁷ require that any person exercising a regulatory function, including functions under the 2003 Act, must have regard to the principles that

- a. regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- b. regulatory activities should be targeted only at cases in which action is needed.

8.14 The Government considers that, subject to these existing duties, licensing authorities are best-placed to determine the scope of their own activities in support of the licensing objectives. Therefore, we consider that additional guidance provided alongside regulations on locally-set fees should avoid adding to these duties. We nevertheless seek views on what further guidance is required on the application of these principles to functions under the 2003 Act so as to encourage efficiency and safeguard against gold-plating.

Encouraging economy and efficiency

8.15 As stated above, licensing authorities are already under a duty to show that they have secured economy and efficiency in their use of resources. Setting fees on a cost recovery basis will bring new focus on the importance of keeping licensing costs as low as possible, reinforced by the priority importance of growth. Licensing bodies should set fees on the basis of estimates of actual costs, taking into account efficiencies to be achieved. It must be recognised that, for example, businesses that make licensing applications are seeking to start or grow their business.

8.16 The Government therefore intends to work with the Local Government Association and other partners to encourage innovation and best practice in securing economy and efficiency in the delivery of licensing functions. This could include changes to existing processes and procedures, potentially using the freedoms and flexibilities provided under the Localism Act 2011. Suggested mechanisms include the sharing of back-office functions between authorities and the use of partnership working and mediation to avoid the need for hearings or review. Licensing authorities should review their costs regularly (it is good practice to review these at least once a year) and, if appropriate, revise fee levels to take into account any changes to their costs, including from efficiencies that they have achieved or plan to achieve in the coming year. It is not good practice to simply assume that costs will increase due to inflation.

Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

¹⁷ The provisions apply by virtue of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007

Safeguards against excessive costs and gold-plating

8.17 In addition to encouraging efficiency, we intend to ensure that the guidance guards against excessive costs and “gold-plating” (by which we mean that activities that go beyond the duties of the 2003 Act and are not justified by proportionality). Particular activities have been suggested where there may be a risk of excessive costs or gold-plating, as set out below.

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

 Agree

 Disagree

 Don't know

25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

 Agree

 Disagree

 Don't know

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

 Agree

 Disagree

 Don't know

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990. (Given that these functions are funded through taxation, and should not be funded by fees under the 2003 Act merely because they arise in respect of premises that hold an authorisation under the 2003 Act, see paragraph 8.5 above).

 Agree

 Disagree

 Don't know

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

9. A single national payment date for annual fees

- 9.1 Annual fees for premises licences and club premises certificates are currently paid on the anniversary of the date on which the licence or certificate was granted. Holders of premises licences, particularly operators who hold multiple licences granted at different times, have argued that it would be more efficient for them to be able to pay all their annual fees on the same date.
- 9.2 On the other hand, some licensing authorities consider that it would increase their costs, by creating a peak period in their work. In any case, there would certainly be a transitional cost in the first year. Under locally-set fees aimed at recovering costs, any increased costs would be passed on to fee payers.
- 9.3 This consultation therefore seeks views on whether there should be a single national payment date for annual fees. However, it is not proposed to implement this change at the same time as the regulations governing locally-set fees are introduced, because it would increase the complexity of the forthcoming change to the fees regime. For example, it would strongly imply a date by which licensing authorities would have to have set their own fees. Please note that this topic is therefore not assessed in the Impact Assessment.

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

 Agree Disagree Don't know

10. Impact assessment

10.1 The impact assessment for the proposals in this consultation has been published alongside this document. Consultation respondents are encouraged to comment on this document.

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

 Agree Disagree Don't know

Consultation Question 29:

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

11. List of questions

Consultation Question 1:

Do you agree or disagree that the use of National Non-domestic Rateable Value bands as a criterion for variable fee amounts should be abandoned?

Agree Disagree Don't know

Consultation Question 2:

If you disagree, please provide evidence that higher National Non-domestic Rateable Value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

Agree Disagree Don't know

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

Agree Disagree Don't know

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

Agree Disagree Don't know

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

Agree Disagree Don't know

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input checked="" type="checkbox"/> Don't know
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Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 13:

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input checked="" type="checkbox"/> Don't know
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Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

Agree Disagree Don't know

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

Agree Disagree Don't know

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

Agree Disagree Don't know

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Consultation Question 21:

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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Consultation Question 22:

Please set evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:

23a: publish their proposed fee levels?;

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23b: publish the basis on which they have been calculated?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23c: publish the measures they have taken to keep costs down?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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23d: invite comments from interested parties?

<input checked="" type="checkbox"/> Agree	<input type="checkbox"/> Disagree	<input type="checkbox"/> Don't know
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Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990.

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

Agree Disagree

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

Agree Disagree

Consultation Question 29:

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

12. Appendix A: Sections 197A and 197B of the Licensing Act 2003

197A Regulations about fees

- (1) Subsection (2) applies where the Secretary of State makes regulations under this Act prescribing the amount of any fee.
- (2) The Secretary of State may, in determining the amount of the fee, have regard, in particular, to--
 - (a) the costs of any licensing authority to whom the fee is to be payable which are referable to the discharge of the function to which the fee relates, and
 - (b) the general costs of any such licensing authority;

and may determine an amount by reference to fees payable to, and costs of, any such licensing authorities, taken together.

- (3) A power under this Act to prescribe the amount of a fee includes power to provide that the amount of the fee is to be determined by the licensing authority to whom it is to be payable.
- (4) Regulations which so provide may also specify constraints on the licensing authority's power to determine the amount of the fee.
- (5) Subsections (6) and (7)--
 - (a) apply where, by virtue of subsection (3), regulations provide that the amount of a fee is to be determined by a licensing authority, and
 - (b) are subject to any constraint imposed under subsection (4).
- (6) The licensing authority--
 - (a) must determine the amount of the fee (and may from time to time determine a revised amount),
 - (b) may determine different amounts for different classes of case specified in the regulations (but may not otherwise determine different amounts for different cases), and
 - (c) must publish the amount of the fee as determined from time to time.
- (7) In determining the amount of the fee, the licensing authority must seek to secure that the income from fees of that kind will equate, as nearly as possible, to the aggregate of--
 - (a) the licensing authority's costs referable to the discharge of the function to which the fee relates, and
 - (b) a reasonable share of the licensing authority's general costs;

and must assess income and costs for this purpose in such manner as it considers appropriate.

197B Regulations about fees: supplementary provision

- (1) Subsections (2) and (3) apply for the purposes of section 197A.
- (2) References to a licensing authority's costs referable to the discharge of a function include, in particular--
 - (a) administrative costs of the licensing authority so far as they are referable to the discharge of the function, and
 - (b) costs in connection with the discharge of the function which are incurred by the

licensing authority acting--

(i) under this Act, but

(ii) in a capacity other than that of licensing authority (whether that of local authority, local planning authority or any other authority).

