



Meeting: **LICENSING COMMITTEE**  
Date: **MONDAY, 3 FEBRUARY 2020**  
Time: **10.00 AM**  
Venue: **CIVIC CENTRE, DONCASTER ROAD, SELBY, YO8 9FT**  
To: **Councillors K Ellis (Chair), R Sweeting (Vice-Chair),  
J Chilvers, S Duckett, I Chilvers, T Grogan, M Jordan,  
J Duggan, M McCartney and P Welch**

## Agenda

**1. Apologies for Absence**

**2. Minutes (Pages 1 - 4)**

To confirm as a correct record the minutes of the Licensing Committee held on 13 January 2020.

**3. Disclosures of Interest**

A copy of the Register of Interest for each Selby District Councillor is available for inspection at [www.selby.gov.uk](http://www.selby.gov.uk).

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests. Councillors should leave the meeting and take no further part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

**4. Chair's Address to the Licensing Committee**

**5. Statement of Licensing Policy 2020 (Pages 5 - 56)**

To receive the report, which asks the Committee to note the draft Statement of Licensing Policy 2020, as attached at appendix 1; and to provide any comments to be considered by the Executive.

**6. Animal Licensing Policy 2020 (Pages 57 - 82)**

To receive the report, which asks the Committee to note the draft Animal Licensing Policy 2020 as attached at Appendix 1; and to provide any comments or recommendations to be considered by the Executive.

*Janet Waggott*

**Janet Waggott, Chief Executive**

<p><b>Date of next meeting (10.00 am)</b> Monday, 2 March 2020</p>
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Enquiries relating to this agenda, please contact Dawn Drury on 01757 292065 ddrury@selby.gov.uk.

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## Minutes

### Licensing Committee

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Venue:	Committee Room - Civic Centre, Doncaster Road, Selby, YO8 9FT
Date:	Monday, 13 January 2020
Time:	10.00 am
Present:	Councillors K Ellis (Chair), R Sweeting (Vice-Chair), J Chilvers, S Duckett, I Chilvers, T Grogan, M Jordan, J Duggan, M McCartney and P Welch
Officers present:	Sharon Cousins – Licensing Manager, Jade Reynolds – Solicitor and Victoria Foreman – Democratic Services Officer
Public:	0
Press:	0

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#### **53 APOLOGIES FOR ABSENCE**

There were no apologies for absence.

#### **54 MINUTES**

The Committee considered the minutes of the meeting held on 2 December 2019.

#### **RESOLVED:**

**To approve the minutes of the Licensing Committee meeting held on 2 December 2019.**

#### **55 DISCLOSURES OF INTEREST**

There were no declarations of interest.

## 56 PROCEDURE AND TAXI LICENSING POLICY

The Committee noted the Licensing Committee procedure and the Council's Taxi Licensing Policy.

Some Members raised concerns around a recent urgent decision taken by the Chief Executive to revoke the licence of a taxi driver. The driver has since been told that they could reapply for the licence. The Committee also noted that the driver had withdrawn the appeal against the revocation.

The Committee felt very strongly that the matter should have been referred to the Committee, and emphasised the Committee's role in ensuring that licensed taxi drivers operating in Selby District were safe.

Members asked the Chair to meet with the Chief Executive to raise the following matters:

- Why did the Chief Executive departed from the usual policy in relation to this matter?
- What checks and balances were there to make sure that the driver is safe?
- That an examination of the material detail relating to this matter in how the Council has got to this point should be carried out.

It was proposed and seconded that the Chair of Licensing meet with the Chief Executive and ask her the questions as set out above, and that a written response should also be provided for circulation to the Licensing Committee.

### **RESOLVED:**

- 1. To ask the Chair of the Committee to meet with the Chief Executive to raise the following matters in relation to the revocation of a taxi driver licence:**
  - **Why did the Chief Executive departed from the usual policy in relation to this matter?**
  - **What checks and balances were there to make sure that the driver is safe?**
  - **To ask that an examination of the material detail relating to this matter in how the Council has got to this point should be carried out.**
- 2. That a written response from the Chief Executive to the points above be circulated to the Licensing Committee.**

## **57 CHAIR'S ADDRESS TO THE LICENSING COMMITTEE**

The Chair informed the Committee that the Gambling Commission had launched a consultation on society lottery reform. They were seeking views on strengthening the licence conditions and codes of practice and producing guidance related to information available to customers.

Members noted that on Saturday 7 December 2019 Selby Enforcement and Licensing Officers carried out a joint enforcement evening in Eggborough, Tadcaster, Sherburn and Selby with the Police, Fire Services and a passive drugs dog. The evening was deemed to be a success and was reported as such in the local press.

Lastly, the Committee were made aware that one verbal warning had been given to a taxi driver by Officers in December for not declaring points on their driver's licence.

## **58 PRIVATE SESSION**

It was proposed, and seconded, that the Committee sit in private session due to the nature of the business to be transacted.

### **RESOLVED:**

**That, in accordance with Section 100(A)(4) of the Local Government Act 1972, in view of the nature of the business to be transacted the meeting be not open to the press and public during discussion of the following items as there will be disclosure of exempt information as described in paragraph 3 of Schedule 12(A) of the Act.**

## **59 APPLICATION FOR A HACKNEY CARRIAGE DRIVER LICENCE**

The Licensing Manager presented the report, which asked the Committee to determine an application for a Hackney Carriage Driver's Licence. It was noted that the application had been brought before the Committee due to a Disclosure and Barring Service (DBS) check highlighted previous convictions during the application process.

The applicant was present and was able to respond to questions asked by the Committee concerning the report including the previous convictions.

The applicant and Licensing Manager left the meeting whilst the Committee considered the application.

The Committee considered the report, and the information from the Licensing Manager, and stated that they were concerned by the number and seriousness of the offences.

The Committee considered that the evidence presented did not

demonstrate that the applicant was a 'fit and proper' person to be a Hackney Carriage driver. It was proposed and seconded to refuse the application. A vote was taken and it was unanimously:

**RESOLVED:**

**To refuse the application for a Hackney Carriage Driver's Licence.**

*Reason for decision:*

*The committee was not satisfied that the applicant was a 'fit and proper person'; due to the number and seriousness of the offences.*

The meeting closed at 10.57 am.



**Report Reference Number: L/19/17**

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**To:** Licensing Committee  
**Date:** 3 February 2020  
**Status:** Non Key Decision  
**Ward(s) Affected:** Whole District  
**Author:** Sharon Cousins, Licensing Manager  
**Lead Executive Member:** Councillor Pearson, Lead Member for Housing, Health and Culture  
**Lead Officer:** Alison Hartley, Solicitor to the Council

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**Title:** Statement of Licensing Policy 2020

**Summary:**

All local authorities have to determine and publish a Statement of Licensing Policy every 5 years. The purpose of the policy is to define how the responsibilities under the Licensing Act 2003 (“the 2003 Act”) are going to be exercised and administered.

A statutory consultation process will take place and there will be the opportunity for the local community to comment on the proposed Statement of Licensing Policy 2020 (“the Policy”).

**1. Recommendations:**

The Committee are recommended to:-

- i. To note the draft Statement of Licensing Policy 2020 as attached at Appendix 1; and
- ii. to provide any comments or recommendations to be considered by the Executive.

**2. Introduction and background**

- 2.1** The Council’s current Statement of Licensing Policy was adopted by the Council on the 1 December 2015.
- 2.2** Selby District Council is a Licensing Authority under the 2003 Act. As a Licensing Authority the Council must determine and publish its Statement of Licensing Policy every 5 years.

- 2.3 In determining the Policy, the Council must carry out the statutory consultation as provided by the 2003 Act.
- 2.4 The 2003 Act gives Local Authorities a range of responsibilities relating to licensing. The Policy states how the Council will exercise its authority.
- 2.5 The Policy covers the following:
  - How the Licensing Authority will use its regulatory powers in relation to applications and reviews of the activities it regulates, to the extent it is allowed by statute.
  - The main licensing objectives for the authority which are set by legislative requirements.
  - The Licensing Authority approach to regulation
  - The scheme of delegation
- 2.6 The Policy has to comply with guidance issued by central government. The current policy is compatible with this advice and guidance.

The proposed Policy for determination has taken into account the legislative changes that will affect the Policy. The changes respond in the main to guidance and regulatory change from central government during the course of the last 5 years.

- 2.7 The Statutory Consultation requirements consist of:-
  - The Chief Officer of Police for the Licensing Authority area
  - The Fire and Rescue Authority for the area
  - Such persons as the Licensing Authority consider to representative of holders of existing premises or personal licences
  - Such persons as the Licensing Authority considers to be representative of holders of existing club premises certificates issued by the authority
  - Such other persons as the Licensing Authority considers to be representative of businesses and residents in its area
  - Director of Public Health
- 2.8 The current revisions consider legislative changes to the current policy and the main changes include the following:
  - Addition of the Home Office Immigration Enforcement Unit as a responsible authority under the Immigration Act 2016
  - Deregulation of entertainment

2.9 The time table for the Policy is:

Date	Process
3 February 2020	Licensing Committee to note the Policy and to provide comments/recommendations.



2 April 2020	Executive Committee to approve consultation and consider comments/recommendations.
6 April 2020 – 18 May 2020	Public/Statutory consultation
8 June 2020	Licensing Committee to update on Consultation feedback
16 June 2020	Policy Review update on consultation and responses
6 August 2020	Executive Committee to note and recommend approval of the Policy.
22 September 2020	Full Council for approval of the Policy

**2.10** The Public Health Team will be consulted and will be in a position to add further considerations in relation to maximum strength alcohol and pricing strategies’.

**2.11** The proposed Policy is attached (Appendix 1) showing amendments to the Policy by tracked changes.

### **3. Implications**

#### **3.1 Legal Implications**

3.1.1. Pursuant to the 2003 Act, Selby District Council is the Licensing Authority, which is responsible for licensing alcohol, entertainment and late night refreshments in its District. The Council is required under Section 5 of the 2003 Act to determine and publish a Statement of its Licensing Policy every five years.

3.1.2. When preparing and determining its Statement of Licensing Policy, the Council is exercising a licensing function and as such must have regard to the following:

- (a) Promote the four licensing objectives:
  - the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm;
- (b) Statutory guidance issued by the Secretary of State under section 182 of the 2003 Act;
- (c) The 2003 Act; and
- (d) Give appropriate weight to the views of those persons/bodies listed in section 5(3) of the 2003 Act which it is required to consult before determining the Policy.

3.1.3. The Policy should not be inconsistent with the provisions of the 2003 Act or with obligations placed on the Council under any other

legislation, such as human rights/equalities provisions. It should be noted that the Council has a duty under Section 17 of the Crime and Disorder Act 1998, when carrying out its licensing functions, to do all it can to prevent crime and disorder in its District. In addition, the Council will seek to support strategies and policies where they are allied to the Licensing Objectives.

- 3.1.4. The Council must have due regard to the public sector equality duty which is contained within the Equality Act 2010. An Equalities Impact Assessment has been carried out. A copy of this assessment can be requested from the background documents.
- 3.1.5. Pursuant to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, requires that the final approval of the Policy is given by Full Council.
- 3.1.6. Failure to review the Policy and follow the correct procedures would mean the Council was not complying with its statutory duty and would leave the Council open to legal challenge and any subsequent costs.

#### **4. Financial Implications**

Any additional administration costs will be considered when reviewing the application fee in accordance with the corporate charging policy.

##### **4.1 Policy and Risk Implications**

No foreseen impacts.

##### **4.2 Corporate Plan Implications**

The consultation process, although not necessary, will help us to achieve our corporate priority of making Selby a great place to make a difference. Through allowing local people and businesses to contribute to the development of the Policy we are achieving a key focus of the priority, namely, 'empowering and involving people in decisions about their area and services'.

##### **4.3 Resource Implications**

N/A

##### **4.4 Other Implications**

N/A

#### **5. Equalities Impact Assessment**

Equalities impact screening has taken place and no significant negative impacts were identified in the immediate future.

**6. Conclusion**

- 6.1** Adoption of the revised Policy and the measures within it will support the statutory position and help protect public safety.

**7. Background Documents**

Equality Impact Assessment

**8. Appendices**

Appendix 1 – Proposed Statement of Licensing Policy 2020

***Contact Officer:***

Sharon Cousins  
Licensing Manager  
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Statement of Licensing Policy 2020~~19~~

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| Approved Council ~~01/12/15~~

## PART 1

### 1 Introduction

- 1.1 Selby District Council is the Licensing Authority (“the Licensing Authority”) under the Licensing Act 2003 (“the 2003 Act”). The Licensing Authority is responsible for the administration and issuing of Premises Licences, Club Premises Certificates, Temporary Event Notices and Personal Licences in the District of Selby in respect of the sale and/or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
- 1.2 Selby district is home to a number of popular restaurants, bars and entertainment venues. The Licensing Regime must balance the competing demands of those who benefit from licensed activities whilst ensuring that these activities do not impact upon residents in a negative way.
- 1.3 The Licensing Authority is aware of the value to the community of a broad range of cultural entertainments, particularly live music, dancing and theatre. The Licensing Authority wishes to see these encouraged for the benefit of all. When drawing up this Policy the Licensing Authority has in mind a wide range of licensed premises such as pubs, members’ clubs, social clubs, restaurants, cafes, theatres, hotels and late night takeaways.
- 1.4 This Policy intends to shape the future of licensing, entertainment and related social activities within the district and has been produced after consultation with all Responsible Authorities, Premises and Club Premises Certificate licence holders, licensed trade representatives and the general public incorporating businesses and residents within Selby district.

## PART 2

### 2 The Policy

- 2.1 The 2003 Act requires a Licensing Authority to prepare and publish a ‘Statement of Licensing Policy’ (“the Policy”) that sets out the principles the Licensing Authority will apply to promote the four Licensing Objectives set out below. The Licensing Authority must base its decisions, in relation to determining applications and attaching any conditions to licences or certificates, on the promotion of these objectives.
- 2.2 This Policy encompasses experience gained in the implementation and regulation of the 2003 Act. The overriding aim of the Policy is to promote the four licensing objectives, each is of equal importance:
- **The prevention of crime and disorder**
  - **Public safety**
  - **The prevention of public nuisance**
  - **The protection of children from harm**



- 2.3 This Policy was prepared in accordance with the provisions of the 2003 Act having had due regard to the Guidance issued under s182 of the 2003 Act (“the Guidance”). This Policy was reviewed in 2019~~5~~ following consultation between ~~14<sup>th</sup> September~~~~9th December 2019~~ and ~~26<sup>th</sup> of October~~ ~~20 January 2020~~ and will come into force in ~~January 2016~~ April 2020. Due consideration and appropriate weight has been given to all responses in the production of this revised Policy.
- 2.4 This Policy will be kept under review and the Licensing Authority may make any revisions to it as it considers appropriate. In any event the Licensing Authority is required to review their Statement of Licensing Policy every 5 years. The Licensing Authority may make revisions to this Policy following changes to, for example:
- local circumstances;
  - the Licensing Act, associated regulations or statutory guidance;
  - national legislation; or
  - the policies and practices of a responsible authority
- 2.5 This Policy shall not undermine the right for any individual to apply for a variety of permissions under the terms of the 2003 Act and to have any such application considered on its individual merits. Similarly the Policy shall not override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act. Each application shall be treated on its own merit.
- 2.6 This Policy is intended to provide clarification to Responsible Authorities applicants and any person on how this Licensing Authority will determine applications and reviews. As the ‘vicinity’ test has now been removed, the Licensing Authority will consider relevant representations from any person irrespective of where they live in relation to the subject premises, however, the Licensing Authority shall give greater weight to the representations of persons immediately affected by the premises and its operation.
- 2.7 The Licensing Authority may depart from this Policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the four licensing objectives. Where it does depart from this Policy full reasons will be provided.
- 2.8 Where revisions are made to the Guidance there may be a period of time when this Policy is inconsistent with the Guidance. In these circumstances the Licensing Authority shall have regard, and give appropriate weight, to the revised Guidance in conjunction with this Licensing Policy.
- 2.9 This Policy recognises that the Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics.
- 2.10 The applicant is expected to comply with relevant legislation on disability including access and egress for disabled persons. This policy will not be used to duplicate such duties as already exist in this area. Further advice can be obtained from the Equality and Human Rights Commission web site <https://www.equalityhumanrights.com/en/ehrc/about-us>.

