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Statement of Licensing Policy 2011 – 2014 (draft – v2)

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Policy and Contact Details

This Statement of Licensing Policy was considered by the Licensing Committee on 2010.
The Policy was adopted by Full Council on the for the period 2011-2014.
The Policy became operative from 7th January 2011.

For further information regarding the Licensing Act 2003 and this Statement of Licensing Policy please contact:

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1.0 Introduction

1.1 Background

1.1.1 **West Somerset Council** (the Council) is the licensing authority under the Licensing Act 2003 (the Act). It is empowered to administer the following in respect of the sale and/or supply of alcohol and the provision of regulated entertainment and late night refreshment within the District:

- premises licences including provisional statements, variations, transfers, interim authorities and reviews
- club premises certificates
- temporary events notices
- personal licences

1.1.2 Unless otherwise stated this licensing policy will not depart from the revised Secretary of State's Guidance laid before Parliament on 28 June 2007. Therefore to reduce repetition if matters are detailed in the Guidance they may not be included in this policy

1.2 Aim

The Act requires the Licensing Authority to carry out its various licensing functions so as to promote the four licensing objectives.

The aim of this Licensing Policy is to set out how the Licensing Authority seeks to promote the four licensing objectives, which are:

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

These four objectives will be the paramount considerations when determining a course of action in relation to the Licensing Authority's licensing functions. Each objective will be given equal importance.

1.3 Purpose

The main purpose of this policy is to provide clarity to applicants, interested parties and responsible authorities on how the Licensing Authority will determine applications to supply alcohol, provide regulated entertainment and operate late night refreshment.

1.4 Consultation

1.4.1 Before determining its policy for any three year period, the Licensing Authority will consult the following:

- the Chief Officer of Police
- the Fire Authority
- persons/bodies representative of local holders of premises licences
- persons/bodies representative of local holders of club premises certificates
- persons/bodies representative of local holders of personal licences
- persons/bodies representative of businesses and residents in the District

- 1.4.2 The Licensing Authority may consult beyond the statutory requirements, and seek comments from additional bodies, groups or individuals.

1.5 Fundamental Principles

- 1.5.1 This Policy sets out the Licensing Authority's general approach to the making of licensing decisions and is consistent with the provisions of the Act. Nothing in the Policy will undermine the right of any individual to apply for permissions and to have any such application considered on its individual merits. Similarly, nothing in the policy will override the right of any person to make representations on an application or to seek a review of a licence or certificate where provisions have been made to do so in the Act.
- 1.5.2 The Licensing Authority may only impose conditions on a premises licence if they are consistent with the operating schedule or after receiving relevant representations and only if a Licensing Committee or Licensing Sub-Committee determines the matter. Any conditions attached to the licence must relate to the promotion of the Licensing Objectives.
- 1.5.3 The Licensing Authority acknowledges that the Government believes that in some circumstances flexible hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided.
- 1.5.4 It is necessary to consider national guidance in the context of local circumstances. Where licensed premises are surrounded by housing, unrestricted extensions of hours could extend the time of such disturbance to later in the night. The Guidance acknowledges that tighter control may be justified in residential areas and the Licensing Authority considers that this is particularly relevant to parts of its administrative area, always having regard to the individual merits of any application.
- 1.5.5 In general terms the Licensing Authority will closely scrutinise applications for premises licences showing a late terminal hour so as to be satisfied that they will have no adverse impact on the licensing objectives.
- 1.5.6 Once people are beyond the control of the individual, club or business holding the relevant authorisation licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour. Licensing law will always be part of a holistic approach to the management of the evening and night-time economy in this District.

2. General Principles

In all applications relating to premises, the Legislation requires applicants to specify methods by which they will promote the four licensing objectives in their operating schedules. The operating schedule should include reference to the measures the applicant intends to promote the licensing objectives.

2.1 Revisions to Policy.

- 2.1.1 The Licensing Authority have a duty to review their Licensing Policy and have therefore consulted with Responsible Authorities and other stakeholders since the implementation of the legislation in order to identify topics that may need to be added or removed from the Licensing Policy.
- 2.1.2 Specific areas of concern include:
- Sales of alcohol from "On" and "Off" licensed premises.
 - Glass related injuries.
 - Noise from music on the premises.
 - Nuisance and disturbance from smokers immediately outside premises.