- (3) References to the general costs of a licensing authority are to costs of the authority so far as they are referable to the discharge of functions under this Act in respect of which no fee is otherwise chargeable and include, in particular--
- (a) costs referable to the authority's functions under section 5;
 - (b) costs of or incurred in connection with the monitoring and enforcement of Parts 7 and 8 of this Act;
 - (c) costs incurred in exercising functions conferred by virtue of section 197A.
- (4) To the extent that they prescribe the amount of a fee or include provision made by virtue of section 197A(3) or (4), regulations may--
- (a) make provision which applies generally or only to specified authorities or descriptions of authority, and
 - (b) make different provision for different authorities or descriptions of authority.
- (5) Subsection (4) is not to be taken to limit the generality of section 197.

13. Appendix B: Current fee levels under the Licensing Act 2003

Table 1: Main fee levels (as they currently stand)

Band	A	B	C	D	E
Non domestic rateable value	No rateable value to £4,300	£4,301 to £33,000	£33,001 to £87,000	£87,001 to £125,000	£125,001 plus
Premises licences					
Application for grant and variation	£100	£190	£315	£450	£635
Multiplier applied to premises used exclusively or primarily for the supply of alcohol for consumption on the premises (Bands D & E only)	N/A	N/A	N/A	X2 (£900)	X3 (£1,905)
Annual fee	£70	£180	£295	£320	£350
Annual charge multiplier applied to premises used exclusively or primarily for the supply of alcohol for consumption on the premises (Bands D&E only)	N/A	N/A	N/A	X2 (£640)	X3 (£1,050)
Club premises certificates					
Application for grant and variation	£100	£190	£315	£450	£635
Annual fee	£70	£180	£295	£320	350

Table 2: Other fees in the Act (as they currently stand)

Application for the grant or renewal of a personal licence	£37
Temporary event notice	£21
Theft, loss, etc. of premises licence or summary	£10.50
Application for a provisional statement where premises being built etc.	£315
Notification of change of name or address	£10.50
Application to vary licence to specify individual as premises supervisor	£23
Application for transfer of premises licence	£23
Interim authority notice following death etc. of licence holder	£23
Theft, loss etc. of certificate or summary	£10.50
Notification of change of name or alteration of rules of club	£10.50
Change of relevant registered address of club	£10.50
Theft, loss etc. of temporary event notice	£10.50
Theft, loss etc. of personal licence	£10.50
Application to vary premises licence to include alternative licence condition	£23
Application for a minor variation to a licence or certificate.	£89
Duty to notify change of name or address	£10.50
Right of freeholder etc. to be notified of licensing matters	£21

Table 3: Current additional fees for “large events” (premises licences where more than 5,000 people are expected in non-purpose built premises)

Number in attendance at any one time	Additional Premises licence fee	Additional annual fee payable if applicable
5,000 to 9,999	£1,000	£500
10,000 to 14,999	£2,000	£1,000
15,000 to 19,999	£4,000	£2,000
20,000 to 29,999	£8,000	£4,000
30,000 to 39,999	£16,000	£8,000
40,000 to 49,999	£24,000	£12,000
50,000 to 59,999	£32,000	£16,000
60,000 to 69,999	£40,000	£20,000
70,000 to 79,999	£48,000	£24,000
80,000 to 89,999	£56,000	£28,000
90,000 and over	£64,000	£32,000

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Consultation Response**Consultation Question 1:**

Do you agree or disagree that the use of National Non-domestic Rateable Value bands as a criterion for variable fee amounts should be abandoned?

Agree Disagree Don't know

Consultation Question 2:

If you disagree, please provide evidence that higher National Non-domestic Rateable Value is consistently linked to higher average costs to the licensing authority within individual licensing authority areas, keeping your views to a maximum of 200 words.

Consultation Question 3:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is linked to costs?

Agree Disagree Don't know

Consultation Question 4:

If you agree, please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Additional costs are incurred due to enforcement work, which includes late night inspections, dealing with noise and anti social behaviour complaints and additional street cleaning.

Consultation Question 5:

Do you agree or disagree that the criterion of whether or not a premises is authorised to provide licensable activities to a late terminal hour is sufficiently practical to implement?

Agree **Disagree** Don't know

Consultation Question 6:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Consultation Question 7:

Do you agree or disagree that the licensing authority should be able to determine the hours during which the higher fee is payable within the boundaries of midnight to 6am?

Agree Disagree Don't know

Consultation Question 8:

If you disagree, please state the hours during which you think licensing authorities should be able to determine that a higher fee is payable.

Consultation Question 9:

Do you agree or disagree that licensing authorities that impose higher fees for premises which open later should have discretion to exclude premises that are authorised to open late only on certain nights per year?

Agree Disagree Don't know

Consultation Question 10:

Please state your reasons, keeping your views to a maximum of 200 words.

As with the exclusion under the late night levy legislation, licensing authorities should be able to determine what premises should be excluded for example premises that are authorised to open late only on certain nights per year, Bank Holidays or New Years Eve.

Consultation Question 11:

Do you agree or disagree that the criterion of whether or not a premises is used primarily for the sale of alcohol for consumption on the premises is linked to costs?

Agree Disagree Don't know

Consultation Question 12:

Please provide evidence for your answer in the box below, keeping your views to a maximum of 200 words.

Additional costs are incurred due to enforcement work, which includes late night inspections, dealing with noise and anti social behaviour complaints and additional street cleaning.

Consultation Question 13:

Do you agree or disagree that the criterion of whether or not premises are exclusively or primarily used for the sale of alcohol for consumption on the premises is sufficiently practical to implement?

Agree **Disagree** Don't know

Consultation Question 14:

If you do not agree, please state your reasons in the box below, keeping your views to a maximum of 200 words.

Consultation Question 15:

Do you agree or disagree that there should be discretion to apply higher fee amounts only where both criteria apply in combination?

Agree Disagree Don't know

Consultation Question 16:

Do you agree or disagree that, if a licensing authority has determined that different fee amounts should apply, it should have discretion to exclude certain types of premises from that higher fee amount?

Agree Disagree Don't know

Consultation Question 17:

If discretion to exclude certain types of premises from a higher fee amount were available, what types of premises should be specified in the regulations as potentially excluded classes? Please give reasons for your answer, keeping your views to a maximum of 200 words.

Premise providing overnight accommodation, where the alcohol is supplied to residents only, for consumption on the premises;

Theatres, where alcohol is supplied to ticket holders in relation to a relevant production at the premises or people concerned in the performance only;

Cinemas, where alcohol is supplied to ticket holders in relation to the exhibition of a film at the premises only.