### 2.11 The need for licensed premises

3.4 The Licensing Authority will not take “need” into account when considering an application, as this is a matter for planning and the market. However, it recognises that the cumulative impact of the number, type and density of licensed premises in a given area, may lead to problems of nuisance and disorder outside and some distance from the premises.

### 3. Cumulative Impact

3.1 With effect from 6 April 2018, the Policing and Crime Act 2017 introduced the concept of Cumulative Impact Assessments (“CIA”) into the 2003 Act by inserting into the 2003 Act a new section 5A.

3.2 Guidance issued under section 182 of the 2003 Act states the following:

Cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area.

In some areas where the number, type or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems of nuisance and disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.

Queuing in itself may lead to conflict, disorder and anti-social behaviour. Moreover, large concentrations of people may also attract criminal activities such as drug dealing, pick pocketing and street robbery. Local services such as public transport, public lavatory provision and street cleaning may not be able to meet the demand posed by such concentrations of drinkers leading to issues such as street fouling, littering, traffic and public nuisance caused by concentrations of people who cannot be effectively dispersed quickly.

Variable licensing hours may facilitate a more gradual dispersal of customers from premises. However, in some cases, the impact on surrounding areas of the behaviour of the customers of all premises taken together will be greater than the impact of customers of individual premises. These conditions are more likely to arise in town and city centres, but may also arise in other urban centres and the suburbs, for example on smaller high streets with high concentrations of licensed premises.

A CIA may be published by a licensing authority to help it to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives. CIAs relate to applications for new premises licences and club premises certificates and applications to vary existing premises licences and club premises certificates in a specified area.

3.4 The Licensing Authority has not published a CIA as there is not currently an evidential basis on which to publish a CIA.

3.5 If the Licensing Authority were to consider the publication of a CIA in the future, it would do so in accordance with the requirements of section 5A of 2003 Act and with regard to the Guidance.

~~3.2 Evidence that areas are becoming saturated with the number, type and density of licensed premises has to be gathered before a “special policy” to deal with this problem can be adopted. The Licensing Authority will consider evidence from the following sources:-~~

- ~~● Local crime and disorder statistics, including statistics on specific types of crime and crime hotspots~~
- ~~● Statistics on local anti-social behaviour offences~~
- ~~● Health related statistics such as alcohol-related emergency attendances and hospital admissions~~
- ~~● Environmental health complaints, particularly in relation to noise and litter~~
- ~~● Complaints recorded by the Council, which may include complaints raised by local residents or resident’s associations~~
- ~~● Residents questionnaires~~
- ~~● Evidence from local councillors~~
- ~~● Evidence obtained through local consultation~~
- ~~● Trends in licence applications, particularly trends in applications by types of premises and terminal hours~~
- ~~● Changes in terminal hours of premises~~
- ~~● Premises capacities at different times of the night and the expected concentrations of drinkers who will be expected to be leaving premises at different times~~

~~3.3 In these circumstances the Licensing Authority may consider that the imposition of conditions is unlikely to address these problems and further, may consider the adoption of a “special policy” of refusing new premises licences or club premises certificates because the area is saturated with licensed premises and the granting of any more would undermine one or more of the licensing objectives.~~

~~3.4 The Licensing Authority will take the following steps into consideration when deciding whether or not to adopt a “special policy”:-~~

- ~~● Identify concern about crime and disorder; public safety; public nuisance; or protection of children from harm~~
- ~~● Consider whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or protection of children from harm~~
- ~~● If such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that the risk of cumulative impact is imminent~~
- ~~● Identify the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise).~~
- ~~● Consult with those specified in section 5(3) of the Licensing Act 2003 (e.g. police, fire etc) and subject to the outcome of the consultation, include and publish details of the “special policy” in the licensing policy statement.~~

~~3.5 The effect of adopting a “special policy” of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations to that effect are received, unless it can be demonstrated by the applicant that the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants would need to address the “special policy” issues in their operating schedules in order to rebut such a presumption. However, a “special~~

policy” must stress that this presumption does not relieve responsible authorities or any other person of the need to make a relevant representation before a licensing authority may lawfully consider giving effect to its “special policy”. If no relevant representations are received, it would remain the case that any application must be granted in terms that are consistent with the operating schedule submitted. However, responsible authorities, such as the police or any other person can make written representations maintaining that it is necessary to refuse the application for the promotion of the prevention of crime and disorder and referring to information which has been before the licensing authority when it developed its statement of licensing policy.

3.6 — Once adopted special policies should be reviewed regularly to assess whether they are needed any longer or if those which are contained in the special policy should be amended. While a special policy is in existence, applications will need to demonstrate why the operation of the premises would not add to the cumulative impact being experienced. The Licensing Authority will review any special policies it adopts when it reviews the Licensing Policy to see whether they have had the effect intended, and whether they are still needed.

3.7 — The Licensing Authority is aware that there are numerous other mechanisms for controlling cumulative impact outside the licensing regime such as:-

- — Planning controls;
- — Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- — The provision of CCTV surveillance in town centres, taxi ranks, provision of public conveniences open late at night, street cleaning and litter rounds;
- — Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- — The confiscation of alcohol from adults and children in designated areas;
- — Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- — Prosecution for the offence of selling alcohol to a person who is drunk or allowing a sale )
- — Police powers to close down instantly for up to 24 hours ( extendable to 48 hours ) any licensed premises in respect of which a Temporary Event Notice (“TEN”) has effect on grounds of disorder, the likelihood of disorder, or noise emanating from the premises causing a nuisance
  
- — The power of police, other responsible authorities or other persons to seek a review of a licence or certificate, and
- — Early Morning Restriction Orders

3.8 — During the first ten years of this policy, no particular circumstances have arisen and, at the present time, it is not considered that any of this authority’s area warrants consideration of a special policy.

## PART 3

### 4 Principles

- 4.1 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy.
- 4.2 The use of premises for the sale or provision of alcohol, regulated entertainment or late night refreshment is subject to planning control. Such use will require planning permission or must otherwise be lawful under planning legislation. Planning permission is generally required for the establishment of new premises or the change of use of premises.
- 4.3 In line with the S182 Guidance the planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.
- 4.4 Where businesses have indicated, when applying for a licence under the Act, that they have also applied for planning permission or that they intend to do so, the licensing committee and officers will consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 4.5 Where relevant representations are received, any decision on a licence application will not consider whether any decision to grant or refuse planning permission or building consent was lawful and correct. It will take into account what the impact of granting the application will be on the four licensing objectives.
- 4.6 In general, all premises which are the subject of an application, should have the benefit of planning permission, or be deemed permitted development. The onus will be on the applicant to demonstrate that planning permission has been granted or that the premises have the benefit of permitted development rights. Failure to do so may result in representations and the licence being refused or granted subject to conditions which take account of the planning permissions in existence.
- 4.7 In addition, all new developments and premises which have been subject to structural alterations since 1994 will have building control approval in the form of a Building Regulations Completion Certificate. The onus will be on the applicant to demonstrate that any structural alterations have been approved by building control. Failure to do so may result in representations and the licence being refused or granted subject to conditions.
- 4.8 Where premises have not obtained the appropriate consents or licences, they may be liable for enforcement action under the appropriate legislation. There may be

circumstances when as a condition of planning permission; a terminal hour is set for the use of commercial premises. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Licensing applications therefore will not be a re-run of the planning application process and licensing decisions will not cut across decisions taken by the Planning Committee or permissions granted on appeal.

- 4.9 The Licensing Authority shall expect every licence/certificate holder or event organiser to minimise the impact of their activities on the surrounding area and any anti-social behaviour created by their customers in and within the vicinity of their premises by taking appropriate measures and actions consistent with that responsibility. In addressing this matter, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- 4.10 The Licensing Authority may recommend actions as good practice. Applicants are asked to give these recommendations serious consideration as adoption of best practices may be considered in the investigation of complaints if they arise in connection with the premises in the future.
- 4.11 The Licensing Authority, however, recognises that the licensing law is not the primary mechanism for the general control of nuisance, noise or anti-social behaviour particularly once individuals have left the vicinity of the licensed premises and therefore beyond the direct control of the individual, club or business holding the licence or certificate. However licensing controls and targeted enforcement should have a positive impact on the immediate vicinity of the licensed premises.
- 4.12 The Policy is not intended to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators, for example, the Gambling Act 2005, the Equality Act, The Clean Neighbourhoods and Environmental Act 2005, Health and Safety at Work, etc. Act 1974, Environmental Protection Act 1990, the Noise Act 1996 and the Regulatory Reform (Fire Safety) Order 2005, etc.
- 4.13 The Licensing Authority seeks to encourage the provision of a culturally diverse range of regulated entertainment within the district, particularly live music and dance that are accessible to all people.
- 4.14 The Licensing Authority has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises.
- 4.15 In drafting this Policy, the Licensing Authority acknowledges its duty under Section 17 of The Crime and Disorder Act 1998 in that the Council has a duty to exercise its functions with a due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area. In addition the Licensing Authority will seek to support strategies where they are allied to the Licensing Objectives such as National and Local Harm Reduction Strategies and any other relevant strategies and policies.

## 5 Conditions

- 5.1 The Licensing Authority is unable to refuse or impose conditions on applications where no relevant representations have been made. Relevant representations are those which relate to the effect of granting or varying the licence on the four licensing objectives. Where relevant representations have been made, the Licensing Authority will aim to facilitate negotiations/mediation between the applicant and Responsible Authorities and any other person to establish whether mutually agreed amendments to the application can result in the representation being withdrawn. If negotiations/mediation proves unsuccessful the Licensing Authority will convene a hearing and where necessary take steps that are appropriate and proportionate to promote the four licensing objectives. This may result in the grant or refusal of the application or the imposition of conditions.
- 5.2 Where conditions are imposed at a licensing hearing, they shall be appropriate and proportionate and shall be tailored to the size, style, characteristics and activities that take place at the premises concerned. However, the Licensing Authority accepts that Responsible Authorities may suggest conditions following negotiation with the applicant when completing their Operating Schedules.
- 5.3 In addition, conditions imposed by a Licensing Authority shall be precise and enforceable, clear in what they intend to achieve, shall not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation, shall not replicate offences set out in the 2003 Act or other legislation, shall be justifiable and capable of being met and shall focus on matters which are within the control of the individual licence holders and not seek to manage the behaviour of customers once they are beyond the direct management of the licence/certificate holder and their staff.
- 5.4 The Licensing Authority recommends that conditions volunteered in the Operating Schedule should be:
- appropriate for the promotion of the licensing objectives;
  - proportionate and enforceable;
  - consistent and not conflicting;
  - relevant, clear and concise; not duplicate other legislation; and
  - expressed in plain language capable of being understood by those expected to comply with or enforce them.
- 5.5 The Licensing Authority when preparing the licences/certificates will not simply replicate the wording from an applicant's Operating Schedule but will interpret conditions in accordance with the applicant's overall intentions.
- 5.6 Applicants are advised before completing their Operating Schedule to seek guidance on the framework for writing conditions in their Operating Schedules. Guidance is available from the Council.
- 5.7 The Licensing Authority recognises that in accordance with Section 43 of the Regulatory Reform (Fire Safety) Order 2005, any conditions imposed by the Licensing Authority that relate to any requirements or prohibitions that are or could be imposed by that Order, shall have no effect. The Licensing Authority shall therefore not impose fire safety conditions where the Order applies.
- 5.8 In much the same way, the Indecent Displays (Control) Act 1981 prohibits the public display of indecent matter and the Licensing Authority shall therefore not seek to

impose conditions concerning such displays inside or outside the premises. The existing laws governing indecency and obscenity are adequate to control adult entertainment of this nature. However, the Licensing Authority shall, if it considers necessary in certain premises, consider attaching conditions following a hearing addressing the exclusion of minors.

- 5.9 Although it is accepted that licence conditions should not duplicate other statutory provisions, the Licensing Authority and licensees should be mindful of the requirements and responsibilities placed on them by other legislation.
- 5.10 Whilst the Licensing Authority encourages cultural activities and live music within the district it is also aware of the need to avoid measures that will deter live music when determining what conditions should be placed on licences/certificates, particularly those conditions that impose costs of a disproportionate nature. However, any adverse environmental impact that may arise from individual applications will also be taken into account when considering such applications. With regard to dancing, the Licensing Authority acknowledges the changes set out in the Policing & Crime Act 2009 related to lap dancing clubs and their re-classification as sexual entertainment venues.
- 5.11 With reference to the Protection of Children from Harm Licensing Objective, those conditions relating to the admission of children to any premises remain a matter for the individual licensee or club or person who has given a Temporary Event Notice (TEN). Venue operators may however volunteer prohibitions or restrictions in their Operating Schedules.
- 5.12 All relevant representations will be considered during the decision making process unless they are considered to be frivolous, vexatious, repetitious, or not in line with the four Licensing Objectives.
- 5.13 The Glossary at the back of this Policy sets out the licensable activities and relevant definitions surrounding the licensing process. If any member of the public is uncertain as to whether or not they require a licence or certificate they should contact Licensing Team, Selby District Council, Civic Centre, Doncaster Road, Selby, YO8 9FT or e-mail the Licensing Authority on; [licensing@selby.gov.uk](mailto:licensing@selby.gov.uk).

## **6 Licensing Hours**

- 6.1 With regard to licensing hours, when the Licensing Authority's discretion is engaged, it will consider each application on its own merit and shall not seek to impose predetermined licensed hours. Where there are no objections to those hours raised by Responsible Authorities or other persons on the basis of the promotion of the licensing objectives, the Licensing Authority will have no discretion but to grant the hours requested.
- 6.2 With regard to shops, stores and supermarkets, the Licensing Authority shall normally expect such premises to provide sales of alcohol for consumption off the premises at any time when the retail outlet is open for shopping unless representations raise reasons for restricting those hours, based on the licensing objectives.
- 6.3 The Licensing Authority recognises that in some circumstances flexible licensing hours for the sale of alcohol may help to ensure that concentrations of customers leaving premises simultaneously are avoided.



## 7 Early Morning Restriction Orders

- 7.1 The power conferred to licensing authorities to make, vary or revoke an Early Morning Restriction Order (“EMRO”) is set out in sections 172A to 172E of the Act. This power came into force on 31 October 2012 and the Government provided guidance as part of the S182 Guidance to Licensing Authorities. Police Reform and Social Responsibility Act 2011 (“the PRSR Act”). This gives the Licensing Authority the discretion to restrict sales of alcohol in the whole or part of their area by introducing an Early Morning Restriction Order (“EMRO”) to restrict the sale or supply of alcohol between the hours of midnight and 6am to tackle high levels of alcohol-related crime and disorder, nuisance and anti-social behaviour.
- 7.2 The decision to implement an EMRO must be evidence based and the Licensing Authority must be satisfied that such an Order would be appropriate to promote the licensing objectives. Furthermore, the Licensing Authority shall consider the potential burden that would be imposed on premises licence/certificate holders.
- 7.3 As an EMRO is a powerful tool and a very stringent approach in tackling issues, the Licensing Authority will first consider whether other measures may address the problems and achieve the same goal. These could include:
- The use of a Cumulative Impact Policy ( see Part 2 point 3 );
  - Taking a robust joint agency approach to tackling problem premises;
  - Prior to reviewing a licence/certificate, meeting with the DPS and licence/certificate holder to ensure a Premises Improvement Plan is in place
  - Where this fails, reviewing Premises Licences/Certificates by the North Yorkshire Police or other Responsible Authorities;
  - Using other mechanisms to control the cumulative impact, e.g. planning controls;
  - Using other mechanisms to control noise and anti-social behaviour;
  - Using Closure Notices and Closure Orders;
  - Providing powers to designate parts of the local authority area as places where alcohol may not be consumed publicly;
  - Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
  - Provision of CCTV;
  - Provision of night marshals and street angels, introduction of a late night levy;
  - Reviews and Expedited Reviews of individual premises, etc.
- 7.4 The Licensing Authority would periodically review any active EMROs in order to ensure that it continues to be appropriate for the promotion of the licensing objectives. The applicant may be required to periodically submit evidence as part of this process to demonstrate that the EMRO is appropriate and achieving the goals and confirming that these cannot be achieved by alternative methods.

## 8 Late Night Levy

- 8.1 The Police Reform and Social Responsibility RSR Act 2011 (“the PRSR Act”) has also introduced the power for the Licensing Authority to charge a late night levy (“the levy”) to all premises within Selby District. The late night levy is a discretionary power allowing Councils to collect an annual fee from all licensed premises in the District that are authorised to sell alcohol between the hours of midnight and 6am as a means of raising a contribution towards the costs of policing the night time economy. The decision to introduce, vary or cease the levy will be made by full Council in conjunction with the Police and Crime Commissioner and North Yorkshire Police.