- 2.1.3 Applicants for a premises licence are advised to include in their Operating Schedule, (where applicable) specifically how they prevent sales of alcohol to persons under 18, minimise glass related injuries and or assaults, prevent noise from licensed premises become a nuisance and manage customers outside their premises who are smoking.
- 2.1.4 Crime Statistics locally indicate that a last time of entry condition is assisting in the promotion of the licensing objectives. It is therefore expected that applicants for late licensed premises will detail in their operating schedules that there will be no new entry to the premises after 1am.

2.2 Children and Cinemas

- 2.2.1 The Act requires applicants for premises licences and club premises certificates to copy details of their applications to a body which:
 - a) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
 - b) is recognised by the Licensing Authority for that area for the purposes of this section as being competent to advise it on such matters.
- 2.2.2 The Licensing Authority's policy is that the "Responsible Authority" in relation to the protection of children from harm will be Somerset County Council's Children and Young Persons' Department at County Hall, Taunton, TA1 4DY.
- 2.2.3 The Licensing Authority will expect licensees of premises giving film exhibitions to include, in their operating schedules, arrangements for restricting children from viewing age restricted films. Such premises will be subject to a mandatory condition requiring that access will be restricted to only those who meet the required age limit in accordance with any certificate granted by the British Board of Film Classification, or in specific cases where such certificates have not been granted, the Licensing Authority.
- 2.2.4 The Licensing Authority does not intend to adopt its own system of film classification but reserves the right to amend the classification imposed by the British Board of Film Classification.
- 2.2.5 If the Licensing Authority attaches an age-restriction to any film that differs from the BBFC classification or attaches one to an unclassified film, the information about the Licensing Authority's classification will be published on the Council's website at www.westsomersetonline.gov.uk

2.3 Licensing Hours

- 2.3.1 With regard to licensing hours the Licensing Authority will consider each application on its individual merits.
- 2.3.2 Applications for premises licences with a terminal hour later than 12 midnight where the sale or supply of alcohol for consumption on the premises is the main activity or where the sale or supply of alcohol is accompanied by musical entertainment, will be subject to close scrutiny by the Responsible Authorities to ensure that there will be no adverse impact on the licensing objectives. Specifically, the applicant should ensure that the operating schedule for such a premises demonstrates how the licensing objectives will be met. Applicants are strongly recommended to seek the advice of both the Council's Licensing Officers and the Police in this regard.
- 2.3.3 This is a general policy and does not automatically mean that all applications will result in licences being granted until midnight or that no applications will be granted with a closing hour after midnight.

- 2.3.4 In considering these issues the Licensing Authority will give careful consideration to the nature of the venue proposed. For example, the Council is keen to promote establishments at which the service and consumption of alcohol is not the primary activity. These may include restaurants, theatres, cinemas, comedy clubs, galleries, museums, and similar venues. The Licensing Authority's experience is that such venues are liable to give rise to fewer public concerns, and so applications for such premises to operate past midnight are more likely to be successful.
- 2.3.5 The Licensing Authority will pay special regard to the proximity of residential uses to the proposed premises, the parking areas and routes taken by customers when arriving at and leaving the premises. Consideration will be given to the imposition of stricter noise control conditions, if representations are received in areas with a concentration of residential property.
- 2.3.6 The Licensing Authority considers that these issues will be of less significance where proposed premises are not within 250 metres of any residential property.
- 2.3.7 The Licensing Authority will expect premises to be cleared of patrons within a reasonable time of the terminal hour set for the premises. Applicants should state in their operating schedule the time they require to clear the premises. In normal circumstances, this will not exceed 30 minutes from the last sale of alcohol. Where the applicant can show that an extended period would assist in the promotion of the licensing objectives, the Council will consider permitting longer than 30 minutes.
- 2.3.8 Shops, stores and supermarkets will generally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping, unless there are good reasons for restricting those hours. An example would be where the Police make representations that the premises are a focus of disorder and disturbance.

2.4 Maximum Capacities

- 2.4.1 The type of entertainment offered on licensed premises and the closing hour of premises permitted to provide alcohol to the public often have a direct link to crime and disorder, public nuisance and public safety issues. For example, there is generally more likelihood of crime and disorder and public safety problems occurring in a music and dance venue permitted to sell alcohol and open until 3 am than there is in a well managed public house located in a quiet back street that provides limited regulated entertainment and closes at 11 pm.
- 2.4.2 The Licensing Authority believes that some of the problems that may occur in late night licensed premises may be controlled by good management practices. However, controlling the numbers of customers allowed into the premises will also assist in promoting the following three licensing objectives:
- **the prevention of crime and disorder**
 - **public safety**
 - **the prevention of public nuisance**

2.5 Late Night Refreshment

The Licensing Authority will expect applicants for licences in respect of late night refreshment premises to detail in their operating schedules how they intend to promote the licensing objectives and in particular how they intend to address queue management, litter and noise disturbance.