Consultation Question 18:

Are there alternative options that should be available to licensing authorities to apply different fee amounts in their area? Please specify and set out your evidence in the box below, keeping your views to a maximum of 200 words.

Premises that are located in special policy areas, cumulative impact areas/zones, as these premises within these areas are usually used exclusively or primarily for the consumption of alcohol and the provision of late night regulated entertainment. More enforcement work is carried out in these areas by licensing authorities.

Consultation Question 19:

Do you agree or disagree that the proposed cap levels will enable your licensing authority to recover costs?

Agree Disagree Don't know

Consultation Question 20:

Do you have any other comments on the proposed cap levels? Please specify them in the box below, keeping your views to a maximum of 200 words.

Consultation Question 21:

Do you agree or disagree that the proposed cap of £100 will enable your licensing authority to recover costs?

Agree Disagree Don't know

Consultation Question 22:

Please set evidence for your answer in the box below, keeping your views to a maximum of 200 words.

The number of TEN that are determined at subcommittee hearings is minimal. Applicants are usually willing to work with responsible authorities regarding their concerns.

Consultation Question 23:

Do you agree or disagree that licensing authorities be required, before locally-set fees are implemented, to:

23a: publish their proposed fee levels?;

Agree Disagree **Don't know**

23b: publish the basis on which they have been calculated?

Agree Disagree **Don't know**

23c: publish the measures they have taken to keep costs down?

Agree Disagree **Don't know**

23d: invite comments from interested parties?

Agree Disagree **Don't know**

Consultation Question 24:

What practical steps can licensing authorities take to secure efficiency?
Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 25:

Do you agree or disagree that the Guidance should suggest that these areas present a particular risk of excessive costs or gold-plating?

Agree Disagree Don't know

25a: Notification of residents individually of licensing applications in their area by letter (given that the existing duties to advertise on the premises and on the licensing authorities' website enable the involvement of local residents, and that more cost efficient methods of further engagement may be available);

Agree Disagree Don't know

25b: Central re-charges, such as payments from the licensing budget to legal services or external communications. These should relate to costs actually incurred in the delivery of functions under the 2003 Act and not, for example, a standard percentage of central costs.

Agree Disagree Don't know

25c: The costs of discharging the statutory functions of licensing authorities that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990.

Agree **Disagree** Don't know

Consultation Question 26:

Do you think that there are other activities that may present a particular risk of excessive costs or gold-plating? Please state and give reasons for your answer in the box below, keeping your views to a maximum of 200 words.

Consultation Question 27:

Do you agree or disagree that there should be a single national payment date for annual fees in England and Wales?

Agree **Disagree** Don't know

Consultation Question 28:

Do you think that the Impact Assessments related to the consultation provide an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally)?

Agree Disagree Don't know

Consultation Question 29:

Do you have any comments on the methodologies or assumptions used in the impact assessment? If so, please detail them in the box below, referencing the page in the impact assessment to which you refer. Please keep your views to a maximum of 200 words.

None



Gambling, Licensing & Regulatory Committee

17 March 2014

Report from the Assistant Director – Housing and Community Safety

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014**Summary**

1. This report informs members of the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 which comes into force on 6th April 2014. The order relates to the banning of the sale of alcohol below the cost of duty plus VAT.

Background

2. On 23 March 2012 the Government launched its Alcohol Strategy, which aimed to radically reshape the approach to alcohol and reduce the number of people drinking to excess. The Alcohol Strategy is targeted at harmful and hazardous consumers and aims to limit the impact on responsible consumers.
3. In January 2013 the Home Office consulted on the Governments Alcohol Strategy. This consultation looked at five key points included in the Governments Alcohol Strategy one of these was:
 - The price level and mechanisms for a minimum unit price for alcohol;
4. The Government's response to the Alcohol Strategy consultation, published on 17 July 2013, set out Government's intention to ban below cost selling to tackle the availability of below cost alcohol.
5. The Government has established 'cost' as the amount of 'duty plus VAT', defined as the level of alcohol duty for a product plus value added tax payable on the duty element of the product price.
6. The Home Office has issued guidance on banning the sale of alcohol below the cost of duty plus VAT.

Consultation

7. The council have not directly consulted with premises licence and club premises certificate holders given that this is a legislative change to the mandatory licensing conditions. However, as part of the national consultation the Home Office consulted a wide range of persons and organisations including premise licence with regards to their consultation on the Alcohol Strategy.
8. The City of York Council will inform all premises licence and club premises certificate holders, in writing, of the changes to the mandatory licence conditions before the implementation date of 6th April 2014.

Options

9. Option 1 – that members note the change in legislation.

Analysis

10. The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice relates to all licensed premises, including club premises certificates, in England and Wales.
11. The responsibility for ensuring compliance with the mandatory condition setting out the permitted price is the responsibility of a 'relevant person'. A 'relevant person' is defined as the premise licence holder, designated premises supervisor or personal licence holder (in relation to premises licences) and a member or officer of a club who is present and able to prevent a supply of alcohol (in relation to club premises certificates).
12. The level of duty plus VAT is calculated by taking the relevant excise duty figure for a particular product and then applying the current rate of VAT to this amount.
13. Duty rates differ in accordance with the type of alcohol and often the strength of the product. There are three categories for calculating the permitted price of duty plus VAT the three categories are:
 - Beer
 - Spirits, spirit-based ready-to-drink, wine and made-wine (exceeding 22% ABV)
 - Wine, made-wine and cider (not exceeding 22% ABV)

14. The following calculations to determine the permitted price for each product:

Beer permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x strength (% ABV) x Duty rate

Spirits, spirit-based ready-to-drink, wine and made wine (exceeding 22%) permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Wine, made-wine and cider (not exceeding 22% ABV) permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x duty rate

15. The Home Office guidance also covers:

- Multibuy promotions
- Multibuy promotions on non-alcoholic products
- Multipack products
- Inclusive drinks
- Complementary drinks
- Discount coupons
- Reward cards
- Staff discount
- Online internet sales

Council Priorities

16. The Licensing Act 2003 has 4 objectives: the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
17. The introduction of this new mandatory licence condition will assist in the promotion of the licensing objectives and will support the Council's priorities to protect vulnerable people and build strong communities.

Implications

18. The implications arising from this report are:
- **Financial:** There are no direct financial implications associated with this report.

- **Human Resources:** There are no Human Resources implications associated with this report.
- **Equalities:** There are no equalities implications associated with this report.
- **Legal:** There are no legal implications arising directly from this report.
- **Crime and Disorder:** There are no crime and disorder implications associated with this report.
- **Information Technology (IT):** There are no IT implications associated with this report.
- **Other:** There are no other implications associated with this report.