However, any decision in relation to the administration and design of the levy will be delegated to the Licensing Committee.

## **9 Representations**

- 9.1 Under the 2003 Act both Responsible Authorities and ‘other persons’ may make representations on licence/certificate applications and review existing premises licences/certificates. A list of Responsible Authorities can be found at Appendix 3.
- 9.2 ‘Other persons’ is defined as any individual, body or business that may be affected by the operation of a licensed premises regardless of their geographical location. Although the other person may be in any geographical location, any representation they make must be relevant to one or more of the licensing objectives. In addition the other person is encouraged to provide evidence supporting their representation or review. This may be for example by way of recording dates where noise nuisance or anti-social behaviour occurs. Any representation however must be specific to the premises in question and not to the area in general.
- 9.3 In addition all representations must be relevant relating to the likely effect of the grant of the licence/certificate on the promotion of at least one of the licensing objectives. The Licensing Authority will determine whether a representation from an individual, body or business is relevant, frivolous, repetitive or vexatious. In borderline cases, the benefit of the doubt will be given to the person or body making that representation.
- 9.4 Any person aggrieved by a rejection of their representation may lodge a complaint through the Council’s complaints procedure or alternatively by way of judicial review.

## **10 Reviews**

- 10.1 Responsible Authorities and other persons may apply to review a licence or certificate where it is believed an operator of a licensed premises is in their opinion managing their business in a manner that does not promote one or more of the four Licensing Objectives.
- 10.2 Examples of triggers for a review may be: continual complaints of noise from or in the vicinity of the premises; continual complaints of noise or intimidation from customers outside the premises; an accumulation of breaches of licensing conditions; poor management where the licensing objectives are undermined; underage sales of alcohol (persistent or otherwise); crime-related activity; anti-social behaviour; sales of alcohol outside of the permitted hours. This list is not exhaustive
- 10.3 Where an application for a review has been submitted the Licensing Authority will determine whether or not it is relevant, frivolous, vexatious or repetitive. In borderline cases the benefit of the doubt will be given to the person making that application. Advice on reviews is available from the Council.
- 10.4 The Licensing Authority will expect applicants for a review to gather sufficient and relevant evidence relating to the specific premises that is subject to the review. This may include a diary of events and any potential witnesses. With regard to reviews on noise complaints, applicants are encouraged to liaise with the Council’s Environmental Protection team who may be able to assist with and support the review process.

- 10.5 Prior to a requesting a review, however, North Yorkshire Police, other Responsible Authorities or the Licensing Authority may seek to meet with the licence/certificate holder to address issues through a premises improvement plan.

## 11 Licensing Authority as a Responsible Authority

- 11.1 The PRSR Act amended the 2003 Act to include the Licensing Authority as a Responsible Authority. This Licensing Authority will therefore be empowered to fulfil the same functions as other Responsible Authorities under the 2003 Act including making relevant representations to new licence/certificate applications and variations and reviewing an existing licence/certificate.
- 11.2 The Licensing Authority will however not normally act on behalf of other parties (e.g. local residents, councillors or community groups) as such parties may make relevant representations in their own right. However, if these parties fail to make such representations and the Licensing Authority is aware of relevant grounds to make a representation, it may in these circumstances choose to act in its capacity as a Responsible Authority.
- 11.3 However, the Licensing Authority expects other Responsible Authorities to intervene where the basis for that intervention falls within the remit of that particular Responsible Authority. The Licensing Authority recognises that each Responsible Authority has equal standing under the 2003 Act and they may act independently without waiting for representations from any other Responsible Authority.
- 11.4 In cases where the Licensing Authority is also acting in its capacity as a Responsible Authority it will ensure that there is a separation of responsibilities within the Council to ensure procedural fairness and eliminate conflict of interests. Officers within the Enforcement Section have been delegated to act as the Responsible Authority for the Licensing Authority. Any Officer requesting a Review shall not be involved in administering the review application process. Indeed, a separate Enforcement Officer will receive and process these applications including preparing any report for the Licensing Committee. Communications between both Officers shall remain formal and separate throughout the process. Thus a separation will be achieved by allocating distinct functions to different Officers. Essentially, the Enforcement Officer advising the Licensing Sub Committee shall be different from the officer who is acting as the Responsible Authority.

## 12 Health as a Responsible Authority

- 12.1 The PRSR Act has also introduced first-tier local authority Directors of Public Health from April 2013 or their equivalent as Responsible Authorities. It is expected that this Responsible Authority may be useful in providing evidence of alcohol-related health issues if the Council was considering either a cumulative impact policy or an early morning restriction order for example.
- 12.2 The local contact for this Responsible Authority is included in the list of Responsible Authorities at [Appendix 3](#) ~~the rear~~ of this Policy.
- 12.3 Health in North Yorkshire
- Increasing risk and higher risk drinking in North Yorkshire to be estimated at 25.7%, higher than the national average of 23.6%
  - alcohol related hospital admissions are increasing year on year;

- nearly 200 people per annum die in the county as a result of alcohol.
- 12.4 There has also been a long-term increase in the proportion of alcohol purchased from off-license outlets and consumed at home rather than in pubs and bars. This change in drinking patterns is largely driven by low cost alcohol available from the off trade. The Licensing Authority has ensured that the policy recognises this shift in drinking patterns.
- 12.5 The Authority supports the North Yorkshire Alcohol Strategy and will, where possible, work in partnership for dealing with both actual and potential harms from alcohol.

### **13 Live Music Act**

- 13.1 Due to the introduction of the Live Music Act 2012 the public performance of live amplified and unamplified music between the hours of 08:00 and 23:00 on premises licensed for the supply of alcohol on any day when alcohol is being supplied under the licence and the audience is no more than 500 persons is no longer a licensable activity. Any existing licence/certificate conditions relating to live music remain in place but are suspended between these hours. However, the Licensing Authority may impose new, or reinstate existing conditions, following a review of the premises licence or club premises certificate.
- 13.2 Throughout this Policy the Licensing Authority recognises that the definition of regulated entertainment is determined by central Government and may be subject to change.
- 13.3 When considering whether an activity constitutes the provision of regulated entertainment each case will be treated on its own merit. Live music is a performance of live music in the presence of an audience that it is intended to entertain. Live music for example can include the playing of some recorded music and may be part of the performance of amplified live music. As there will inevitably be a degree of judgement as to whether a performance is live music or not organisers of events are encouraged to consult with the Licensing Authority if in doubt.

### **14 Minor Variations**

- 14.1 Minor variations generally fall into four categories: minor changes to the structure or layout of premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions. In all cases the Licensing Authority will consider whether the proposed variation would adversely impact on any of the four licensing objectives.
- 14.2 In considering applications the Licensing Authority will consult relevant Responsible Authorities if there is any doubt about the impact of the variation on the licensing objectives and take their views into account when reaching a decision.

### **15 Sexual Entertainment Venues (SEVs)**

- 15.1 Where an operator seeks to provide activities that include striptease or any other kind of nudity or sexual entertainment (for example, lap dancing clubs or topless waitresses), an application will need to be submitted for a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 as

amended by the Policing and Crime Act 2009. However, it is recognised that there is an exception that allows premises to provide sexual entertainment no more than 11 times per year and no more frequently than monthly. Where this exemption is exercised and concerns are identified with a licensed premises this may lead to a review of the premises licence and the imposition of any relevant conditions.

## 16 Children

- 16.1 With regard to the Protection of Children from Harm licensing objective, the Licensing Authority and this Policy recognises The Director of Children and Young People's Services at North Yorkshire County Council as the Responsible Authority competent to act in relation to this licensing objective. The Licensing Authority will give considerable weight to representations on child protection matters.
- 16.2 The Licensing Authority shall not seek to limit the access of children to any licensed premises unless it is necessary for the prevention of physical, moral or psychological harm. In all other cases it will be left to the discretion of the Licensee but the Licensing Authority shall expect that the licensee shall give full consideration of access by children at all times and ensure that there is a policy in place to promote this licensing objective.

The Guidance gives a range of alternatives which may be considered for limiting the access of children where that is appropriate for the prevention of harm to children.

Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:

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

Conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is appropriate, this should remain a matter for the discretion of the individual licence holder, club or premises user.

- 16.3 Where there are concerns with regard to access of children the Licensing Authority will consult the Director of Children and Young People's Services. However, where the Licensing Authority's discretion is engaged it will judge the merits of each application before deciding whether or not to impose conditions limiting the access of children.
- 16.4 The following are examples of premises that are likely to raise concern and engage the Licensing Authority as a Responsible Authority to take action:
- Where entertainment or services of an adult or sexual nature are common thereby likely to undermine the Licensing objectives;
  - Where relevant premises are known to allow unaccompanied children;

- Where the applicant has described in the Operating Schedule that ‘*no adult or similar entertainment shall take place on the premises*’ but intends to hold an event liable to compromise the protection of children from harm licensing objective;
  - Where there has been early indication and subsequent evidence of poor management of the premises leading to undermining of the licensing objectives;
  - Where the premises have a known association with drug taking or dealing;
  - Where the current staff have received convictions or cautions for serving alcohol to minors or where the premises has a reputation for underage drinking or failures in test purchasing;
  - Where there is a strong element of gambling on the premises;
  - Where there is likely to be under age events with the intention of selling or exposing alcohol for sale or where the intention is to permit adults to this event;
  - Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.
- 16.5 Examples of entertainment likely to cause concern are entertainment or services of an adult or sexual nature including topless bar staff, striptease, lap, table or pole dancing, performances involving feigned violence or entertainment involving strong or offensive language.
- 16.6 Where there are events solely provided for children, for example an Under 18’s disco in a public house or similar relevant premises, the Licensing Authority strongly advises that no alcohol is served at such events and for the management of the premises to ensure that measures are in place to prevent sales to under aged persons. In addition, it is recommended that measures should be in place to prevent alcohol being brought onto those premises and to prevent under aged persons leaving and returning to the premises in order to consume alcohol in the vicinity of the premises.
- 16.7 In particular, the Licensing Authority will consider what conditions are offered in the Operating Schedule. The applicant in completing the Operating Schedule is required to describe the steps they intend to take to promote this Licensing Objective and highlight any adult entertainment or services, etc. that may give rise to concern in respect of children. However, where the applicant does not state the steps they intend to take to promote this Objective but does state that “*no adult or similar entertainment shall take place on the premises*”, the Licensing Authority shall consider that this restriction to be a condition on the Licence/certificate even though it may not state it on the Licence/Certificate itself.
- 16.8 The 2003 Act as amended by the Policing & Crime Act 2009 has introduced a number of mandatory conditions. One of these conditions provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with the recommendations given either by the British Board of Film Classification (“the BBFC”) or by the Licensing Authority itself. The Licensing Authority has a procedure in place for the approval of unclassified films that includes conditions relating to the admission of children. In adopting these procedures the Licensing Authority supports the BBFC Guidelines and shall not seek to duplicate the BBFC’s recommendations. The Film Authorisation Procedure is available from Council. Any changes to these procedures are not considered changes to this Policy and as such any amendment to these procedures will not necessitate a review of the Licensing Policy.

## PART 4

### 17 Licences & Certificates – General

- 17.1 New applicants and existing licence/certificate holders are encouraged to take heed of the information contained within this Policy. In order to avoid potential representations which generally delay an application, the Licensing Authority strongly recommends that prior to submitting their application applicants consult all Responsible Authorities, in particular North Yorkshire Police and the Environmental Protection team. In some cases, it may be advisable to consult ‘other persons’ as defined in the 2003 Act, for example a Town or Parish Council or neighbouring properties.
- 17.2 The Premises Licence/Certificate application outlines the operating conditions and the Operating Schedule that will form the basis of conditions that will be attached to the Licence/Certificate. The Licensing Authority shall expect the applicant to have carefully considered the promotion of all four Licensing Objectives in their Operating Schedule.
- 17.3 The Licensing Authority recognises that large-scale events may attract large crowds and the risks to public safety, crime and disorder and public nuisance are likely to increase with these numbers. Event organisers are recommended to consult with Responsible Authorities and the Safety Advisory Group in good time to discuss the Operating Schedule and any potential issues well before an application is submitted.
- 17.4 Where a festival, carnival or similar event requiring a Premises Licence or Temporary Event Notice is due to take place, the event organiser and/or landowner are recommended to consult with Responsible Authorities and the Safety Advisory Group in good time to discuss any potential issues.

### 18 Immigration Matters

- 18.1 The commencement of the Immigration Act 2016 made it a requirement for licensing authorities to be satisfied that an applicant has the right to work in the UK. An application made by someone who is not entitled to work in the UK must be rejected.
- 18.2 Licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from doing work relating to the carrying on of a licensable activity.
- 18.3 A premises or personal licence issued in respect of an application made on or after 6 April 2017 will lapse if the holders permission to live or work in the UK comes to an end.

The licensing authority will have regard to any guidance issued by the Home Office in relation to the immigration related provisions now contained in the 2003 Act

Immigration offences, including civil penalties, are ‘relevant offences’ as defined by the 2003 Act;

## **19 Deregulation of Entertainment**

**19.1 The Legislative Reform (Entertainment Licensing) Orders 2014 and Deregulation Act 2015 deregulated some of the licensable activities under the 2003 Act in addition to the deregulation created by the Live Music Act 2012.**

**19.2 Some of the activities which may no longer require authorisation are:**

- Exhibitions of films where they are incidental to another activity which is exempt from licensing.
- 'Not-for-profit' film exhibitions between 08:00 and 23:00 on any day held in community premises provided that the audience size is no more than 500 and the organiser gets consent from the person who is responsible for the premises and ensures that age classification ratings are complied with.
- A performance of amplified live music or playing of recorded music between 08:00 and 23:00 on any day in a church hall, community hall, or other similar community premises, that is not licensed to sell alcohol, provided that the audience size is no more than 500 and the organiser gets consent from the person responsible for the premises.
- A performance of amplified live music or playing of recorded music between 08:00 and 23:00 on any day at the non-residential premises of a local authority, a school or a hospital provided that the audience size is no more than 500 and the organiser gets consent from the local authority or the school or the health care provider for the hospital.

## **2048 Wholesale Sales of Alcohol**

**2048.1** All sales of alcohol to members of the public, even in wholesale quantities, from any premises will require an authorisation. Any premises from which alcohol is supplied or sold will require either a premises licence, a club premises certificate or temporary event notice. There will need to be a designated premises supervisor for the premises if the authorisation is in the form of a premises licence.

**2048.2** Sales made to other traders for the purposes of their trade will not be a licensable activity. Similarly, sales made to holders of premises licences, club premises certificates or personal licences will not be a licensable activity if the sale is for the purposes authorised by the premises licence or for the purposes of the qualifying club. Also exempt will be when alcohol is sold wholesale to premises users operating under a temporary event notice

## **2149 Mail Order supply of alcohol**

**2149.1** Where alcohol is sold to the public by mail order the premises or warehouse from which the alcohol is dispatched will require a licence.

## **220 Garages**



- | **220.1** With regard to the licensing of garages and/or filling stations Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises that are primarily used as a garage. The Licensing Authority must decide whether or not a premises is used primarily as a garage. The accepted approach is based on “intensity of use” to establish “primary use”. For this reason, the Licensing Authority will expect an applicant to provide comprehensive statistical information with their application on the intensity of use to establish primary use.
- | **220.2** Where there is insufficient evidence to establish primary use (e.g. where there is a new build) the Licensing Authority shall decide whether to deal with any issues through enforcement action after the licence is granted or defer granting the licence until the primary use issue can be established to the Licensing Authority’s satisfaction. R (Murco Petroleum Limited) v Bristol City Council 2010 addresses the issue of Licensing Authority’s compelling applicants to answer questions and to supply relative turnover figures if requested to do so. The Licensing Authority’s role is not merely adjudicatory; it may also take a more inquisitorial stance.
- | **220.3** In order to promote the four Licensing Objectives, the Licensing Authority may consider seeking Premises Licences for land or buildings under public ownership within the district. The Local Authority will seek to encourage and promote festivals, carnivals and similar events in the district to provide a more vibrant community.
- | **220.4** In addition, the Licensing Authority encourages local Town and Parish Councils to seek Premises Licences for land or buildings under public ownership within the community.