3.0 Licensing Approach

3.1 Partnership Working

- 3.1.1 The Council recognises that Licensing functions are not the only means of promoting the licensing objectives. Delivery must involve working in partnership with Planning, Environmental Health, the Police, the Fire Authority, the Crime and Disorder Reduction Partnership, Pubwatch, local businesses and residents, Somerset County Council, transport operators and those involved with child protection.
- 3.1.2 The Council recognises that co-operation and partnership remain the best means of promoting the licensing objectives.

3.2 Integrating Strategies

- 3.2.1 There are many stakeholders involved in the leisure industry and many are involved in the promotion of the licensing objectives. A number of stakeholders' plans and strategies deal with matters related to the licensing function. Where this is the case the Council will aim, as far as possible, to coordinate them.
- 3.2.2 Cultural Strategy – The Council will monitor the impact of any decisions on the provision of regulated entertainment. The aim is not to deter live music, but to ensure that the licensing objectives are promoted. The Council will monitor the effect of licensing on the provision of regulated entertainment, particularly live music and dancing to ensure that any licensing conditions that impose any restrictions on such events are proportionate and reasonable.
- 3.2.3 Racial Equality – The Council is required under race relations legislation to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. The impact of these issues on the Licensing Policy will be monitored and amendments will be made as necessary.
- 3.2.4 Enforcement Policy – All licensing enforcement will be conducted in accordance with the Enforcement Concordat and the Environmental Health & Licensing Enforcement Procedures.

3.3 Avoiding Duplication

- 3.3.1 The Licensing Authority recognises the need to avoid, so far as possible, duplication with other regulatory regimes such as health and safety at work, fire safety, building control and planning. Conditions will not be imposed if the matters concerned are already provided for in other legislation. However, other legislation may not always cover the unique circumstances that arise in connection with licensable activities and in such cases tailored conditions may be necessary but only if relevant representations are received.
- 3.3.2 Non-compliance with other statutory requirements may be taken into account in reaching a decision about whether or not to grant a licence but only if relevant representations are received.

3.4 Vicinity

- 3.4.1 The term “vicinity” is used in the Act on a number of occasions and, in particular, with reference to those “interested parties” who may lodge objections to applications for premises licences and who may make representations concerning existing premises licences. The Act defines an “interested party” as being “a person living in the vicinity, a body representing persons living in the vicinity, a person involved in a business in the vicinity, a body representing those persons or a member of the relevant licensing authority”.

However, the Act does not define the term “vicinity”.

- 3.4.2 The Licensing Authority has decided that in order to assist applicants and residents it would be helpful to provide guidance as to how it will approach the meaning of the term “vicinity.” The Licensing Authority will normally treat the term “vicinity” as meaning within a 100 metre radius of the premises in question. However it is open to an applicant to argue that, in particular instances, an objection from an “interested party” within this radius is not relevant, for example, where a major traffic route lies between the resident and the premises and noise from the premises is highly unlikely to affect the resident. It is also open to an “interested party” located outside of this radius to argue that a representation is valid, for example, where the resident lives on the route from the premises to bus stops or main taxi ranks.

3.5 Conditions

- 3.5.1 Conditions may only be attached if relevant representations are received, any such conditions attached to licences and certificates will be tailored to the individual style and characteristics of the premises and events concerned.
- 3.5.2 However, where it is considered necessary to promote one or more of the licensing objectives the Licensing Authority will, if relevant representations are received, consider attaching conditions drawn from the Pool of Model Conditions set out in Revised Secretary of State’s Guidance. This list is not exhaustive and additional conditions may be attached to any licence or authorisation if a representation is received.