Risk Management

19. There are no known risks associated with this report.

Recommendations

20. The Committee is asked to note the content of this report.

Contact Details

Author:

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Licensing Manager
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Chief Officer Responsible for the report:

Steve Waddington
Assistant Director (Housing and Community
Safety)

**Report
Approved**



Date 7th March 2014

Specialist Officer Implications: None

Wards Affected:

All

Background Papers (attached to report):

Draft Statutory Instrument

Guidance on Banning the sale of alcohol below the cost of duty plus VAT



Home Office

Guidance on banning the sale of alcohol below the cost of duty plus VAT

For suppliers of alcohol and enforcement authorities in England and Wales

February 2014

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Introduction

Overview: banning the sale of alcohol below the cost of duty plus VAT

On 23 March 2012 the Government launched its Alcohol Strategy, which aims to radically reshape the approach to alcohol and reduce the number of people drinking to excess. The Alcohol Strategy is targeted at harmful and hazardous consumers and aims to limit the impact on responsible consumers. The Government's response to the Alcohol Strategy consultation, published on 17 July 2013, set out the Government's intention to ban below cost selling to tackle the availability of below cost alcohol.

The Government has established 'cost' as the amount of 'duty plus VAT', defined as the level of alcohol duty ('duty') for a product plus value added tax ('VAT') payable on the duty element of the product price.

This guidance provides a single point of reference for suppliers of alcohol and local authorities in England and Wales for banning the sale of alcohol below the cost of duty plus VAT.

This guidance document provides comprehensive information regarding implementation of the relevant legislation, methods of calculating the amount of duty plus VAT (referred to in legislation as "the permitted price") and effective enforcement of the ban. The content of this guidance relates to proposals to be introduced as draft legislation in early 2014. Therefore the content is subject to parliamentary approval of legislation; if approval is obtained, the legislation will come into force in April 2014.

The ban will prevent businesses from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harms.

Who the ban applies to

The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises, including those with club premises certificates, in England and Wales.

Section 1: Implementing the ban

Responsibility for ensuring compliance of the mandatory condition at premises

Responsibility for ensuring compliance with the mandatory condition setting out the permitted price is the responsibility of a “relevant person”. We have defined “relevant person” (in relation to premises licences) as the premises licence holder, designated premises supervisor or personal licence holder and (in relation to club premises certificates) a member or officer of a club who is present and able to prevent a supply of alcohol.

The premises licence holder, designated premises supervisor or personal licence holder is responsible for ensuring that any person (if different from the licence holder) responsible for amending prices on the premises is aware of the legal requirement to sell alcohol at or above the cost of duty plus VAT on that premises.

In circumstances where local store managers are not responsible for amending the prices in-store, responsibility is applicable to the company headquarters and the person, or persons, who are a “relevant person” under the mandatory condition.

How to calculate the permitted price of duty plus VAT

The level of duty plus VAT is calculated by taking the relevant excise duty figure for a particular product and then applying the current rate of VAT to this amount.

Duty rates differ in accordance with the type of alcohol and often the strength of the product. There are three categories for calculating the permitted price of duty plus VAT. The three categories are:

- 1) Beer
- 2) Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22% ABV)
- 3) Wine, made-wine and cider (not exceeding 22% ABV)

We use the following calculations to determine the permitted price for each product:

Beer permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22%) permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

Wine, made-wine and cider (not exceeding 22% ABV) permitted price = Duty + VAT

Where Duty (pence) = volume (litres) x duty rate

(Note: duty rates for beer, wine, made-wine and cider are given in pounds per hectolitre. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per litre, which is an identical figure. Duty rates for spirits and other products over 22% ABV are given in pounds per litre of pure alcohol. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per centilitre (i.e. 10ml) of pure alcohol, which is also an identical figure.)

Where a retailer wishes to sell drinks that are mixed, for example, in a cocktail, they should calculate the permitted price using the alcohol contained in the drink.

Where permitted prices are not a whole number of pennies, the price should be rounded up to the nearest whole number.

The duty rates are set out in [Annex A](#).

Worked examples:

440ml can of 4% ABV lager

$$\begin{aligned} \text{Beer permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (0.44 \times 4 \times 19.12) \times 1.2 \\ &= 40.38144, \text{ rounded up to 41 pence} \end{aligned}$$

440ml can of 9% ABV lager

$$\begin{aligned} \text{Beer permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (0.44 \times 9 \times (19.12 + 5.09)) \times 1.2 \\ &= 115.04592, \text{ rounded up to } \pounds 1.16 \end{aligned}$$

70cl bottle of 37.5% ABV vodka

$$\begin{aligned} \text{Spirits permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (0.7 \times 37.5 \times 28.22) \times 1.2 \\ &= 888.93, \text{ rounded up to } \pounds 8.89 \end{aligned}$$

500ml bottle of 4.5% ABV sparkling cider

$$\begin{aligned} \text{Cider permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.5 \times 39.66) \times 1.2 \\ &= 23.796, \text{ rounded up to 24 pence} \end{aligned}$$

500ml bottle of 4.5% ABV made-wine

$$\begin{aligned} \text{Made-wine permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.5 \times 113.01) \times 1.2 \\ &= 67.806, \text{ rounded up to 68 pence} \end{aligned}$$

750ml bottle of 12.5% ABV wine

$$\begin{aligned} \text{Wine permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.75 \times 266.72) \times 1.2 \\ &= 240.048, \text{ rounded up to } \pounds 2.41 \end{aligned}$$

Cocktail containing 50ml 19% ABV port and 275ml 4% ready-to-drink (RTD)

$$\begin{aligned} \text{Wine permitted price} &= (\text{volume (litres)} \times \text{duty rate}) + \text{VAT} \\ &= (0.05 \times 355.59) \times 1.2 \\ &= 21.3354 \end{aligned}$$

$$\text{RTD permitted price} = (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT}$$

$$= (0.275 \times 4 \times 28.22) \times 1.2$$

$$= 37.2504$$

Total permitted price = 21.3354 + 37.2504
 = 58.5858, rounded up to 59 pence

It should be noted that there are different duty rates within each of the categories of beer and wine and cider, and that the appropriate rate should be used. See [Annex A](#) for details of the duty rates for each category.