### | **234 Late Night Refreshment**

- | **234.1** It is recognised that the provision of late night refreshment forms an important part of the district’s late night economy. As such where late night refreshment is provided between the hours of 11pm and 5am applicants must demonstrate in their Operating Schedule how they will promote the four Licensing Objectives, particularly with regard to the Prevention of Crime and Disorder and the Public Nuisance Licensing Objectives.
- | **234.2** Where an applicant wishes to sell alcohol either on or off the premises in such an establishment or provide an alcohol delivery service, the Licensing Authority recommends that the Operating Schedule sets out specific measures to ensure the prevention of Crime and Disorder and Public Nuisance in the vicinity of the premises. Existing premises that seek to provide an alcohol delivery service are expected to notify the Licensing Authority that they are operating such a service setting out specific measures they intend to take to promote the licensing objectives.
- | **234.3** Where a delivery service is operated from these premises extra care must be taken by the operator with regard to compliance/breach of licensing hours. For example, a pizza order must be capable of reaching the customer at the delivery address by no later than the end of the permitted hours.
- | **234.4** The Licensing Authority recommends takeaways and late night refreshment houses have a responsible policy for regularly clearing litter from outside their premises whilst the premises are open and at the end of the working day. Such a policy could also include notices displayed advising customers to use the bins provided.

### | **242 Mobile Premises**

- | **242.1** Where licensable activities take place in mobile vehicles, a Premises Licence will be required for the land upon which the vehicle operates. The application must specify the pitch from where trading is to take place. The premises licence will be in addition to any street trading licence or consent that may be required. Where a street trading licence or consent is in force it may have more onerous conditions than the premises licence in which case the licensee will be expected to abide by the more onerous conditions.
- | **242.2** As this type of premises is likely to cause people to congregate, the Licensing Authority will expect applicants to demonstrate specific measures to prevent Crime and Disorder, prevent Public Nuisance and promote Public Safety.
- | **242.3** In addition, the Licensing Authority shall expect the applicant to consider specific measures to ensure that litter from such premises is regularly disposed of.

### | **253 Gaming Machines**

- | **253.1** Where licensed premises intend to provide more than two Category C or D gaming machines, the Licensing Authority will hold a licensing hearing to determine the application for an alcohol-licensed premises gaming machine permit.
- | **253.2** Compliance within the Gambling Commission's Codes of Practice relating to gaming machines on licensed premises is mandatory.

## **PART 5**

### | **264 Personal Licences**

- | **264.1** Where a Premises Licence authorises the supply of alcohol, every supply of alcohol must be made or authorised by a Personal Licence Holder. Whilst this does not mean that the Personal Licence Holder must be present at every sale of alcohol or directly supervise each sale, authorisation should be meaningful and properly managed.
- | **264.2** The Licensing Authority advises that it is good practice for the Personal Licence holder to give specific written and dated authorisation to individuals to demonstrate due diligence. Whilst the Designated Premises Supervisor ("the DPS") and Personal Licence Holder may authorise sales in their absence, they still remain responsible for those sales. Similarly, the Premises Licence Holder also remains responsible for ensuring that the licensing law and conditions are complied with at that premises.
- | **264.3** Where a community premises applies for an exemption from the requirement to have a DPS, the Licensing Authority must be satisfied that arrangements for the management of the premises by their Committee or Board of individuals are sufficient to ensure the adequate supervision of the supply of alcohol on the premises. The applicant will be required to set out how the premises is managed, its committee structure and how the supervision of alcohol sales are conducted. Copies of the Constitution and other management documents must be submitted. The management committee is strongly encouraged to notify the Licensing Authority if there are any key changes in the committee's composition as this committee will collectively be responsible for ensuring compliance with licence conditions and licensing law. Where management

arrangements are unclear, the Licensing Authority may seek further details to confirm that the management board or committee is properly constituted and accountable. While overall responsibility lies with the management committee where premises are hired out, the hirer will be clearly identified as having responsibilities falling within their control. Community premises are encouraged to check with the Licensing Authority before making any application.

- | 264.4 Where a Premises Licence is in force authorising the supply of alcohol, a DPS will need to be nominated. The main purpose of the DPS is to ensure that there is always one specified individual who can be readily identified by Responsible Authorities as the individual who has day-to-day responsibility for running the business and who can therefore ensure that any problems are dealt with swiftly. As such the DPS will occupy a pivotal position. Experience has proved that in some cases the Premises Licence Holder has employed a DPS who is remote from the premises and therefore not involved in the day-to-day running of that premises. In these cases where there is no individual readily identifiable by Responsible Authorities, the Licensing Authority will therefore pay particular attention to those premises where the DPS is remote and not the person responsible for the daily running of the premises.
  
- | 264.5 Whilst the Licensing Authority recognises that a DPS may supervise more than one premises, the DPS must be able to ensure that the four Licensing Objectives are promoted and that the licensing law and licensing conditions are complied with. Where the DPS is not available at the premises for whatever reason, the Licensing Authority recommends a responsible individual is nominated who can deal with matters in the absence of the DPS. In addition, the Licensing Authority recommends that a notice is displayed prominently indicating the name and position of that nominated person. Whenever alcohol is to be sold it is recommended that written and dated consent be given to that nominated person.
  
- | 264.6 Applicants for Personal Licences with relevant unspent criminal convictions are required to notify the Licensing Authority of the nature of those convictions upon application. In such cases, the Licensing Authority will advise North Yorkshire Police and, where an objection is received on crime prevention grounds, a hearing will be held to determine whether or not a licence should be granted.
  
- | 264.7 Where a Personal Licence holder appears before a magistrates' court for a relevant offence, the Licence holder must produce his licence to the court at the first hearing or provide the court with a valid reason why they are unable to produce that licence. The magistrates and/or the crown court will then decide on what action, if any, to take.
  
- | 264.8 Where an applicant for a Personal Licence is convicted of a relevant offence as listed in the Licensing Act 2003, the applicant is required to advise the Licensing Authority as soon as is reasonably practicable so that the Licence can be amended.
  
- | 264.9 Experience has indicated that a number of Personal Licence Holders have failed to produce their Personal Licence to the court in accordance with Section 128 of the 2003 Act. The Licensing Authority views this at best as negligent and at worst placing the public at risk as some of the offences have been serious. In view of this the Licensing Authority will take appropriate action against those who continue to fail to notify the courts and provide notification of their change of address in accordance with their statutory duty.
  
- | 264.10 All offences under the Licensing Act 2003 are considered summary offences that normally have to be prosecuted within 6 months of the offence. However, by virtue of

Section 186(3) the time limit for the laying of information has been extended from 6 months to 12 months from the date of the offence.

## PART 6

### 275 Temporary Event Notices

- | 275.1 The Licensing Act 2003 provides for a light touch authorisation by way of a TEN under which any person (the premises user) may submit a notification to the Licensing Authority to conduct licensable activities on a temporary basis.
- | 275.2 A TEN may be given for part of a building such as a single room within a village hall, a plot within a larger area of land or a discrete area within a marquee, as long as the Notice clearly describes the area where the event is to be held.
- | 275.3 Although premises users are not required to be on the premises for the event, they will remain liable for any offences that may be committed at the premises whilst the TEN is in place.
- | 275.4 As a TEN does not relieve the premises user from any requirements under other regulatory regimes, the Licensing Authority recommends the user contact the Planning Authority, Highways and any other relevant authority well in advance of the event to ensure any other permissions are in place.
- | 275.5 It is strongly recommended to avoid the potential of police objections to contact the North Yorkshire Police Licensing Officer and the Environmental Protection Team prior to the submission of the TEN and outline any measures in place to promote the Crime and Disorder and Prevention of Public Nuisance Licensing Objectives.
- | 275.6 For larger scale or outdoor events, the Licensing Authority encourages event organisers to seek advice from the Safety Advisory Group in advance of submitting their application. The group will be able to offer local advice on other legislative requirements, such as health and safety issues, road closures, the use of pyrotechnics, local byelaws, etc. along with the need to prevent anti-social behaviour.
- | 275.7 The Licensing Authority accepts that there is now a provision for a late TEN to be submitted. These must be received no later than 5 working days (not including the date of receipt of the notice or the date of the event) prior to the event. If objections are received to a late TEN a Counter Notice will be issued and the event will not be allowed to take place.
- | 275.8 Event organisers are advised to submit their TEN to The Police Licensing Officer, North Yorkshire Police Headquarters, The Licensing Section, Fulford Road, York, YO10 4BY In addition, event organisers are advised to submit their application to the Licensing Authority and the Environmental Protection Team on a weekday and in any event before 12 midday on a Friday in order to ensure a quick, efficient and timely response.
- | 275.9 Temporary Event Organisers are advised to submit their TENS well before the date of the event and in any event, must submit their notifications to the Licensing Authority in accordance with the number of working days currently specified in Regulations. When serving notices, organisers should serve the notice on the Licensing Authority, Police and Environmental Health at the same time. This then ensures that the Responsible Authorities have sufficient opportunity to consider the notice in line with

the Prevention of Crime and Disorder and Prevention of Public Nuisance Licensing Objectives.

- | **275.10** It is a legal requirement for all organisers to assess the Health and Safety and Fire Risk associated with their event and document any significant findings. Guidance on how to conduct such risk assessments may be obtained from the relevant enforcing authority. In any event, the Licensing Authority will notify the Fire Authority of all TENS submitted so that they can offer advice to event organisers if necessary. Members of the Safety Advisory Group will also be notified of all TENS for similar reasons. Organisers are recommended to give thought to the provision of first aid at such events. It should be noted that if the Fire Authority is of the opinion that the use of premises/venue involves, or will involve, a risk to relevant persons so serious, including anything affecting their escape from the premises in the event of fire, the Fire Authority may prohibit or restrict premises use without notice.
- | **275.11** Event organisers are reminded of Police powers to close down events without notice, on the grounds of disorder, the likelihood of disorder, or public nuisance. The Licensing Authority, therefore, expects organisers to be aware of the relevant offences under the Licensing Act 2003, for example, sales of alcohol to children or to drunken individuals. Event organisers are advised to contact the Licensing Authority for further advice.

## PART 7

### | **286 Club Premises Certificate**

- | **286.1** In order for a qualifying club to supply alcohol and provide other licensable activities on Club premises, a Club Premises Certificate is required. Qualifying conditions are specified in section 62 of the 2003 Act and the Licensing Authority must be satisfied that these conditions have been met, including evidence to support the fact that the Club is non-profit making. Additional information is available from the Council and in Guidance Notes.
- | **286.2** The Licensing Authority will require the Club to produce an Operating Schedule evidencing how it will promote the four Licensing Objectives. The Operating Schedule will form part of the Club Premises Certificate.
- | **286.3** Where a Club intends to open its premises to the general public, the Licensing Authority recommends a Temporary Event Notice or Premises Licence. Whilst there is no definition of 'guest' within the Licensing Act 2003, the term may include a wide variety of people who are invited by the Club. The manner in which they are admitted as 'guests' would be for the Club to determine and set out in its Club Rules. Where the point is reached that a Club is providing commercial services to the public it will no longer be considered to be conducted in good faith and would therefore no longer meet General Condition 3 in Section 62 of the Licensing Act 2003. Where the Licensing Authority considers a club has ceased to operate in good faith, it will give the Club notice withdrawing their Club Premises Certificate. The Club shall be entitled to appeal this decision and where the appeal is not successful; the Club will be required to apply for a full Premises Licence.
- | **286.4** The Licensing Authority will require the Club Secretary's contact details to be readily available in the event of an emergency.

## PART 8

### 297 Operating Schedule

- 297.1 The Operating Schedule is a key part of the application form whereby applicants may volunteer appropriate conditions to demonstrate compliance of the licensing objectives by describing the steps they intend to take to promote these objectives. These volunteered conditions will then form conditions on the Premises Licence or Certificate. In completing an Operating Schedule, applicants are expected to have regard to this Policy.
- 297.2 The Licensing Authority encourages applicants and existing operators to plan ahead to meet their legal responsibilities under the Equality Act 2010. In addition, applicants are expected to include positive proposals in their Operating Schedule on how they will manage any potential risks. Where their operation is within a cumulative impact area, they will be expected to demonstrate how the operation of their premises will not add to the cumulative impact already being experienced in that area.
- 297.3 Premises Licence and Club Premises Certificate applicants may wish to refer to their Fire Safety and Health and Safety risk assessments that they will have conducted. Applicants are advised to seek the views of professional experts in relation to the preparation of these risk assessments. Where a maximum occupancy is set, applicants are advised to have an appropriate method in place to monitor the numbers of people entering and exiting the premises.
- 299.4 In completing their Operating Schedule the Licensing Authority suggest an applicant considers the following:

#### General

- Premises log book
- Management and staff training and awareness of duties under the Licensing Act
- Policies and procedures relating to e.g. age restricted sales, capacity, noise monitoring, dispersal, queuing, etc
- Safe capacities
- Evidence of competent management procedures

#### Prevention of Crime and Disorder

- Drugs policy
- CCTV
- Pub Watch and Radio links with other licensed premises
- Security Industry Authority Door supervisors and Approved Contractor Scheme
- Polycarbonate or shatterproof vessels
- An appropriate ratio of tables and chairs to customers
- Management of outside areas
- Use of 'spikeys' or similar anti-drink spiking device
- Calming atmosphere at close of business/event
- Safe capacities
- Queuing policy
- Stewards for events and events

### Public Safety

- Health and Safety and Fire Safety risk assessments and staff training
- Safeguarding measures
- Use of CCTV in and around the premises
- Safe capacities and monitoring procedures
- Provision of local taxi companies who can provide safe transportation home
- Procedures to control access to and egress from premises
- Patrolling of premises
- Glass clearance policy
- Control of ventilation
- Control of litter immediately outside the premises
- First aid trained staff
- Adequate external lighting
- Consideration of the safety of performers appearing at any premises
- Indoor sporting events: medical practitioner; use flame retardant material, proximity of public to the activity; water sports events – lifeguards
- Stewards for events and event plan; and regard to standards of the National Sporting Body
- Ensuring appropriate access for emergency services

### Prevention of Public Nuisance

- Control of general noise, disturbance, light, odour, litter and anti-social behaviour
- Whilst regulated entertainment is taking place, management of noise disturbance
- Control of litter (e.g. cigarette ends, rubbish, etc), vomiting, urinating and anti-social behaviour in the vicinity of the premises
- Dispersal policy to ensure customers respect their neighbours
- Removal of persons causing disturbance
- Management of outside areas, e.g. pub gardens, smokers, etc.
- Control of deliveries in early hours
- Queuing policy
- Winding down period

### Protection of Children from Harm

- Refusals book
- Consideration of access to premises where adult entertainment may take place
- Consideration to proximity of premises to schools and youth clubs
- Clarity on activities and times at which events take place to determine whether or not it is appropriate to allow access to children
- Challenge 21 policy
- tills prompts at retail outlets
- Measures to control access to hotel minibars in rooms occupied by children
- Operational measures to avoid proxy purchases
- How to prevent children from being exposed to alcohol sales at under age events, gambling, incidents of violence and disorder and drugs or drug taking
- Consideration of safeguarding issues
- Consideration of children as performers where relevant
- Supervision of children
- Under 18 event Code of Conduct, for example: searches, ticketed event, door supervisors, stewards monitoring event, set hours for event, restricted event, policy to ensure young people leave premises safely, etc.

| 297.5 These lists are not exhaustive and advice can be obtained from the relevant responsible authorities. However, applicants are reminded again to contact the

relevant Responsible Authorities to seek their expert advice before an application is submitted to the Licensing Authority.

297.6 Where an applicant is a vessel, the Licensing Authority strongly recommends advice be sought from the Maritime & Coastguard Agency prior to submitting the application form. This Agency will offer advice on the safety of passengers aboard the vessel.

29.7 Where a premises plans to hold a large event, the event organiser should contact the Safety Advisory Group in the first instance, which is co-ordinated by the Local Authority and made up of representatives from the Local Authority, emergency services and relevant bodies. This is a forum for discussing and advising on public safety at an event. They aim to help organisers with the planning, and management of the event and to encourage cooperation and coordination between the relevant agencies. Please contact: [sag@selby.gov.uk](mailto:sag@selby.gov.uk)

## PART 9

### **3028 Enforcement**

3028.1 With regard to enforcement action the Licensing Authority will take a stepped approach to enforcement in line with the Enforcement Policy.