3.6 Enforcement

- 3.6.1 The Council when planning and carrying out enforcement activities will always have regard to the principles in the Regulators’ Compliance Code.
- 3.6.2 The Council intends to use appropriate enforcement to promote the licensing objectives. Once licensed, it is essential that premises are monitored to ensure that they are run in accordance with their operating schedules, in compliance with the specific requirements of the Act and any licence conditions. It will also be important to monitor the District for unlicensed activities that require a licence.
- 3.6.3 The Licensing Authority has established protocols with Avon and Somerset Police Authority, Somerset County Council Trading Standards and Devon and Somerset Fire Authority on enforcement issues to ensure an efficient deployment of Police and Council Officers.

3.7 Live Music, Dancing and Theatre

- 3.7.1 The Council recognises the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre for the wider cultural benefit of the community and in particular for children and young people.
- 3.7.2 When considering applications for such events and the imposition of any conditions if representations are received on licences or certificates, the Licensing Authority will carefully balance the need to promote the licensing objectives against these wider cultural benefits.

4.0 Administrative Issues

4.1 Temporary Event Notices

- 4.1.1 The Act states that the organiser of a Temporary Event must give the Licensing Authority a minimum of 10 working days' notice. However, in a significant number of cases this time period would not allow enough time for the organiser to liaise with the fire authority, the police and the relevant Council officers to ensure that the event passes off safely with minimum disturbance to local residents.
- 4.1.2 The Licensing Authority recommends that the Licensing Authority and the Avon and Somerset Police receive Temporary Event Notices at least 28 days before the planned event.

4.2 Applicants for Personal Licences

The Licensing Authority places particular emphasis on the role of premises supervisors and licensees and where the Police object on the grounds of prevention of crime and disorder there will be a presumption against issuing a personal licence to any applicant with an unspent conviction for a relevant offence. If the applicant can demonstrate exceptional and compelling reasons for disregarding the conviction, this will be taken into consideration.

4.3 Large Scale Events

Large Scale events of a temporary or more permanent nature will generally require detailed planning and more consultation with responsible Authorities and possibly representatives of other organisations concerned with safety. For such events it is recommended that applicants contact the Licensing Team at the earliest opportunity to discuss their proposals.

4.4 Reviews of Licence or Club Premises Certificate

- 4.4.1 The Licensing Act details that where a premises licence or club premises certificate has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence. The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied that the ground is not relevant to one or more of the licensing objectives, or in the case of an application made by a person other than a responsible authority, that the ground is frivolous or vexatious, or the ground is a repetition.
- 4.4.2 The Licensing Authority can on review of licence or certificate, revoke the licence or certificate, suspend the licence or certificate, remove the Designated Premises Supervisor, reduce hours or licensable activities or add conditions to the licence or certificate.
- 4.4.3 The Licensing Authority recommends that Persons or Bodies considering seeking a review should discuss the matter with the Licensing Unit to discuss possible alternatives and to ascertain the correct procedure.

4.5 Administration, Exercise and Delegation of Functions

- 4.5.1 The Council has a Licensing Committee, consisting of 15 elected members, to carry out its licensing functions and to make licensing decisions, except those functions relating to the making of a statement of licensing policy.
- 4.5.2 In the interests of speed, efficiency and cost-effectiveness the Committee will delegate certain decisions and functions to sub-committees and officers.
- 4.5.3 A Licensing Sub-Committee of three councillors will sit to hear applications where relevant representations have been received from interested parties or responsible authorities. Ward councillors will not sit on a panel involving an application within their ward.
- 4.5.4 Where there are no relevant representations on an application for the grant of a premises licence or club premises certificate or Police objection to an application for a personal licence or

to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers.

4.5.5 The following table sets out the agreed delegation of decisions and functions to the Licensing Committee, Sub-Committees and officers.

4.3.6 This scheme of delegation does not prevent the referral of matters to a higher authority if considered appropriate in the circumstances of any particular case.

MATTER TO BE DEALT WITH	SUB-COMMITTEE	OFFICERS
Application for personal licence	If an objection is made	If no objection is made
Application for personal licence, with unspent convictions	All cases	
Application for premises licence/club premises certificate	If a representation is made	If no representation is made
Application for provisional statement	If a representation is made	If no representation is made
Application to vary premises licence/club premises certificate	If a representation is made	If no representation is made
Application for minor variation to premises licence/club premises certificate		All cases
Application to vary designated premises supervisor	If a police objection is made	All other cases
Request to be removed as designated premises supervisor		All cases
Application for alternative licence condition to be included in licence		All cases
Application for transfer of premises licence	If a police objection is made	All other cases
Application for interim authority	If a police objection is made	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc		All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of a police objection to a temporary event notice	All cases	