Product	Description	Exceptions	Notable products
Beer	In the Alcoholic Liquor Duties Act 1979, beer is defined as including ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, whose alcoholic strength exceeds 0.5% ABV. This includes mixtures of beer with non-alcoholic drinks, (for example, with lemonade to produce shandy). Also classified as beer for duty purposes are certain mixtures of beer with alcoholic liquors or substances where the final product strength does not exceed 5.5% ABV	Beer below 1.2% ABV is not subject to duty. Lower-strength beer (2.8% and below) pays the reduced rate. Higher-strength beer (over 7.5% ABV) pays the general beer duty rate plus the higher-strength duty rate. Beer mixed with spirits will be liable to the spirits rate of duty.	Barley wine
Wine and made-wine	Wine is defined as a drink produced by fermentation of fresh grapes or grape must. Made-wine is any other drink - apart from beer or cider - containing alcohol that is made by fermentation, rather than by distillation or any other process.	Still wine and sparkling wine are in different duty brackets. Wine is liable to the sparkling rates of duty if it has an actual alcoholic strength by volume exceeding 5.5 per cent but not exceeding 15 per cent ABV and: in a closed bottle with excess pressure, due to carbon dioxide, of three bars or more at 20°Centigrade, or regardless of pressure, is contained in a closed bottle with a 'mushroom	Wine: Port Sherry Madeira Vermouth Cinzano Mulled wine Made-wine: Mead Sake Ginger wine Fruit-flavoured cider (flavoured with anything except apple juice)

		shaped stopper' held in place by a tie or fastening.	
Cider and perry	<p>For a drink to be classed as cider or perry for duty purposes, the following apply:</p> <p>A pre-fermentation juice requirement. At least 35 per cent apple or pear juice must be included in any mixture from which fermentation takes place.</p> <p>A final product juice requirement. A minimum of 35 per cent apple or pear juice must be included overall in making the final product.</p>	<p>For duty purposes, the following may not be added to cider:</p> <p>(i) any alcoholic liquor, or</p> <p>(ii) any liquor or substance which communicates colour or flavour, other than such as the Commissioners may allow as appearing to them to be necessary to make cider (or perry).</p> <p>The following are classed as made-wine or spirits:</p> <p>cider of 8.5% ABV or more, or labelled or described as 8.5% ABV or more</p> <p>cider including anything other than certain permitted ingredients, or ingredients in more than specific quantities</p>	
Spirits and ready-to-drink spirit based products	There is one duty band for spirits and ready-to-drink products where the alcohol content comes from spirits.	Fortified wines, including sherry and port, should be classed as wines.	

Where a retailer is uncertain about the category to which a product should belong, the retailer should calculate the permitted price using both categories, and use the higher of the duties.

HMRC have published [detailed guidance](#) on the categories of duty payable, and its [guide to alcoholic duties and procedures](#) gives further detail on types of alcoholic drinks.

See [Annex B](#) for a list of the permitted prices of the most common type of alcohol products. We have also provided a link to an online permitted price calculator at [Annex C](#) which can be used to calculate the permitted prices of those products that are not listed in [Annex B](#).

The duty rate that applies on the day of sale to the customer will be the duty rate that should apply for the calculation of the permitted price.

Changes to excise duty and VAT

Duty rates may change each year, typically following the Chancellor's Budget. Therefore, those who supply alcohol will need to ensure the new duty rates are applied to the three formulae in the preceding section when duty rates change.

Revised duty rates usually take effect a short time (usually around five days) after the Budget is announced by the Chancellor. It is required that businesses implement changes to their pricing systems within fourteen calendar days of implementation of the new rate to ensure compliance with the mandatory condition.

The same rule will apply to any change in the rate of VAT.

Updating of pricing systems

Businesses and others who supply alcohol will need to ensure that their pricing systems are accurate to prevent any sale of alcohol below the cost of duty plus VAT. This includes ensuring that prices are accurate on shelves, barcodes, menus and price lists, where appropriate.

It is therefore recommended that businesses follow a series of steps to successfully implement the regulation on the premises. A recommended series of steps can be found at [Annex D](#).

Multibuy promotions

Businesses can continue to sell alcohol as part of buy one get one free promotions. However, businesses will need to ensure that the total purchase price for the package of products is not below the aggregate of the duty plus VAT permitted price for each product comprised in the package. To achieve this, businesses will need to calculate the total of the combined permitted price of each alcoholic product in the promotion.

For example, if a business runs a promotion for the sale of a bottle of whisky with a free bottle of wine then the business will need to combine the permitted price for each of the bottle of whisky (£9.49 for 700ml bottle of whisky with a strength of 40%) and the bottle of wine (£2.41 for 750ml bottle of wine with a strength of 11.5%). $£9.49 + £2.41 = £11.90$ permitted price for both items as part of a buy one get free promotion.

Multibuy promotions on non-alcoholic products

In instances where businesses run a promotion for the sale of an alcoholic product and a free non-alcoholic product (such as chocolates, flowers etc.) and vice-versa, businesses will need to ensure that the total purchase price of the promotion is not below the permitted price of the alcohol product comprised in it (or aggregate of the permitted prices if there is more than one alcohol product) as detailed above.

For example, if a retailer runs a promotion for a meal deal that includes a free bottle of wine then the retailer will need to ensure that the selling price of the meal deal is not below the permitted price of the wine.

Multipack products

Businesses can continue to sell bulk items of alcohol, such as multipacks of beer or ready-to-drink products. Businesses will need to ensure that each multipack is sold above the aggregate of the permitted price of each product in it.

For example, if a business runs a promotion to sell a pack with 24 440ml cans of 4% ABV lager in one multi-pack they will need to calculate the total volume of lager in order to calculate the permitted price.

$$24 \times 440\text{ml} = 10.560 \text{ litres}$$

$$\begin{aligned} \text{Beer permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (10.560 \times 4 \times 19.12) \times 1.2 \\ &= 969.15456, \text{ rounded up to } \pounds 9.70 \end{aligned}$$

Inclusive drinks

Many businesses run promotions in hotels and restaurants, for example, a free bottle of champagne with a hotel room or a drink included in the price of a table meal. Businesses can continue to run these types of special promotions but will need to ensure that the permitted price of the alcoholic product in question is included in the overall price of the promotion.

For example, where a pub offers a table meal with a pint of 4% beer included in the price, the total cost of the table meal must be at or above the permitted price of the beer (ie 53p).

Complementary drinks

Free drinks provided an ad hoc basis, for instance those offered as compensation for late food service, do not count as sales because the customer has not paid anything for the drink.

Discount coupons

Businesses may continue to offer discount coupons for alcoholic drinks, but must ensure that the price of the product after all applicable discounts are applied is above the permitted price of the product.

Where a coupon is offered by a producer for a discount on alcohol, retailers should ensure that the price of the drink does not fall below the floor price as a result of that coupon being applied.

Where 'threshold spend' coupons are offered to customers (e.g. save £2 when you spend £15), they may be used to purchase alcohol as long as the total cost of the sale is not below the permitted price for the alcoholic products.

Reward cards

Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed have an equivalent cash value that is not below the permitted price of the product. Where retailers offer a promotion on reward points or vouchers, the original value of the voucher shall be taken into account.