3028.2 The Licensing Authority will use a multi-agency approach to ensure the premises complies with the licensing laws and promotes the licensing objectives. This includes the sharing of relevant information about premises and licence holders and may include making copies of all written correspondence between the Licensing Authority and the licence holder available to Responsible Authorities

3028.3 The Licensing Authority may seek to meet with the licence or certificate holder and/or DPS working closely with them and relevant Responsible Authorities in implementing a Premises Improvement Plan as an alternative to formal action where appropriate.

3028.4 Where the premises does not comply with an agreed Improvement Plan and continues to breach the licensing laws and/or licence conditions, the Licensing Authority will consider further sanctions, either by way of a review, formal caution, prosecution or serving of a s19 Closure Notice, under the Anti-Social Behaviour Crime and Policing Act 2014. Should a magistrate issue a closure order the police or the Council's public protection section may request a review of the licence. In any event, the Licensing Authority will have regard to the Regulators' Code and the Enforcement Concordat together with the Council's own Enforcement Policy.

3028.5 However, where the premises continues to flout the law, act irresponsibly, or serious issues are identified firm action will be taken that may include immediate prosecution, particularly where the licensing objectives have been undermined.

3028.6 Enforcement action will be:

- Targeted toward those premises presenting the highest risk;
- Proportionate to the nature and seriousness of the risk those premises present;
- Consistent, so that the Licensing Authority takes similar approaches in similar situations;



- Transparent, so those who are subject to enforcement action know what to expect; and
- Accountable so that the Licensing Authority and its officers take responsibility for their actions.

**3028.7** In order to ensure compliance with the law and licensing conditions, the Licensing Authority will carry out with North Yorkshire Police whenever possible unscheduled 'non routine' evening inspections. After each visit the DPS and licence or certificate holder will be notified of any concerns and be given an opportunity to rectify any issues. Where one off events take place, the Licensing Authority may also carry out inspections to ensure the Licensing Objectives are promoted.

**3028.8** In addition, the Licensing Authority will conduct checks to ensure that official notices for new applications, varied applications, reviews and minor variations are accurate and clearly displayed. Notices for reviews shall be displayed at or near the site of the premises, and where there are concerns these shall be regularly checked and recorded.

**3028.9** The licence/certificate holder is required to ensure that the Premises Licence/Club Premises Certificate, or certified copy of that licence or certificate, is kept at the premises and in the custody, or under the control of, either the licence/certificate holder or a person who works at the premises and whom the licence holder has nominated in writing to have custody of that licence. In addition, the 2003 Act requires that a summary, or certified copy, is prominently displayed at the premises together with a notice specifying the name of the person nominated to have custody of the licence. Experience has proved that a number of licensees/certificate holders are not aware of this legislative requirement. With regard to enforcement, where a premises does not display the licence summary or does not have the licence/certificate, or certified copy, on the premises, then the Licensing Authority will write to the licence/certificate holder giving them an initial warning prior to taking any legal action. Continued failure will result in further sanctions being taken as outlined above.

**3028.10** Any decision to instigate legal proceedings will take account of the criteria set down in the Code for Crown Prosecutors and Attorney General Guidelines.

### **3129 Fees: Annual Licence Fees**

**3129.1** The PRSR Act gives the Licensing Authority the power to suspend a licence or certificate if the holder fails to pay the annual licence fee promptly in accordance with the invoice. Where the licence/certificate holder fails to pay the annual fee when due the Licensing Authority will notify the licence/certificate holder in writing specifying the date on which the suspension takes effect. This date will be two working days after the day the Licensing Authority has given the licence/certificate holder such notice. The Licensing Authority will work with North Yorkshire Police and appropriate action will be taken when the premises continues trading whilst suspended.

**3129.2** Where the licence/certificate holder has paid the annual fee the Licensing Authority will lift the suspension and inform North Yorkshire Police accordingly.

## **PART 10**

- | ~~320.1~~ Decisions on all licensing matters shall be taken in accordance with an approved scheme of delegation. This is aimed at underlining the principles of timely, efficient and effective decision-making.
- | ~~320.2~~ The Licensing Committee will consist of 10 Members. The Licensing Sub-Committee will conduct any Hearings required under the 2003 Act.
- | ~~320.3~~ Applications for Premises Licences, Club Premises Certificates or Temporary Event Notices where relevant representations have been received and not withdrawn will be dealt with by a Licensing Sub Committee unless such representations are considered irrelevant, frivolous or vexatious or unless the Licensing Authority, the applicant and everyone who has made representations agree that a hearing is not necessary.
- | ~~3.3~~ The decision determined by the Licensing Sub-Committee shall be accompanied by clear and cogent reasons, having had due regard to the Human Rights Act 1998 and all other legislation.

## PART 11

### | ~~334~~ Administration, Exercise and Delegations of Functions

- | ~~334.1~~ The 2003 Act provides that the functions of the Licensing Authority, including all its determinations, are to be carried out by its Licensing Committee with the exception of the preparation of this Policy. Appreciating the need to provide a speedy, efficient and cost-effective service to all parties involved in the licensing process, the Licensing Committee has delegated certain decision and functions and has established Sub Committees to deal with them.
- | ~~334.2~~ Officers have delegated powers to deal with all the Licensing functions of the Licensing Authority save for those where the Act specifically reserves the powers only to the Licensing Committee or to the full Council.
- | ~~334.3~~ The table at Appendix 1 sets out the agreed delegation of decisions and functions to the Licensing Committee, Licensing Sub Committees and authorised officers.
- | ~~334.4~~ The Licensing Committee has approved its own rules relating to the procedure of hearings by the Licensing Sub Committee under the Licensing Act 2003.

### | ~~342~~ The role of District Councillors

- | ~~342.1~~ The Licensing Authority recognises that District Councillors play an important role in the local community. They may make representations in writing and speak at the hearing on behalf of any other person such as a local resident or business if specifically asked to do so. They can also make representations in their own right if they have concerns about premises.
- | ~~342.2~~ Residents or businesses may wish to contact their local District Councillor in respect of a licence/certificate application. Details of how to contact District Councillors may be obtained from the Council's [Page 40](#) Website. Where a resident or business seeks the assistance of a District Councillor it is helpful if they can send them any evidence that

a premises is causing a problem in the area. It is also helpful if a resident or business that makes a representation on an application to send a copy of their representation to the relevant District Councillor. This then helps them to gain an understanding of local feelings.

**342.3** District Councillors may attend hearings of licensing sub committees considering applications and speak on behalf of local residents and businesses, but only if:

- They have made a personal representation;
- They have made a representation on behalf of local residents or business as 'community advocates'
- They have been nominated by (an objector) who cannot attend the hearing or prefers to be represented at the hearing.

**342.4** District Councillors may however attend a hearing as an observer or as part of training for the Licensing Committee.

**342.5** District Councillors wish to be kept informed of licensing related matters within Selby District, such as applications and reviews. The 2003 Act does not prevent Licensing Authorities from providing this information to Councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as "soliciting" representations. Elected members will be signposted to the Councils Website where all current application/review notices can be viewed.

## PART 12

### **353 Appeals against Licensing Authority decisions**

**353.1** Following a hearing of an application by the Licensing Authority, the applicant or any objector has the right to appeal against that decision to York Magistrates' Court within 21 days. In hearing an Appeal against the Licensing Authority's decision, the court will have regard to this Policy and the Guidance issued under Section 182 of the Licensing Act 2003. However, the court would be entitled to depart from both of these documents if it considers it justified so to do.

**353.2** Where an appeal has been lodged against a decision of the Licensing Authority, the Licensing Authority will in all cases be the respondent to the appeal and may call as witnesses any other person or Responsible Authorities who made representations against the application if it so chooses. In addition, and provided the court considers it appropriate, the Licensing Authority may also call as witnesses any individual or body it considers may assist in their response to an Appeal.

## PART 13

### **364 Complaints against licensed premises**

**364.1** Where the Licensing Authority receives complaints against a licensed premises, complainants are advised in the first instance, whenever possible, to raise their complaint directly with the licensee in order to resolve the matter. The Licensing Authority, however, recognises that it is not always possible or practical for the public to raise complaints directly with the licensed premises. In such circumstances complaints in the first instance should be addressed to: The Lead Officer of

Enforcement Selby District Council, Civic Centre, Doncaster Road, Selby, YO8 9FT;  
or email the Council at [info@selby.gov.uk](mailto:info@selby.gov.uk).

- 364.2 Complaints will be dealt with in a timely and efficient manner.
- 364.3 It is expected that all noise-related complaints are initially raised with the Council's Community Officers in Environmental Health and complaints regarding unlicensed activities and operating outside the permitted hours are raised with the Licensing Authority or Police Licensing Officer.
- 364.4 On receipt of a licensing complaint, a relevant Officer will investigate the circumstances, discussing the complaint with the DPS of the licensed premises, the licence/certificate holder, any relevant Responsible Authority and the complainant. Where it is a valid complaint, the Licensing Authority shall endeavour to seek a resolution through informal means prior to taking any formal sanction, dependant on the nature of the complaint.
- 364.5 The Lead Officer of Licensing or Enforcement is responsible for considering complaints in the context of this Policy and will determine whether or not it is a relevant complaint. This officer will authorise suitably qualified officers to discharge duties as appropriate to their seniority, professional qualifications and/or experience.
- 364.6 Where there is a serious complaint, then the Lead Officer of Enforcement shall ensure that it is investigated and enforcement action taken where necessary. The Licensing Authority shall act in accordance with the Enforcement Policy and in accordance with the Regulators' Code and the Enforcement Concordat.
- 364.7 With regard to whether or not a complaint/representation is relevant, the Licensing Manager~~Lead Officer of Enforcement~~ in conjunction with the Solicitor to the Council shall decide on whether it is vexatious, frivolous, repetitive or not relevant (that is, in line with one or more of the four Licensing Objectives) and there is no right of appeal against this decision. Aggrieved objectors should take their own legal advice. The exclusion of a complaint/representation on the grounds that it is repetitious does not however apply to Responsible Authorities. Responsible Authorities may make more than one request for a review of a Premises Licence/Certificate within the 12-month period or other reasonable interval agreed by the Licensing Authority. Where the decision is made that a complaint is vexatious, frivolous, repetitious or irrelevant, the complainant will be informed of this in writing with full reasons being given for the decision.

### 37 Other Relevant Legislation, Information and Guidance Legislation

- Health and Safety at Work Act 1974 and associated legislation
- Human Rights Act 1998 – Selby District Council has a duty under the European Convention of Human Rights to protect both the rights of a resident to privacy and family life (Article 8) and the rights of a licensee to operator their business without undue interference (Article 1 of the first protocol).
- Equality Act 2010 – licensees should make themselves familiar with this legislation as it covers matters relating to unlawful discrimination, for example disability, sex, race and age.

- 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 on it, it shall be the duty of each authority to which this section applies 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; and
  - the misuse of drugs, alcohol and other substances in its area; and
  - re-offending in it 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 requirements under this Act.
- Violent Crime Reduction Act 2006 – Part 1 of this Act amends the Licensing Act 2003 and includes measures to tackle alcohol-related violence and disorder.
- Policing and Crime Act 2009 – Part 3 of this Act amends the Licensing Act 2003 and includes measures to tackle alcohol misuse.
- Police, Reform and Social Responsibility Act 2011 – Part 2 of the Act amends the Licensing Act 2003.
- Anti-social Behaviour, Crime and Policing Act 2014 – Section 59 of this Act gives local authorities powers to make a Public Space Protection Orders. Orders can include Alcohol Restriction Zones (ARZ). In areas where an ARZ is in place it is an offence for a person who is consuming alcohol to not cease and/or surrender the alcohol when requested to do so by a police officer or other authorised person.
- Policing and Crime Act 2017 – Part 7 of this Act amends the Licensing Act 2003.
- Environmental Protection Act 1990 – this covers a wide range of types of pollution including noise.
- Regulators’ Code under the Legislative and Regulatory Reform Act 2006 – for consideration by all parties.
- 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 – 7.00am.
- Anti-Social Behaviour Act 2003 – Section 40 and 41 of this Act provides that if the noise from a licensed premises 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 Licensing Act 2003 to close licensed premises for temporary periods.
- 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.

- **The Regulatory Reform (Fire Safety) Order 2005** – North Yorkshire Fire and Rescue Service enforce fire safety legislation. Further information of the legal requirements can be found on their website: <http://www.northyorksfire.gov.uk/>
- **Data Protection Act 2018** – applicants should have regard to the provisions of this Act in relation to their premises and in particular to the Information Commissioners Code of Practice on CCTV.

#### **Information and Guidance Documents**

- Licensing Act 2003 - <https://www.legislation.gov.uk/ukpga/2003/17/contents>
- Section 182 Guidance, Pool Conditions Supporting Guidance and Guidance on Persistently Selling Alcohol to Children - <https://www.gov.uk/>
- Alcohol Strategy - <https://www.gov.uk/government/publications/alcohol-strategy>
- Health, Safety and Welfare Music and Other Events - <https://www.thepurpleguide.co.uk/>
- Running a Safety Event - <http://www.hse.gov.uk/event-safety/running.htm>
- Risk Assessments - <http://www.hse.gov.uk/risk/controlling-risks.htm>
- Controlling Noise – <https://www.york.gov.uk/NoisePollution>
- Reducing litter - <https://www.gov.uk/government/publications/reducing-litter-caused-by-food-on-the-go-a-voluntary-code-of-practice-for-local-partnerships>

## Appendix 1 – DELEGATION OF FUNCTIONS

Matters to be dealt with	<i>Council</i>	Sub Committee	Officer
Licensing Policy approval	All cases		
Application for a Personal Licence		If Police objection	If no Police objection
Application for a Premises Licence or Club Premises Certificate		If relevant representation made	If no relevant representation made

<b>Matters to be dealt with</b>	<i>Council</i>	<b>Sub Committee</b>	<b>Officer</b>
<b>Application for a Provisional Statement</b>		<b>If relevant representation made</b>	<b>If no relevant representation made</b>
<b>Application to vary Premises Licence or Club Premises Certificate</b>		<b>If relevant representation made</b>	<b>If no relevant representation made</b>
<b>Application to vary DPS</b>		<b>If Police objection</b>	<b>All other cases</b>
<b>Request to be removed as DPS</b>			<b>All cases</b>
<b>Application for transfer of premises licence</b>		<b>If Police objection</b>	<b>All other cases</b>
<b>Applications for interim authorities</b>		<b>If Police objection</b>	<b>All other cases</b>
<b>Application to review licence or Club Premises Certificate</b>		<b>All cases</b>	
<b>Decision on whether a complaint is irrelevant, repetitious, frivolous, vexatious or repetitious, etc.</b>			<b>All cases</b>



<b>Matters to be dealt with</b>	<i>Council</i>	<b>Sub Committee</b>	<b>Officer</b>
<b>Decision to object when local authority is a consultee and not the relevant authority considering the application</b>		<b>All cases</b>	
<b>Determination of an objection to a TEN</b>		<b>All cases</b>	
<b>Imposition of existing conditions on a standard TEN (s.106A of the 2003 Act)</b>		<b>All cases</b>	
<b>Determination of application to vary licence at community premises to include alternative licence condition</b>		<b>If police objection</b>	<b>All other cases</b>
<b>Decision on whether to consult other Responsible Authorities on minor variation application</b>			<b>All cases</b>
<b>Determination of minor variation application</b>			<b>All cases</b>
<b>Acting as a Responsible Authority on behalf of the Licensing Authority</b>			<b>All cases</b>

<b>Matters to be dealt with</b>	<i>Council</i>	<b>Sub Committee</b>	<b>Officer</b>
<b>Suspension of a licence or Club Premises Certificate for non-payment of annual fee</b>			<b>All cases</b>
<b>Specify the date on which suspension takes effect (min. 2 working days)</b>			<b>All cases</b>
<b>Decision to introduce, vary or end a late night levy</b>	<b>All cases</b>		
<b>Other decisions relating to administration and design of levy</b>	<b>All cases</b>		
<b>Decision to introduce, vary or revoke an Early Morning Restriction Order</b>	<b>All cases</b>		

## Appendix 2 - LICENSING ACT 2003 GLOSSARY

<i>Authorised Persons/Officers</i>	Officers empowered by the 2003 Act to carry out inspection and enforcement roles. This group includes: <ul style="list-style-type: none"> <li>• Officers of the Licensing Authority</li> <li>• Fire Authority Inspectors</li> <li>• Inspectors locally responsible for the enforcement of the Health and Safety at Work, etc. Act 1974; and</li> <li>• Environmental Health Officers</li> <li>• Trading Standards Officers</li> </ul> North Yorkshire Police are separately empowered and not included in the above list.
<i>Child</i>	Any person who is under the age of 16 years.
<i>CIP</i>	Cumulative Impact Policy
<i>Club Premises Certificate (CPC)</i>	A Licence to supply alcohol to members of a Qualifying Club and sell it to members and their guests on the premises without the need for any member or employee to hold a Personal Licence.
<b>Conditions:</b>	
Proposed Condition	Conditions proposed by the applicant in the Operating Schedule.
Imposed Condition	Conditions imposed by the Licensing Authority after a licensing hearing
Mandatory Condition	Conditions laid down by the Licensing Act 2003 as amended
<i>Cumulative Impact</i>	Where there is a potential impact on the promotion of the Licensing Objectives of a significant number of licensed premises concentrated in one area.
<b><u>Cumulative Impact Assessment (CIA)</u></b>	<u>This may be published to help to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives.</u>
<i>Designated Premises Supervisor (DPS)</i>	A specified individual holding a Personal Licence, who is responsible for the day to day running of the business and whose name will appear on the Premises Licence.
DCMS	Department of Culture Media & Sports, now known as Department of Culture, Olympics, Media & Sport.
Frivolous Representation	Representation or objection that is categorised by its lack of seriousness.
<i>Late-Night Refreshment</i>	The supply of hot food and drink between the hours of 11pm and 5am for consumption on or off the premises.