GLOSSARY OF TERMINOLOGY

Club Premises Certificate	means a certificate granted to a qualifying club under the Act in respect of premises occupied, and habitually used for the purposes of a club. Alcohol must not be supplied other than to members by or on behalf of the club.
Entertainment facilities	are defined as facilities for enabling persons to take part in entertainment for the purpose of being entertained. The descriptions of entertainment are making music, dancing, and entertainment of a similar description to that falling within those mentioned above. This definition is subject to Part 3 of Schedule 1 to the Licensing Act 2003 (interpretation).
Hot food or hot drink	<p>food or drink supplied on or from any premises is “hot” for the purposes of Schedule 2 to the Act if the food or drink, or any part of it:</p> <p>(i) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature,</p> <p>or</p> <p>(ii) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.</p>
Interested Party	<p>is defined as:</p> <p>(i) a person living in the vicinity of the premises</p> <p>(ii) a body representing persons who live in that vicinity</p> <p>(iii) a person involved in a business in that vicinity</p> <p>(iv) a body representing persons involved in such businesses</p> <p>(v) a member of the relevant licensing authority</p>
Licensable activities and qualifying club activities	<p>are defined in the Licensing Act as:</p> <p>(i) the sale by retail of alcohol</p> <p>(ii) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club</p> <p>(iii) the provision of regulated entertainment</p> <p>(iv) the provision of late night refreshment - for those purposes the following licensable activities are also qualifying club activities:</p> <p>(i) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club for consumption on the premises where the supply takes place</p> <p>(ii) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place</p>

	(iii) the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.
Operating Schedule	<p>means a document that must be prepared by or on behalf of an applicant for a premises licence or club premises certificate containing a statement including the following matters:</p> <ul style="list-style-type: none"> • the relevant licensable activities • the times at which licensable activities are to take place and any other times the premises are to be open to the public • information about the Designated Premises Supervisor • whether any alcohol sales are on and/or off sales • the steps being taken to promote the licensing objectives.
Personal Licence	authorises an individual to supply or authorise the supply of alcohol in accordance with a premises licence.
Premises Licence	authorises the premises to be used for one or more licensable activity.
Provision of late night refreshment	<p>is defined as the provision of hot food or hot drink to members of the public, or a section of the public on or from any premises, whether for consumption on or off the premises between 11 pm and 5 am</p> <p>or</p> <p>at any time between those hours when members of the public, or a section of the public, are admitted to any premises, a person supplies, or holds himself willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises.</p>
Regulated Entertainment	<p>is defined as:</p> <ul style="list-style-type: none"> (a) a performance of a play (b) an exhibition of film (c) an indoor sporting event (d) a boxing or wrestling entertainment (e) a performance of live music (f) any playing of recorded music (g) a performance of dance (h) entertainment of a similar description to that falling within paragraph (e), (f) or (g) where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience. Any reference to an audience includes a reference to spectators. This definition is subject to Part 3 of Schedule 1 to the Licensing Act 2003 (interpretation). (i) Entertainment Facilities. This definition is subject to Part 1 of Schedule 1 to the Licensing Act 2003 (interpretation).

Responsible Authority	<p>is defined as:</p> <p>(i) Chief Officer of Police for any Police area in which the premises are situated</p> <p>(ii) the Fire Authority for any area in which the premises are situated</p> <p>(iii) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc Act 1974 for any area in which the premises are situated</p> <p>(iv) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (c.8) for any area in which the premises are situated</p> <p>(v) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health</p> <p>(vi) a body which:</p> <p>(a) represents those who, in relation to any such area, are responsible for, or interested in matters relating to the protection of children from harm, and</p> <p>(b) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters</p> <p>(vii) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated</p> <p>(viii) in relation to a vessel:</p> <p>(a) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c.57)) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is or is proposed to be, navigated at a time when it is used for licensable activities</p> <p>(b) the Environment Agency</p> <p>(c) the British Waterways Board, or</p> <p>(d) the Secretary of State</p> <p>(e) a person prescribed for the purpose of this subsection.</p>
Temporary Event	<p>is defined as the use of premises for one or more of the licensable activities during a period not exceeding 96 hours usually where a premises licence covering the licensable activity is not in place.</p>
Temporary Event Notice	<p>a document giving notice to the Licensing Authority of intention to hold a temporary event.</p>