The price of an alcoholic product is considered to be the amount of money paid by the purchaser at the time of sale. Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price, as they have a cash value only in respect of subsequent sales, and not the present one. For instance, if a promotional voucher is offered to customers for reward points in exchange for buying a particular alcoholic product, the value of the points shall not be taken into account when calculating whether the permitted price has been charged.

Staff discount

Companies can offer staff discount, as long as the price after all discounts are applied is above the permitted price.

Online internet sales

The ban will apply to all sales of alcohol that take place (i.e. the alcohol is despatched) within England and Wales.

As detailed above, businesses will need to ensure that the online price of all alcohol products are sold above the duty plus VAT permitted prices.

Section 2: Exemptions

The following are exempt from the ban:

- Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003
- Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003
- Low strength beer and other drinks of 1.2% ABV or less

Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003

Section 173 of the Licensing Act 2003 states that:

(1) An activity is not a licensable activity if it is carried on— .

- (a) aboard an aircraft, hovercraft or railway vehicle engaged on a journey,
- (b) aboard a vessel engaged on an international journey,
- (c) at an approved wharf at a designated port or hoverport,
- (d) at an examination station at a designated airport,
- (e) at a royal palace,
- (f) at premises which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown,
- (g) at premises in respect of which a certificate issued under section 174 (exemption for national security) has effect, or
- (h) at such other place as may be prescribed.

This would include sales at airside bars and shops at international airports and seaside at international ferry terminals.

Therefore, a ban on below cost sales will not apply to any alcoholic products sold at these locations.

Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003

The supply of alcohol in sealed containers as a prize is exempt from the condition under existing provision about incidental non-commercial lotteries in section 175 of the Licensing Act 2003 (an incidental non-commercial lottery is defined in Part 1 of Schedule 11 to the Gambling Act 2005).

This will therefore ensure that free alcohol (in sealed containers) can continue to be awarded as prizes in competitions and raffles in, for instance, community charity events, without being subject to a ban on below cost sales.

Low strength drinks of 1.2% ABV or less

There is currently no duty paid on alcoholic drinks of 1.2% ABV or less. Therefore, any drink that has a strength of 1.2% ABV or less will be exempt from the condition.

Under section 191(1)(a) of the Licensing Act 2003, the definition of alcohol does not include alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question.

Section 3: Enforcement

Responsibility for enforcement

The ban will be enforced by local authorities including licensing authorities, Trading Standards and the police.

It is recommended that enforcement officers only check the prices of heavily discounted alcohol products as these products are most likely to pose a risk of breaching the new mandatory condition. We do not expect enforcement officers to check the price of all alcohol products on the premises unless they feel it is appropriate to do so.

Where necessary, enforcement officers may request a copy of the premises pricing lists and take away for analysis to compare against the duty plus VAT permitted prices. This will ensure that enforcement officers do not spend a substantial amount of time calculating the permitted prices of products on the premises where conditions may be challenging.

Breach of the ban under the Mandatory Code of Practice

Businesses are required by law to comply with the licensing conditions of the Mandatory Code.

Failure to comply with the permitted price condition may be an offence under section 136 of the Licensing Act 2003. This may also result in a review of the licence, or the service on the premises of a closure notice under section 19 of the Criminal Justice and Police Act 2001.

Annex A

Alcohol duty rates (2013)

Alcohol type	Rate from 25/03/2013
Rate £ per litre of pure alcohol	
Spirits	28.22
Spirits-based: Ready-to-drinks	28.22
Wine and made-wine: Exceeding 22% ABV	28.22
Rate £ per hectolitre per cent of alcohol in the beer	
Beer - General Beer Duty	19.12
Beer - High Strength: Exceeding 7.5%ABV - in addition to the General Beer Duty	5.09
Beer - Lower Strength: Exceeding 1.2% - not exceeding 2.8% ABV	9.17
Rate £ per hectolitre of product	
Still cider and perry: Exceeding 1.2% - not exceeding 7.5% ABV.	39.66
Still cider and perry: Exceeding 7.5% - less than 8.5% ABV.	59.52
Sparkling cider and perry: Exceeding 1.2% - not exceeding 5.5% ABV.	39.66
Sparkling cider and perry: Exceeding 5.5% - less than 8.5% ABV.	258.23
Wine and made-wine: Exceeding 1.2% - not exceeding 4% ABV	82.18
Wine and made-wine: Exceeding 4% - not exceeding 5.5% ABV.	113.01
Still wine and made-wine: Exceeding 5.5% - not exceeding 15% ABV.	266.72
Wine and made-wine: Exceeding 15% - not exceeding 22% ABV.	355.59
Sparkling wine and made-wine: Exceeding 5.5% - less than 8.5% ABV.	258.23
Sparkling wine and made-wine: 8.5% and above - not exceeding 15% ABV	341.63

Annex B

Duty plus VAT permitted prices (2013)

Based on the 2013 duty rates, examples of an approximate permitted price after a ban on sales below duty plus VAT would be as follows:

Product	Size	ABV (%)	Permitted price
Beer/Lager	275ml	5.0	32p
	300ml	2.0	7p
	300ml	5.0	35p
	330ml	4.5	35p
		5.0	38p
		6.0	46p
	440ml	4.0	41p
		4.5	46p
		5.0	51p
		9.0	£1.16
	500ml	4.0	46p
		4.5	52p
		5.0	58p
	568ml	4.0	53p
		4.5	59p
		5.0	66p
		8.5	£1.41
	Sparkling cider and perry	330ml	4.5
440ml		5.0	21p
568ml		4.5	28p
750ml		7.5	£2.33
2 litre		7.5	£6.20

Still cider and perry	568ml	4.5	28p
		7.0	28p
		8.0	41p
Wine and made-wine	750ml	4.0	74p
		5.5	£1.02
Still wine and made-wine	750ml	11.5	£2.41
		20	£3.21
Sparkling wine and made-wine	750ml	8.0	£2.33
		11.5	£3.08
Spirits	70cl	17	£4.03
		23	£5.46
		37.5	£8.89
		40	£9.49
	1 litre	17	£5.76
		23	£7.79
		37.5	£12.70
		40	£13.55
Spirit-based ready-to-drinks	250ml	6.4	55p
	275ml	4.0	38p
		4.5	42p
	330ml	6.0	68p
	700ml	4.0	95p

Annex C

Duty plus VAT permitted price calculator (2013)

Beer	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
High Strength Beer (exceeding 7.5% abv)	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
Low Strength Beer (exceeding 1.2% abv, not exceeding 2.8% abv)	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
Still cider and perry	
Insert volume (in ml) i.e. 1l bottle - insert 1000	Insert abv (in %) i.e. 5.5% abv - insert '5.5'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
Sparkling cider and perry	
Insert volume (in ml) i.e. 1l bottle - insert 1000	Insert abv (in %) i.e. 5.5% abv - insert '5.5'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
Wine and made-wine	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 13.5% abv - insert '13.5'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
Sparkling wine and made-wine	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 13.5% abv - insert '13.5'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.
Spirits	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 37.5% abv - insert '37.5'
Duty + VAT floor price: £0.00	< this is a result. Do not enter a value.