<i>Licence Holder</i>	Licence holder is defined as the Premises Licence Holder or Club Premises Certificate Holder.
<i>Licensable Activities</i>	<ul style="list-style-type: none"> <li>• The sale of alcohol by retail</li> <li>• The supply of alcohol by or on behalf of a club to, or to the order of, a member of a club</li> <li>• The provision of regulated entertainment</li> <li>• The provision of late-night refreshment</li> </ul>
<i>Licensing Objectives</i>	<ul style="list-style-type: none"> <li>• Prevention of Crime and Disorder</li> <li>• Public Safety</li> <li>• Prevention of Public Nuisance</li> <li>• Protection of Children from Harm</li> </ul>
<i>Licensing Qualification</i>	Qualification obtained from for example the British Institute of Innkeeping and a requirement for a Personal Licence.
<i>Occupancy Levels</i>	Safe occupancy limits for a premises or venue is determined by the size of the premises or venue combined with ensuring that escape routes are adequate for the people, and numbers of people, who are likely to use them. This prevents overcrowding which can lead to crime, disorder and concerns over public safety.
<i>'Other Persons'</i>	Defined as any individual, body or business affected by the operation of a licensed premises, regardless of their geographic proximity to the premises.
<i>Operating Schedule</i>	<p>This forms part of the completed application form for a Premises Licence and must promote the 4 Licensing Objectives. It must include:</p> <ul style="list-style-type: none"> <li>• The relevant licensable activities</li> <li>• The times during which the applicant proposes that the relevant licensable activities are to take place</li> <li>• Any other times during which the applicant proposes that the premises are to be open to the public</li> <li>• Where the applicant wishes the licence to have effect for a limited period, that period</li> <li>• Where the relevant licensable activities include the sale by retail of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified as the Designated Premises Supervisor</li> <li>• Whether the relevant licensable activities include the supply of alcohol, whether such sales are proposed to be for consumption on the premises or off the premises, or both</li> <li>• The steps which the applicant proposed to take to promote the 4 Licensing Objectives.</li> </ul>
<i>Personal Licence</i>	A Licence to authorise individuals to sell or supply alcohol or authorise the sale or supply of alcohol for consumption on or off the premises for which a Premises Licence is in force for the carrying on of that activity. Valid for 10 years.

<b><i>Prejudicial Interest (Members)</i></b>	An interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.
<b><i>Premises Improvement Plan</i></b>	An agreed action plan with timeframes agreed between the licence holder and the Responsible Authority.
<b><i>Premises Licence</i></b>	A Licence in respect of any premises, such as land or buildings within the community that are to be used for one or more licensable activities. Valid for an indefinite period unless reviewed or revoked.
<b><i>Proprietary Clubs</i></b>	Clubs run commercially by individuals, partnerships or business for the purpose of profit.
<b><i>Provisional Statement</i></b>	A statement where premises are being constructed or extended or substantially altered that the Licensing Authority would be provisionally minded to grant a Licence on completion of the works.
<b><i>Proxy Purchases</i></b>	Illegal purchasing of alcohol on behalf of a person under the age of 18.
<b><i>Qualifying Club</i></b>	Where members have joined together for particular social, sporting or political purposes and then combined to buy alcohol in bulk as members. Examples of Qualifying Clubs are: <ul style="list-style-type: none"> <li>• Conservative, Labour and Liberal Clubs</li> <li>• Royal British Legion</li> <li>• Ex-Servicemen's Club</li> <li>• Working Men's Club</li> <li>• Social and Sports Clubs</li> </ul>
<b><i>Regulated Entertainment</i></b>	Entertainment that is defined by statute.
<b><i>Relevant licensed premises</i></b>	Premises that are authorised to supply alcohol for consumption on the premises by a premises licence or CPC.
<b><i>Relevant Offences</i></b>	As set out in Schedule 4 to the Licensing Act 2003.
<b><i>Relevant Representations</i></b>	Representations, or objections, are relevant if they relate to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives.

<b>Responsible Authorities</b>	<p>This group can make relevant representations and includes public bodies such as:</p> <ul style="list-style-type: none"> <li>• Relevant Licensing Authority</li> <li>• North Yorkshire Police (Chief Officer of Police)</li> <li>• Children and Young People’s Service</li> <li>• North Yorkshire Fire &amp; Rescue Authority</li> <li>• North Yorkshire Trading Standards</li> <li>• The Local Enforcement Agency for the Health and Safety at Work, etc. Act 1974</li> <li>• The Local Authority Environmental Health Service</li> <li>• North York Moors Planning Authority/Local Authority Planning Service</li> <li>• <u>each local authority’s Director of Public Health (DPH) in England<sup>4</sup> and Local Health Boards (in Wales); Primary Healthcare Trust (or its equivalent)</u></li> <li>• <u>Home Office Immigration Enforcement (on behalf of the Secretary of State).</u></li> <li>• Maritime and Coastguard Agency (if applicable)</li> </ul>
<b>Safety Advisory Group</b>	<p>Safety Advisory Group – a group of officers from the Council’s Enforcement team, Highways, Police, Fire, Ambulance, Health and Safety, Emergency Planning formed to offer advice to applicants on carrying out events either under a TEN or a restricted Premises Licence</p>
<b>Special Policy</b>	<p><del>A policy contained within the Statement of Licensing Policy to deal with cumulative impact.</del></p>
<b>Temporary Events Notice (TEN)</b>	<p>A Notice served on the Licensing Authority for the temporary carrying on of the sale of alcohol, provision of regulated entertainment or late-night refreshment at a premises not authorised by a Premises Licence or Club Premises Certificate. This Notice is subject to certain limitations as laid down by the Licensing Act 2003.</p>
<b>TEN – 10 working days’ notice</b>	<p>10 working days <u>exclusive</u> of the day on which the event is to start <u>and</u> <u>exclusive</u> of the day on which the Notice is given to the Licensing Authority.</p>
<b>Types of Authorisation</b>	<ul style="list-style-type: none"> <li>• Premises Licence</li> <li>• Club Premises Certificate</li> <li>• Personal Licence</li> <li>• Provisional Statement</li> <li>• Temporary Events Notice</li> </ul>
<b>Vexatious Representation</b>	<p>A representation may be considered vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification.</p>
<b>Vicinity</b>	<p>A term which has been removed from the Licensing Act 2003 by the Police Reform and Social Responsibility Act 2011. Previously, the Licensing Authority in making their initial decision on the question of vicinity had to consider whether the individual’s residence or business is likely to be directly affected by disorder and disturbance occurring on those premises.</p>

## Appendix 3 – RESPONSIBLE AUTHORITY CONTACT LIST

In accordance with the s182 Guidance this policy lists all the relevant contact points where members of the public may obtain general advice. The Licensing Authority in particular recommends that all applicants seek advice from the Responsible Authorities below prior to submitting applications.

<b><u>Responsible Authority</u></b>	<b><u>Contact Details</u></b>
<b><u>Police</u></b>	<u>North Yorkshire Police Headquarters</u> <u>The Licensing Section</u> <u>Fulford Road</u> <u>York</u> <u>YO10 4BY</u> <u>Email: <a href="mailto:nyplicensing@northyorkshire.pnn.police.uk">nyplicensing@northyorkshire.pnn.police.uk</a></u>
<b><u>Environmental Control</u></b>	<u>Environmental Control</u> <u>Selby District Council</u> <u>Civic Centre</u> <u>Doncaster Road</u> <u>Selby</u> <u>YO8 9FT</u> <u>Email: <a href="mailto:ehdutyofficer@selby.gov.uk">ehdutyofficer@selby.gov.uk</a></u>
<b><u>Planning Department</u></b>	<u>Planning</u> <u>Selby District Council</u> <u>Civic Centre</u> <u>Doncaster Road</u> <u>Selby</u> <u>YO8 9FT</u> <u>Email: <a href="mailto:planningenforcement@selby.gov.uk">planningenforcement@selby.gov.uk</a></u>
<b><u>Fire Authority</u></b>	<u>North Yorkshire Fire and Rescue Authority</u> <u>Chief Fire Officer</u> <u>Fire Brigade Headquarters</u> <u>Crosby Road</u> <u>Northallerton</u> <u>North Yorkshire</u> <u>DL6 1AB</u> <u>Email: <a href="mailto:Electronicconsultation@northyorksfire.gov.uk">Electronicconsultation@northyorksfire.gov.uk</a></u>
<b><u>Health &amp; Safety</u></b>	<u>N/A</u>
<b><u>Trading Standards</u></b>	<u>North Yorkshire Trading Standards</u> <u>Licensing</u> <u>Unit 4/5</u> <u>Thornfield Business Park</u> <u>Standard Way</u> <u>Northallerton</u> <u>North Yorkshire</u> <u>DL6 2XQ</u> <u>Email: <a href="mailto:trading_standards@northyorks.gov.uk">trading_standards@northyorks.gov.uk</a></u>
<b><u>Social Services</u></b>	<u>Social Services (North Yorkshire County Council)(Children)</u> <u>North Yorkshire County Council</u> <u>County Hall</u> <u>Northallerton</u> <u>North Yorkshire</u> <u>DL6 2XQ</u> <u>Email: <a href="mailto:social_services@northyorks.gov.uk">social_services@northyorks.gov.uk</a></u>

<b><u>Public Health</u></b>	<u>Public Health</u> <u>Dr Lincoln Sargeant</u> <u>Director of Public Health</u> <u>North Yorkshire County Council</u> <u>County Hall</u> <u>Northallerton</u> <u>North Yorkshire</u> <u>DL7 8AD</u> <u>Email: <a href="mailto:nypublichealth@northyorks.gov.uk">nypublichealth@northyorks.gov.uk</a></u>
<b><u>Licensing Authority</u></b>	<u>Licensing Enforcement Team</u> <u>Selby District Council</u> <u>Doncaster Road</u> <u>Selby</u> <u>YO8 9FT</u> <u>Email: <a href="mailto:Enforcementteam@selby.gov.uk">Enforcementteam@selby.gov.uk</a></u>
<b><u>Home Office</u></b> <u>Only for Section.17,</u> <u>42,47,34 &amp; 52</u> <u>applications</u>	<u>Home Office's Secretary of State</u> <u>Alcohol Licensing Team</u> <u>Lunar House</u> <u>40 Wellesley Road</u> <u>Croydon</u> <u>CR9 2BY</u> <u>Email: <a href="mailto:Alcohol@homeoffice.gsi.gov.uk">Alcohol@homeoffice.gsi.gov.uk</a></u>

~~The Licensing Team  
Selby District Council  
Civic Centre  
Doncaster Road  
Selby  
YO8 9FT~~

~~Tel: 01757 705101  
Fax: 01757 292229  
e-mail: [licensing@selby.gov.uk](mailto:licensing@selby.gov.uk)~~

~~**Please note the Licensing Authority is also a  
Responsible Authority in its own right (see below)**~~

~~**North Yorkshire Police**~~

~~Alcohol Licensing Unit  
North Yorkshire Police  
Fulford Road  
York  
YO10 4BY~~

~~Tel: 01904 669498  
e-mail: [nyplicensing@northyorkshire.pnn.police.uk](mailto:nyplicensing@northyorkshire.pnn.police.uk)~~

~~**North Yorkshire Fire & Rescue Authority**~~

~~North Yorkshire Fire and Rescue Authority  
Chief Fire Officer  
Fire Brigade Headquarters  
Crosby Road  
Northallerton  
North Yorkshire  
DL6 1AB~~



**Health & Safety Enforcement for all Local Authority/County Council-owned and operated premises**

The Operations Manager

Health & Safety Executive

Tel: 0113 2834200

The Lateral

Fax: 0113 2834382

8 City Walk

Leeds

LS11 9AT

**Social Services**

Director of the Children and Young People's  
Service North Yorkshire County Council Children  
and Young People's Service Room 122

County Hall \_\_\_\_\_ Tel: 01609 780780

Northallerton

DL7 8AE

**Trading Standards**

North Yorkshire Trading Standards

Unit 4/5, Block B \_\_\_\_\_ Tel: 01609 760616

Thornfield Business Park

Standard Way

Northallerton

DL6 2XQ

**Director of Public Health**

Director of Public Health, \_\_\_\_\_ Tel: 01609 780780

North Yorkshire County Council,

County Hall,

Northallerton

DL7 8AD

This list may from time to time be subject to change and applicants and existing licence holders are recommended to contact the Licensing Authority for an up to date list.

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**Report Reference Number: L/19/18**

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**To:** Licensing Committee  
**Date:** 3 February 2020  
**Status:** Non Key Decision  
**Ward(s) Affected:** Whole District  
**Author:** Sharon Cousins, Licensing Manager  
**Lead Executive Member:** Councillor Pearson, Lead Member for Housing, Health and Culture  
**Lead Officer:** Alison Hartley – Solicitor to the Council

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**Title:** Animal Licensing Policy 2020

**Summary:**

For Members to consider the draft Animal Licensing Policy 2020 (“the Policy”) that consolidates existing procedures and incorporates the Animal Welfare (Licensing Activities Involving Animals) (England) Regulations 2018 (“the Regulations”).

**1. Recommendations:**

The Committee are recommended to:-

- i. To note the draft Animal Licensing Policy 2020 as attached at Appendix 1; and
- ii. to provide any comments or recommendations to be considered by the Executive.

**2. Introduction and background**

**2.1** The Regulations came into effect on 1 October 2018 and are now the primary legislation for the licensing of the following animal activities:

- Animal Boarding (Catteries and Kennels)
- Home Boarding of Dogs
- Dog Day Care
- Dog Breeding
- Hiring out of Horses (formally riding establishments)
- Sales of animals (formally pet shops)
- Training or Exhibiting Animals (formally Performing animals)

**2.2** The Regulations implement a single ‘Animal Activities Licence’ for any of the

Activities shown in section 2.1 above.

- 2.3** Prior to the new legislation coming into effect the Licensing Committee resolved to issue one year licences only. After the 1<sup>st</sup> October 2018 there were a number of updates to the guidance issued by DEFRA and moving forward the star rating will determine the length of the licence, as set out in Appendix 2. Licences will be able to be issued for a one, two or three year period based on an assessment of risk.
- 2.4** Standard licensing conditions are prescribed by the Regulations rather than each local authority deciding its own licence conditions for its area. As well as minimum standards, there are higher ones that are designed to incentivise better practice.
- 2.5** There are now powers for licensing authorities to vary, suspend and revoke licences where there is non-compliance or it is necessary to protect the welfare of the animal.

## **2.6 Delegation and Authorisation**

Delegation of powers and Authorisation is proposed as set out below:

- a) Granting and renewal of licence – Presently delegated to Officers in accordance with the Constitution.
- b) Refusal of a licence – To be determined by full Licensing Committee. Appeal of the Council’s decision to be heard by the First Tier Tribunal.
- c) Suspension or Variation of a licence – Delegated to Officers, to be authorised by the Licensing Manager or above.

The guidance issued by DEFRA in regards to the Regulations, Procedural Guidance notes for local authorities at Page 9 (Appendix 3), clearly sets out the grounds for suspension of a licence and the mechanism for suspension dependent upon the offence.

- d) Revocation of a licence – To be determined by full Licensing Committee.
- 2.7** Within the Regulations is a star rating system to allow customers to see how Businesses perform against the Regulation standards. The star rating is issued by the inspecting licensing officer/animal specialist. The applicant will be provided with the supporting information (inspection reports) which will highlight the inspecting officer’s decision on how the risk rating, compliance level and star rating has been determined. The business is encouraged to discuss the matter initially with the inspecting officer. Any appeals against the star rating assigned to the business will be dealt with in accordance with the guidance issued by DEFRA and the proposed appeal procedure set out in Appendix 4.

**2.8** As with all decisions made by the Council there is always an appeal process. If a first tier appeal was made the Courts would look at the following documents in the following order:

- The relevant legislation
- The Council's Policy
- Guidance

Selby District Council does not currently have a Policy for Animal Licensing. It is therefore recommended that the Council adopts a policy that incorporates the new legislation and shows our basic requirements for such Licenses.

**2.9** Unlike other licensing regimes, there is no statutory requirement for local authorities to set policies in relation to animal welfare licensing. The Council do, however, consider it is best practice to do so as benefits bring transparency, accountability, certainty, consistency and the promotion of good standards in licensing. Policies are an integral part of the decision-making process. A policy guides, but does not bind, a local authority.

**2.10** The proposed policy is based on the Regulations and proposes the following:

- Introduction of a fit and proper test, this includes, the right to work in the UK, no relevant convictions, not being disqualified from holding a licence, the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of the animals in their care, made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.
- A Basic Disclosure (DBS) certificate (issued within 3 months of the date of application) showing that they are not disqualified from holding a licence, and/or hold no relevant convictions which may affect whether they are a 'fit and proper' person to hold a licence.
- We may request information from North Yorkshire Police under our information sharing agreement about any relevant convictions an applicant may hold.
- Details on conditions placed on a licence for Dangerous Wild Animals.
- Details of conditions placed on a licence for Zoos.
- Requirement of a written safeguarding policy and a procedure for vetting staff, for applicants and licence holders whose activities involve contact with children or vulnerable persons
- A list of offences where the Council will not issue a licence if the applicant has been convicted.

**2.11** If agreed a 6 week consultation will commence on the 6 April 2020 and end on the 18 May 2020. Consultation will be by the following:

- Consultation with existing licence holders
- Published at our local offices

- Published on the Councils website

The results of the consultation will be brought back to the Licensing Committee for comment. The proposed Policy will then go before the Policy Review Committee, the Executive Committee and Full Council.

The proposed timetable for the Policy is:

<b>Date</b>	<b>Process</b>
3 February 2020	Licensing Committee to Note and provide comments/recommendations.
2 April 2020	Executive Committee to approve consultation and consider comments/recommendations.
6 April 2020 – 18 May 2020	Public/Statutory Consultation
8 June 2020	Licensing Committee to update on Consultation feedback
16 June 2020	Policy Review to update on consultation and responses
6 August 2020	Executive Committee to note and recommend approval of the Policy
22 September 2020	Full Council for approval of the Policy

### **3. Implications**

Failure to act appropriately under the legislation will make the Council non-compliant with the legislation and prevent appropriate regulatory action being taken to safeguard the welfare of animals in the Council area.

#### **3.1 Legal Implications**

- a) There is no statutory requirement to adopt an Animal Licensing Policy, however, the Council believes it is best practice to do so.
- b) The Regulations and the statutory guidance issued by DEFRA provides a new licensing regime for activities which must be licensed, who may apply for a licence and how the Council will determine the applications for a licence.
- c) If the Council refuse to grant or renew a licence, the applicant may appeal to the First-Tier Tribunal, which must be done within 28 days of the decision. Once the Licence is granted, the Council may suspend, vary or revoke the licence.
- d) The statutory guidance issued by DEFRA requires that the Council must have an appeal process for applicants to challenge the initial star rating they are given. The Council proposes the procedure as set out in Appendix 4.

### **3.2 Financial Implications**

There are no financial implications

### **3.3 Policy and Risk Implications**

Failure to regulate animal welfare activities may result in serious harm to animals and have serious reputational impact on the Council.

### **3.4 Corporate Plan Implications**

The consultation process, although not necessary will help us to achieve our corporate priority of making Selby a great place to make a difference. Through allowing local people and businesses to contribute to the development of the policy we are achieving a key focus of the priority, namely, 'empowering and involving people in decisions about their area and services'.

### **3.5 Resource Implications**

N/A

### **3.6 Other Implications**

N/A

### **3.7 Equalities Impact Assessment**

N/A

## **4. Conclusion**

Adoption of the proposed policy and the measures within it will support the statutory position and help protect public safety.

## **5. Background Documents**

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018.

The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 – Procedural Guidance notes for Local Authorities, October 2018 (*guidance issued by DEFRA*).

## **6. Appendices**

Appendix 1 – Proposed Animal Licensing Policy 2020

Appendix 2 – Star Scoring Matrix

Appendix 3 - Procedural Guidance

Appendix 4 – Proposed Animal Welfare Star Rating Appeal procedure

### **Contact Officer:**

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# Draft Animal Welfare Licensing Policy

Approved (date)

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## **1. Introduction**

- 1.1 This policy sets out how the Council will exercise its functions under the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, Dangerous Wild Animals Act 1976 and Zoo Licensing Act 1981.
- 1.2 This policy has been introduced pursuant to the commencement of the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 (“the Regulations”) on 1 October 2018. It will be reviewed at least every 3 years following first approval, and at other times where considered necessary, for example, to reflect significant changes in relevant legislation or guidance.
- 1.3 This policy sets out the principles we will use when dealing with applicants and licence holders with whom the Council is responsible for.
- 1.4 This policy provides guidance to any person with an interest in Animal licensing. In particular, but not exclusively:
  - Applicants for licenses,
  - Existing licence holders whose licences are being reviewed,
  - Licensing Officers,
  - Members of the Licensing Committee, and
  - Magistrates’ hearing appeals against local authority decisions.
- 1.5 This policy sets out the criteria to be taken into account by the Council when determining whether or not an applicant or an existing licence holder is suitable to be granted, have renewed or continue to hold a Licence. In addition to criminal convictions the Council will also take into account other factors such as general character, compliance with licence requirements/guidance/conditions, non-criminal behaviour and police or other relevant records or information from reliable sources.
- 1.6 There are many types of animal related businesses that do not currently require a licence – examples include livery yards, dog walkers, dog groomers and similar. For this reason they do not form part of this Policy.
- 1.7 Under this Council’s Constitution and scheme of delegations, the authority to grant animal licenses has been delegated to the Licensing Manager, who may further delegate as appropriate. Matters of policy making and the setting of fees are decisions made by the Council’s Licensing Committee.

## **2. Policy Objectives**

- 2.1 The Policy is designed to ensure that:-
  - any person who carries on, attempts to carry on or knowingly allows a licensable activity to be carried on holds a licence in accordance with the Regulations,
  - the licence holder is not disqualified from holding a licence in accordance with the requirements of the Regulations,
  - that the five overarching principles of animal welfare, (known as the “five needs”) introduced by the Animal Welfare Act 2006 are upheld in any decision,

- the safeguarding of any children or vulnerable persons in contact with a licensable activity is ensured
- each application is considered on its merits
- decisions made by the Council are transparent and consistent
- relevant objectives of the Council's Corporate Plan are supported
- that the obligations of the Council's Public Sector Equality duty under the Equality Act 2010, section 149 are fulfilled by eliminating discrimination, harassment, victimisation and other conduct prohibited by the Act, advancing equality of opportunity and fostering good relations between persons who share and those who do not share protected characteristics.

2.2 In addition, the Council will base its licensing regime on the following principles which arise from the responsibilities arising under the Animal Welfare Act 2006:-

- Responsibility to protect the welfare of all fellow creatures;
- Ensuring the welfare of domestic or captive animals by implementing appropriate standards that promote the "five needs";
- Ensuring that persons responsible for the management of animal welfare observe recognised standards of good practice;
- Ensuring that, so far as it falls within its powers, the requirements of all animal-related legislation will be rigorously and pro-actively enforced.

### **3. Animal Welfare Act**

3.1 The Animal Welfare Act 2006 (the Act) established that reasonable welfare standards must be maintained whilst unifying all animal legislation, including responsibilities falling to other enforcement agencies.

3.2 The Act introduced five overarching principles of animal welfare, known as the "five needs" which are:

**1. The need for a suitable environment;**

(by providing an appropriate environment, including shelter and a comfortable resting area)

**2. The need for a suitable diet;**

(by ready access, where appropriate, to fresh water and a diet to maintain full health)

**3. The need to be able to exhibit normal behaviour patterns;**

(by providing sufficient space, proper facilities and the company of an animal of its own kind, where appropriate)

**4. Any need to be housed with, or apart from, other animals;**

(by providing the company of an animal of its own kind, where appropriate); and

**5. The need to be protected from pain, suffering, injury and disease;**

(by prevention or rapid diagnosis and treatment, and ensuring conditions and treatment which avoid mental suffering).

## **4. Licensable Activities**

- 4.1 The Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 came into force on 1<sup>st</sup> October 2018 and will have an impact on establishments licensed under the previous animal health legislation. This includes those previously licensed as pet shops, catteries, kennels, home boarders, dog crèche, riding establishments, dog breeders and performing animals.
- 4.2 A licence is required when any of the licensable activities outlined in Schedule 1 of the regulations are undertaken. These are:
- selling animals as pets (Part 2);
  - providing or arranging for the provision of boarding for cats or dogs (including the provision of boarding for cats; kennels for dogs; home boarding for dogs; or day care for dogs (Part 3);
  - hiring out horses (Part 4);
  - breeding dogs (Part 5);
  - keeping or training animals for exhibition (Part 6).
- 4.3 The Regulations replace previous licensing and registration regimes under the following legislation:
- Pet Animals Act 1951
  - Animal Boarding Establishments Act 1963
  - Riding Establishments Acts 1964 & 1970
  - Breeding of Dogs Act 1973 & Breeding and Sale of Dogs (Welfare) Act 1999
  - Performing Animals (Regulation) Act 1925
- 4.4 The Regulations do not impact on the licensing of Dangerous Wild Animals under the Dangerous Wild Animals Act 1976 and Zoos under the Zoo Licensing Act 1981, which remains unaffected by the legislative changes, however will fall within the scope of this Policy.

## **5. Suitability of Applicants**

### Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018

- 5.1 In accordance with the Regulations any individual, who carries on a licensable activity will be designated as the operator of the business and can apply for a licence providing they are not disqualified from holding a licence in accordance with Regulation 11 and Schedule 8.
- 5.2 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-
- Will require the applicant to provide a basic disclosure (DBS) certificate (issued within 3 months of the date of application) showing that they are not disqualified from holding a licence, and/or hold no relevant convictions which may affect whether they are a 'fit and proper' person to hold a licence;

- May request information from North Yorkshire Police under our information sharing agreement about any relevant convictions an applicant may hold. This information sharing is possible under Section 17 of the Crime and Disorder Act 1998, which requires that local authorities must have regard to the likely effect of the exercise of their functions on, and do all that they can to prevent crime and disorder in their area.

5.3 An applicant will be granted a licence if the Council is satisfied that the licence conditions will be met. In considering this, the Council will take into account whether the applicant is a fit and proper person to be the operator of the activity. The term 'fit and proper' is not defined in the legislation or guidance. For the purpose of this Policy, the Council will consider a 'fit and proper person' to be an individual who can demonstrate upon application that they have:-

- the right to work in the UK
- no relevant convictions
- not been disqualified from holding a licence
- the knowledge, experience, compliance history and ability to comply with licence conditions and safeguard the welfare of animals in their care
- made suitable management and training arrangements to safeguard and protect any staff and/or members of the public who may be affected by the licence activity.

#### Dangerous Wild Animals and Zoos

5.4 In order to ensure compliance with our duties to ensure that an individual has not been disqualified from holding a licence, upon application the Council:-

- Will require the applicant to provide a basic disclosure (DBS) certificate issued within 3 months of the date of application; and
- May request information from North Yorkshire Police under our information sharing agreement about any relevant convictions an applicant may hold.

#### Relevance of convictions

5.5 The purpose of this section is to offer guidance on how the Council can determine whether an applicant/licence holder suitable to either be granted a licence in the first place or retain such a licence. In all cases, the Council will consider the conviction or behaviour in question, what weight should be attached to it and each and every case will be determined on its own merits, but in light of these guidelines. Most applicants or licensees will have no convictions and that is clearly the ideal situation. In relation to other people, it is accepted that people do make mistakes, and it is further accepted that many learn from those mistakes and do not continue to commit further offences. Accordingly, in many cases an isolated conviction, especially if committed some time ago, will not prevent the grant or renewal of a licence.

5.6 The Council will not normally grant a licence to a person with one (or more) convictions for any of the following offences:

- Offences involving violence
- Possession of a weapon
- Sex and indecency offences
- Offences involving dishonesty
- Offences involving drugs
- Licensing offences
- Offences involving danger or suffering caused to Animals.

5.7 Any offences or behavior not expressly covered by this Policy may still be taken into account.

## **6. Safeguarding**

6.1 The Regulations have the aims of maintaining and improving animal welfare standards. However there are other safeguarding considerations arising from licensable activities which the Council has a statutory duty to ensure, in particular surrounding the protection of children and vulnerable persons.

6.2 The Council is aware that some licensable activities may involve unsupervised contact with children and/or vulnerable persons. For example the tuition of a young person provided at a Riding Establishment, or entertaining at a children's party with an exhibition of animals.

6.3 To this extent, the Council would expect applicants and licence holders whose activities involve contact with children or vulnerable persons to:-

- Have a written safeguarding policy and provide training for staff; and
- Have a procedure for vetting staff who have unsupervised contact with young/vulnerable persons.

## **7. Application Process**

7.1 Licence applications must be submitted on the prescribed application form, along with any supporting information (as detailed in the application form and as required under this Policy), together with the appropriate fee. Planning permission may need to be applied for and the onus is on the applicant to apply for this.

7.2 The Council will notify licence holders when their existing licence will expire (3 months prior to expiry) and licence holders must make a new application at least 10 weeks before the licence expires to continue the activity without a break. It is the licence holder's responsibility to ensure that any renewal application is made in good time, and the Council cannot be held responsible for any delays or lapses of a licence caused by an incomplete or late application.

7.3 Payment for vet inspections required either by legislation or by the Council in order to determine the application, will be an additional charge passed on to the applicant/license holder.

7.4 The Guidance stipulates that once a local authority receives an application for

the grant or renewal of a licence it must do all of the following before granting or renewing a licence:

- The Council must consider whether the conduct displayed by the applicant indicates that they are a fit and proper person to carry out the licensable activity and meet their licence conditions.
- The Council must inspect the site of the licensable activity and assess if it is likely to meet the licence conditions. The inspection must be completed by a suitably qualified inspector present (as well as a veterinarian for the initial inspection of a dog breeding establishment, or a listed veterinarian for inspections of horse riding establishments). The inspector must prepare a report, in accordance with the requirements of regulation 10, to be submitted to the local authority following their inspection.
- The inspector’s report will contain information about the operator, any relevant premises, any relevant records, the condition of any animals and any other relevant matter and state whether or not the inspector considers that the licence conditions will be met.
- Ensure that the appropriate fees have been paid, these can include fees for the consideration of the application, the reasonable anticipated costs of consideration of a licence holder’s compliance with the Regulations, the reasonable anticipated costs of enforcement in relation to any licensable activity of an unlicensed operator and any costs reasonably anticipated in relation to the provision of information to the Secretary of State.

**8. Rating and Licence duration**

8.1 Licences can be issued for a period of either one, two or three years depending on the risk rating and level of compliance. This also corresponds with the Star Rating for the establishment.

8.2 The Scoring matrix is below:

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>3 Star</b> 2yr licence Min 1 unannounced visit within 24 month period	<b>5 Star</b> 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>2 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>4 Star</b> 2yr licence Min 1 unannounced visit within 24 month period



- 8.3 Licences for the keeping or training animals for exhibition are issued for three years.