Annex D

Implementation checklist

The following steps are advised in order to ensure that businesses are selling their alcohol products above the permitted prices for duty plus VAT.

Calculate the duty plus VAT permitted price of an alcohol product



Amend the price (if required) on Central Pricing systems to ensure that the correct price is associated with the barcode on the product



Amend the price on price tags/and or pricing displays on shop shelves



Amend the price on menus



Amend the price on promotional posters, flyers and other materials



Amend the price on websites

Annex E

Frequently asked questions

When will the ban come into effect?

The condition providing for a ban on below cost sales would “go live” when the order is brought into force. This is expected to be 6 April 2014.

On and after this date, the mandatory condition would apply to licensed premises and they would be required to comply with it.

Calculation of prices and updating

What if duty is paid on the alcohol at one rate, but then the duty that applies at the point of sale is different (e.g. following a change in duty at the Budget)?

The duty that applies at the time that the sale is made is the duty to be used in the calculation of the permitted price.

How will prices be rounded? For example, if the duty plus VAT on a can of beer is 49.3p, would shops be able to charge at 49p, rounding down, even if this is below the permitted price?

Consistent with the provision in the Alcoholic Liquor Duties Act 1979, prices should be rounded up to the nearest penny.

How will retailers know which products attract which rate of duty (for instance, products such as alcoholic ginger beer)?

HMRC produces notices which define the products which are included within the duty categories. If a retailer is in doubt about the category of duty rate payable for a particular product, they should use the higher of the possible permitted prices. For instance, if unsure if a product is a cider or a made-wine, prices for both categories should be calculated:

A 500ml bottle of 4.5% ABV product

Cider = $39.66 \times 0.5 \times 1.2$

= 23.796

= 24p permitted price

Made-wine = $113.01 \times 0.5 \times 1.2$

= 67.806

= 68p permitted price

In this example, the permitted price for the product would be 68p.

What about small brewers that pay reduced duty?

Where retailers sell alcohol which is produced by breweries subject to reduced rates of duty under the Small Breweries' Relief scheme, the permitted price for that alcohol may reflect the reduced duty rate. However, retailers should be able to demonstrate that they have taken reasonable steps to satisfy themselves that the reduced rate of duty applies, and where there is doubt, retailers should consider applying the higher duty rate to determine the permitted price.

How will this affect retailers' obligations under the Grocery Suppliers' Code of Practice (GSCOP)?

The price agreed between the supplier and retailer for products is outside the Code, as is the price the retailers charge consumers. However, if the retailer believes that they need to vary a supply agreement to comply with new legislation, section 3(2)(a) of part 3 of Code allows retailers to vary supply agreements retroactively to allow for circumstances outside their control.

To comply with section 3(3) of part 3 of the Code, the retailer must give the supplier reasonable notice of any variation. A rise in duty rates may be a situation to which this part of the Code could apply.

Application and enforcement

How will this be applied and how will it be enforced?

As a mandatory condition, the measure is capable of being enforced in the same way as any other condition in a licence.

This provides that a 'relevant person' shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. The relevant person is defined as the premises licence holder, designated premises supervisor (where there is one in relation to the licence) or personal licence holder (there is also provision specifically in respect of clubs).

The prohibition on sales below the prescribed permitted price is a condition. As such, the provisions in the Licensing Act 2003 which apply to conditions (e.g. sections 136 and 139) also apply to this condition. It is an offence by a person to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under or in accordance with an authorisation (the reference to authorisation includes a condition).

However, it is a defence if the person's act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

What are the penalties for a breach?

Non-compliance with the condition is likely to mean that the person who made the sale would commit an offence under section 136 of the Licensing Act 2003.

This carries a penalty (on conviction) of up to 6 months' imprisonment and/or a £20,000 fine. It may also result in the licence being reviewed (on the basis of the crime prevention objective).

What if retailers do not have an up to date product price list that enforcement officers can take away from the shop floor?

The production of a price list on request is optional, as enforcement officers can check prices while on the shop floor.

What if the price list that has been produced does not take all promotions into account?

Enforcement officers should be made aware of any known discrepancies

Will the enforcement officer come back at a later time to check prices if some on the list that they have taken away are found to be below permitted price?

This will be for the enforcement authority to decide.

Will enforcement be proactive or reactive?

This is for individual authorities to decide.

Saving schemes and other promotions

How does this deal with the issues of money off vouchers?

The retailer would be unable to sell alcohol below the permitted price on the basis of any discount arising by virtue of a voucher.

Consumers may still be able to benefit from a discount voucher or other promotion if either the price payable for the alcohol remains above the permitted price after the discount is applied or if they purchase non-alcoholic products with the alcohol (as the prohibition doesn't apply to those products).

When alcohol is only part of a basket of goods and a discount or voucher is applied, how should that discount be considered when calculating the permitted price?

The sale would not breach the condition provided that the aggregate price paid is not less than the permitted price of the alcohol comprised in the sale.

In relation to a sale of two or more alcoholic products, this is the aggregate of the permitted price for each alcoholic product comprised in the sale.

What if a supplier voucher takes a price below the permitted price?

Retailers should be able to show that they have taken all reasonable steps to ensure that discounts applied by supplier vouchers do not take the price of a product below the permitted price.

What about loyalty schemes where customers can collect vouchers as a reward for continued custom over a period of time?

Where the effect of the scheme is to give a person something which in fact has a cash value in a sale of alcohol, its value is taken into account in determining whether its value means that the alcohol was sold below the permitted price.

Can retailers still offer staff discount?

Yes, as long as the price after all discounts are applied is above the permitted price.

Do free drinks offered as compensation (e.g. for a delayed meal) count as sales?

Free drinks offered on ad hoc or impromptu basis, for example as compensation for poor service, do not count as sales because the customer has not paid anything for the drink. This is different to, for instance, 'meal deals' where the drink is offered as part of a package of goods.

Where a receipt shows a drink at zero pence, does this count as a sale?

This does not count as a sale as it has no monetary value.

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Draft Order laid before Parliament under section 197(4) of the Licensing Act 2003, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

LICENCES AND LICENSING

**The Licensing Act 2003 (Mandatory
Licensing Conditions) Order 2014**

Made - - - - 2014
Coming into force - - 6th April 2014

The Secretary of State, in exercise of the powers conferred by sections 19A, 73B and 197(2) of the Licensing Act 2003(1), makes the following Order.