## **9. Standards and Conditions**

### Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations

- 9.1 The Regulations include mandatory conditions for each licensable activity and DEFRA has produced associated guidance. The conditions are divided into two categories namely General Conditions (stipulated in Schedule 2) and Specific Conditions from the associated Schedule of the Regulations.
- 9.2 Applicants/licence holders will need to meet all the mandatory conditions, although minor failings may be noted/recorded providing they do not compromise the welfare of the animals (these should be predominantly administrative in nature).
- 9.3 For each activity (except keeping or training animals for exhibition) a number of “higher standards” have been included in the guidance. Meeting the higher standards is optional but is the only way to gain a higher star rating.
- 9.4 The higher standards are classified into two categories – required (mandatory) and optional. These will usually be colour coded into blue and red respectively. To qualify as meeting the higher standards the business must achieve all the required (mandatory) standards as well as a minimum of 50% of the optional higher standards.
- 9.5 The Regulations make provision for Officers to take samples for laboratory testing from any animals on premises occupied by an operator for the purposes of ensuring the licence conditions are being complied with. A Licence holder must comply with any reasonable request of an inspector to facilitate the identification and examination of an animal and the taking of samples and, in particular, must arrange the suitable restraint of an animal if so requested by an inspector.
- 9.6 Samples should be as non-invasive as possible, however inspectors may deem more invasive samples necessary if there are concerns over the welfare of the animals. The provision for sampling is primarily aimed at veterinarians carrying out inspections and it is not expected that samples be taken by those without the training to properly and safely do so.

### Dangerous Wild Animals

- 9.7 The Council will usually impose Defra’s standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

### Zoos

- 9.8 The Council will usually impose Defra’s standard conditions, in addition to any premises/animal specific conditions deemed to be required by the Inspecting Officer/Vet.

## **10. Granting an application**

10.1 Where a licence is issued the Council will provide the following details:

- the Licence with the Star Rating;
- details of how the business has been rated including a list of the higher standards the business currently fails to meet or a list of the minimum standards the business is failing to meet and resulting in a “minor failing” category;
- a copy of the risk management assessment table;
- details of the appeals process and timescales.

10.2 Any fee(s) required upon the grant of the licence must be paid in full prior to the issue of the licence.

## **11. Refusing Applications**

11.1 The Council will consider the report from the inspector and any comments made by the applicant when deciding whether to issue a licence.

11.2 The Council will refuse to issue a licence if it considers that the applicant cannot meet the licence conditions, for example, if the granting of a licence will have a negative impact on animal welfare or if the level of accommodation, staffing or management is inadequate for the well-being of animals.

11.3 The Council will also refuse to issue or renew a licence if the applicant has a history of non-compliance with licensing conditions or requirements, is obstructive towards officers, or if there are safeguarding concerns arising from the licensed activity. The above list is not exhaustive, but indicative of the circumstances where they Council will want to refuse an application.

11.4 The Council will also refuse an application if it considers that the applicant does not meet the ‘fit and proper person’ test.

11.5 A licence cannot be issued to an operator who is disqualified.

11.6 Any application fees or veterinary inspection fees paid will not be refunded for unsuccessful applications.

11.7 If a licence is refused, the applicant will have the right of appeal to a First-tier Tribunal within 28 days of the decision notice.

## **12. Appeals to Star Rating**

12.1 To ensure fairness to the business, the Council has an appeals procedure in place for the operator to dispute the star rating given.

12.2 The business will be provided with supporting information (the inspection reports) which will highlight the inspecting officer’s decision on how the risk rating, compliance level and star rating has been determined. The business is encouraged to discuss the matter initially with the inspecting officer where

possible.

- 12.3 A business may appeal if they consider their star rating to be wrong - in other words it does not reflect the standards found at the time of inspection. Any appeal to the rating given must be made in writing within 21 days.
- 12.4 A business may wish to apply for a re-inspection or re-rating on a chargeable basis following completion of works to rectify any non-compliance or improvements to achieve higher standards.
- 12.5 An appeal will be assessed and determined by an appointed manager within the Council, who will conduct a 'desk based' appraisal of the rating given.
- 12.6 The appointed managers for this purpose are the Housing & Environmental Health Service Manager, or any Head of Service or Manager overseeing them in their absence.
- 12.7 If the business disagrees with the outcome of the appeal they can only challenge the decision by means of judicial review.

### **13. Variations, Suspensions and Revocations of Licences**

- 13.1 The Regulations provide for a local authority at any time to vary a licence:
  - On the application in writing of the licence holder, or
  - On the initiative of the local authority, with the consent in writing of the licence holder.
- 13.2 In addition to the above a local authority may suspend, vary or revoke a licence without the consent of the licence holder if:
  - The licence conditions are not being complied with,
  - There has been a breach of the Regulations,
  - Information supplied by the licence holder is false or misleading, or
  - It is necessary to protect the welfare of an animal.
- 13.2 A suspension or variation of a licence will normally take effect 7 working days after the decision has been issued to the licence holder unless the reason is to protect the welfare of an animal in which case the local authority may stipulate that the decision has immediate effect.
- 13.3 A decision to vary or suspend the licence must be notified to the licence holder in writing, explaining the reasons for the decision, and providing information regarding when the suspension or variation comes into effect and the rights of the licence holder to make written representation, as well as any specific changes deemed necessary in order to remedy the situation.
- 13.4 The decision to vary, suspend or revoke a license will be dependent on the severity of the situation. If an operator fails to meet administrative conditions or provide information when requested then this could potentially lead to the suspension of a licence. If such a scenario happens repeatedly, the Council may consider revocation appropriate. Revocation of a licence will also occur in an instance where poor welfare conditions are discovered or it would otherwise benefit the welfare of the animals involved to be removed from the

activity. Variations can occur if adjustments need to be made, whether that is to the licence itself or to the premises/animals referred to in the licence.

- 13.5 Following the issuing of the notice of suspension or variation, the licence holder will have 7 working days to make written representation. Upon receipt of this the Council will decide whether to continue with the suspension or variation of the licence or cancel the decision.
- 13.6 If the licence has been altered with immediate effect to protect the welfare of an animal then the Council must indicate that this is the reason.
- 13.7 The business will not be able to trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by the local authority upon being satisfied that licence conditions are being met.
- 13.8 There is no right of appeal against the suspension of a licence. After 28 days of suspension the licence must be revoked or reinstated.
- 13.8 A licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the local authority to vary or revoke a licence. This must be done within 28 days of the decision.

#### **14. Transfer of a licence upon the death of a licence holder**

- 14.1 If a licence holder dies, the procedure in regulation 12 of the Regulations applies. It allows the personal representative of the deceased to take on the licence provided that they inform the local authority within twenty-eight days of the death that they are now the licence holders. The licence will then remain in place for three months from the death of the former holder or for the rest of the time it was due to remain in force if that time period is shorter. The new licence holder should then apply for a new licence one month before the expiry of this new period.
- 14.2 Additionally the local authority can extend the three month period by up to another three months if requested by the personal representative and if they believe this time is needed to wind up the estate of the former licence holder.
- 14.3 If the personal representative does not notify the local authority within 28 days of the death of the licence holder, the licence will cease to have effect after those 28 days.

#### **15. Inspections During the Course of a licence**

- 15.1 There will be cases where inspections must be carried out during the term of a licence.
- 15.2 For the activity of hiring out horses, there is a requirement for an annual inspection by a listed veterinarian, regardless of the total length of the licence. The local authority must appoint a listed veterinarian to inspect the premises on which the activity is being carried out before the end of the first year after the licence is granted and then each subsequent year.

- 15.3 Unannounced inspections can also be carried out and will be used in the case of complaints or other information that suggests the licence conditions are not being complied with or that the welfare of the animals involved in a licensed activity is at risk.
- 15.4 During the course of an inspection the inspector may choose to take samples for laboratory testing from the animals on the premises occupied by an operator. The operator must comply with any reasonable request of an inspector to facilitate the identification, examination and sampling of an animal including ensuring that suitable restraints are provided if requested.

## **16. Qualifications of Inspectors**

- 16.1 All inspectors must be suitably qualified. This is defined in the Guidance as:
- Any person holding a Level 3 certificate granted by a body, recognised and regulated by the Office of Qualifications and Examinations Regulation which oversees the training and assessment of persons in inspecting and licensing certain animal activities businesses, confirming the passing of an independent examination. A person is only considered to be qualified to inspect a particular type of activity if their certificate applies to that activity;
  - Any person holding a formal veterinary qualification, as recognised by the Royal College of Veterinary Surgeons (“RCVS”), together with a relevant RCVS continuing professional development record;
  - Until October 2021, any person that can show evidence of at least one year of experience in licensing and inspecting animal activities businesses.

## **17. Fee Structure**

- 17.1 The current level of licence fee will be displayed on the Council’s webpage.
- 17.2 All fees have been calculated and reviewed annually, taking into account the statutory requirements of Regulation 13, with the aim of full cost recovery.

## **18. Enforcement**

- 18.1 The Regulations introduce a range of enforcement powers to allow the Council to issue a suspension, variation or revocation notice where licence conditions are not being complied with; there is a breach of the regulations or issues relating to the protection of the welfare of an animal.
- 18.2 The service of an enforcement notice is subject to a strict process and includes provision for the right to make written representations and/or appeal.
- 18.3 It is an offence to breach any licence condition. It is also an offence not to comply with an inspector’s request in the process of taking a sample from an animal.

- 18.4 It is also an offence to obstruct an inspector who has been appointed by a local authority to enforce the Regulations. Committing any of these offences could result in an unlimited fine.
- 18.5 Anyone who carries on any of the licensable activities without a licence is liable to imprisonment for a term of up to six months, a fine or both. Section 30 of the Animal Welfare Act 2006 allows for local authorities to prosecute for any offences under that Act.
- 18.6 The post-conviction power from section 34 of the Animal Welfare Act 2006 is in place whereby a person convicted of an offence under the Act or Regulations may be disqualified from owning, keeping, participating in the keeping of animals and/or from being party to an arrangement under which they can control or influence the way an animal is kept. They may also be disqualified from transporting or dealing in animals. Breaching these disqualifications is an offence.
- 18.7 The post-conviction power from section 42 of the Animal Welfare Act is also in place whereby a court can cancel a currently existing licence and disqualify a person from holding a licence for any period it sees fit when that person is convicted of an offence under the Act or Regulations.
- 18.8 The Council works closely with partners in accordance with a locally established joint enforcement protocol and will aim to promote the welfare of animals and safety of the public.
- 18.9 The main enforcement and compliance role for the Council in terms of the Regulations will be to ensure compliance with the conditions placed upon the licence and investigate and take appropriate action on unlicensed premises.
- 18.10 In carrying out its enforcement duties with regards to the inspection of premises, the variation, suspension or revocation of licences and the powers to institute criminal proceedings in respect of certain offences under the Act, the Council has adopted an enforcement policy, which is available on [www.selby.gov.uk](http://www.selby.gov.uk)

**Star Scoring Matrix**

Scoring Matrix		Welfare Standards		
		Minor Failings (existing business that are failing to meet minimum standards)	Minimum Standards (as laid down in the schedules and guidance)	Higher Standards (as laid down in the guidance)
Risk	Low Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>3 Star</b> 2yr licence Min 1 unannounced visit within 24 month period	<b>5 Star</b> 3yr licence Min 1 unannounced visit within 36 month period
	Higher Risk	<b>1 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>2 Star</b> 1yr licence Min 1 unannounced visit within 12 month period	<b>4 Star</b> 2yr licence Min 1 unannounced visit within 24 month period

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**Procedural Guidance**

**Suspension, variation or revocation of a licence**

25. A local authority may at any time vary a licence:

- (a) On the application in writing of the licence holder, or
- (b) On your own initiative, with the consent in writing of the licence holder.
- (c) In addition to the above a local authority may suspend, vary or revoke a licence without the consent of the licence holder if:
  - i. The licence conditions are not being complied with,
  - ii. There has been a breach of the Regulations,
  - iii. Information supplied by the licence holder is false or misleading, or
  - iv. It is necessary to protect the welfare of an animal.

26. Such a suspension, variation or revocation of a licence will normally take effect 7 working days after the decision has been issued to the licence holder unless the reason is to protect the welfare of an animal in which case you may stipulate that the decision has immediate effect.

27. The decision to vary or suspend the licence must be notified to the licence holder in writing, explain the reasoning for the decision, and provide information regarding when the suspension, variation or revocation comes into effect and the rights of the licence holder, as well as any specific changes that you deem necessary in order to remedy the situation.

28. The decision to vary or suspend a licence should be dependent on the severity of the situation, if an operator fails to meet administrative conditions or provide information when requested then this could potentially lead to the suspension of a licence if it happens repeatedly. Revocation of a licence should occur in an instance where poor welfare conditions are discovered or it would otherwise benefit the welfare of the animals involved to be removed from the activity. Variations can occur if adjustments need to be made, whether that is to the licence itself or to the premises/animals referred to in the licence.

29. Under paragraph 16(2) of the Regulations if it is necessary to protect the welfare of an animal the local authority may specify in the notice of suspension, variation or revocation that it takes immediate effect.

30. A local authority notice must be delivered in one of three ways, in person; by leaving it at or sending it by post to the person's current or last known postal address; or by emailing it to the person's current or last known email address.

31. Following the issuing of the notice the licence holder will then have 7 working days to make written representation. Upon receipt of this you must decide whether to continue with the suspension, variation or revocation of the licence or cancel the decision to make changes to the licence. If the licence has been altered to protect the welfare of an animal then you must indicate that this is the reason and whether the change is still in effect.

32. The business will not be able to trade once the suspension of a licence has come into effect and cannot do so until the decision is overturned by either the local authority upon being satisfied that licence conditions are being met or by the First-tier Tribunal who may decide the local authority's decision was incorrect.

33. If a licence is suspended for a significant period of time then the local authority should ensure that the animals are checked on regularly to ensure that the welfare of the animals is maintained.

34. As with applications the licence holder may appeal to a First-tier Tribunal if they do not agree with the decision made by the local authority. This must be done within 28 days of the decision.

35. Note that if representation is not responded to within 7 working days of receipt then the initial decision the local authority made is deemed to be overturned, this is also the case if a licence which is initially suspended has no further action taken on it within 28 days.

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## **Proposed Animal Welfare Star Ratings Appeal**

### **Introduction**

To ensure fairness to businesses this procedure explains how businesses can dispute the star rating given to their business after their local authority inspection. This procedure is relevant where the business feels the star rating does not reflect the animal welfare standards and risk level of the business at the time of the inspection. This process is not to be used if a business has made improvements and wishes to be re-assessed – in this case the business should apply for a re-inspection.

### **The Procedure**

1. In the first instance the business is encouraged to discuss their star rating informally with the “inspecting officer”. This will allow for a full explanation of how the rating was decided. Any discussions do not form part of the formal process and do not change the timeframe for lodging an appeal. An appeal can be withdrawn after the informal discussion. A star rating cannot be changed after an informal discussion but the business can apply for a re-inspection at their cost after implementing any recommendations that could result in a higher star rating (due to the nature of the star rating it may not be possible for a star rating to be improved upon).
2. A formal appeal will need to be submitted to the Licensing Authority in writing (can be email) within 21 days of the receipt of the licence (this includes weekends and bank holidays). Appeals can be emailed to [licensing@selby.gov.uk](mailto:licensing@selby.gov.uk)
3. The local authority then has 21 days (including weekends and bank holidays) from the date they receive the appeal to determine the appeal. The local authority will inform the business of their decision upon the determination of the appeal but no later than 21 days after the Environmental Health and Licensing department have received the paperwork.
4. The appeal will be determined by the Housing & Environmental Health Service Manager or by someone acting on their behalf or by the equivalent in another authority. Any officer involved in the production of the rating or the inspection on which the rating is based on will not consider the appeal.
5. The outcome of the appeal will be determined after considering the inspection reports and all associated paperwork along with the past record of the business alongside the star rating criteria. In some cases a further visit may be required. The cost of the visit will be borne by the applicant unless it results in a higher rating being awarded. (An appeal can be withdrawn at this stage should the business not want to pay for an inspection). The requirement for a visit will depend on the nature of the dispute and whether or not a decision can be made on the basis of the inspection report and appeal form.
6. If the business disagrees with the outcome of the appeal the decision can be challenged by way of judicial review. It is advised that the business seeks its own legal advice ahead of any judicial review proceedings. The business also has recourse to the local authority complaints procedure (taking the matter to the Local Government Ombudsman where appropriate) if they consider that the service has not been properly delivered.

7. If your issue is in relation to the Star Rating scheme itself rather than the inspecting officers interpretation of it you will need to contact [DEFRA](#) or [PIF](#); who are the organisations responsible for the drafting of the scheme.