In accordance with section 197(4) of that Act(2), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with sections 19A(1) and 73B(1) of that Act, the Secretary of State considers it appropriate for the promotion of the licensing objectives(3) to specify the condition set out in this Order.

Citation and commencement

1. This Order may be cited as the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 and comes into force on 6th April 2014.

Mandatory licensing condition

2. (1) In relation to an existing or future relevant premises licence, the condition set out in the Schedule is specified for the purposes of section 19(4)(4) of the Licensing Act 2003.

(2) In relation to an existing or future relevant club premises certificate, the condition set out in the Schedule is specified for the purposes of section 73A(5) of the Licensing Act 2003.

(1) 2003 c. 17; sections 19A and 73B were inserted by paragraphs 2 and 4 respectively of Schedule 4 to the Policing and Crime Act 2009 (c. 26).

(2) Section 197(4) was amended by paragraphs 29 and 44 of Schedule 7 to the Policing and Crime Act 2009.

(3) See section 4(2) of the Licensing Act 2003.

(4) Section 19(4) was inserted by paragraph 1 of Schedule 4 to the Policing and Crime Act 2009.

(5) Section 73A was inserted by paragraph 3 of Schedule 4 to the Policing and Crime Act 2009.

Date

Name
Minister of State
Home Office

SCHEDULE

Article 2

Mandatory Licensing Condition

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1—

(a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979(6);

(b) “permitted price” is the price found by applying the formula—

$$P = D + (D \times V)$$

where—

(i) P is the permitted price,

(ii) D is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence—

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence, or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994(7).

(6) 1979 c. 4. Section 1 was amended by regulation 2 of the Excise Duty (Amendment of the Alcoholic Liquor Duties Act 1979 and the Hydrocarbon Oil Duties Act 1979) Regulations 1992 (S.I. 1992/3158), section 162 of and Part I of Schedule 29 to the Finance Act 1995 (c. 4), section 7 of and paragraph 2(a) of Schedule 2 to the Finance Act 1991 (c. 31), section 3 of the Finance Act 1993 (c. 34), section 227 of and paragraph 51 of Schedule 39 to the Finance Act 2012 (c. 14), section 1 of the Finance Act 1995, section 1 of and Part 2 of Schedule 1 to the Finance Act 1988 (c. 39), section 5 of the Finance Act 1997 (c. 16) and article 2 of the Alcoholic Liquor Duties (Definition of Cider) Order 2010 (S.I. 2010/1914). Section 2 was amended by article 6 of the Alcoholic Liquors (Amendment of Enactments Relating to Strength and to Units of Measurement) Order 1979 (S.I. 1979/241), regulation 2 of S.I. 1992/3158, section 11 of and Part 2 of Schedule 8 to the Finance Act 1981 (c. 35), section 7 of and paragraph 3 of Schedule 2 to the Finance Act 1991 and section 5 of the Finance Act 1997. Section 3 was amended by article 7 of S.I. 1979/241. Section 4 was amended by article 8 of S.I. 1979/241, section 15 of and paragraphs 2 and 3 of Schedule 1 to the Finance Act 2011 (c. 11) and section 227 of and paragraph 51 of Schedule 39 to the Finance Act 2012 (c. 14). Section 5 was amended by section 1 of the Finance Act 1982 (c. 39) and section 180 of the Finance Act 2013. Section 36 was amended by section 7 of the Finance Act 1991, section 4 of and paragraph 1 of Schedule 1 to the Finance Act 2002 (c. 23), sections 14 and 15 of and paragraphs 2 and 4 of Schedule 1 to the Finance Act 2011, section 180 of the Finance Act 2013 and section 1 of and paragraph 9 of Schedule 1 to the Finance (No. 2) Act 1992 (c. 48). Section 37 was amended by section 15 of and paragraph 1 of Schedule 1 to the Finance Act 2011 and section 180 of the Finance Act 2013. Section 54 was amended by section 1 of and paragraph 12 of Schedule 1 to the Finance (No. 2) Act 1992 and section 5 of the Finance Act 1985 (c. 54). Section 55 was amended by section 1 of the Finance Act 1984 (c. 43) and section 1 of and paragraph 13 of Schedule 1 to the Finance (No. 2) Act 1992. Section 62 was amended by section 3 of the Finance Act 1996 (c. 8), section 10 of the Finance (No. 2) Act 1997 (c. 58), section 180 of the Finance Act 2013, section 4 of the Finance Act 1998 (c. 36) and section 3 of the Finance Act 1997. There are other amendments which are not relevant to this Order.

(7) 1994 c. 23. Section 2 was amended by section 3 of the Finance (No. 2) Act 2010 (c. 31). Section 7 was amended by section 76 of and Part 1 of Schedule 36 to the Finance Act 2009 (c. 10) and section 203 of and paragraphs 2 and 3 of Schedule 28 to the Finance Act 2012 (c. 14). Section 24 was amended by section 19 of and paragraph 1 of Schedule 8 to the Finance (No. 3) Act 2010 (c. 33). There are other amendments which are not relevant to this Order.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 19A and 73A of the Licensing Act 2003 (as inserted by section 32 of and Schedule 4 to the Policing and Crime Act 2009) provide for the Secretary of State to prescribe by order up to nine mandatory conditions applicable to relevant premises licences and club premises certificates. Relevant premises licences and relevant club premises certificates are those authorising the sale and supply of alcohol to the public in licensed premises or to members or guests of clubs in club premises.

The Schedule to the Order sets out a mandatory condition which applies to relevant premises licences and club premises certificates.

Paragraph 1 provides that the condition requires a relevant person to ensure that no alcohol is supplied from the premises to which the licence or certificate relates at a price below the permitted price.

Paragraph 2 contains relevant definitions for the purposes of paragraph 1. The permitted price is defined as the aggregate of the duty chargeable in relation to the alcohol on the date of its sale or supply and the amount of that duty multiplied by a percentage which represents the rate of VAT chargeable in relation to the alcohol on the date of its sale or supply. A relevant person is defined as a premises licence holder, designated premises supervisor or personal licence holder (in relation to premises in respect of which there is a premises licence) and a member or officer of a club who is present and able to prevent a supply of alcohol (in relation to premises in respect of which there is a club premises certificate).

Paragraph 3 provides that the permitted price is rounded up to the nearest penny.

Paragraph 4 provides that a change to the permitted price which would apply as a result of a change to the rate of duty or VAT charged in relation to alcohol would not apply until the expiry of the period of 14 days beginning on the day on which the change in the rate of duty or VAT takes effect.