

A Guide to the Licensing Act 2003

What is the general effect of the Act?

The Licensing Act 2003 transfers responsibility for the licensing of premises such as pubs, nightclubs, off licences and restaurants that sell or supply alcohol away from the Magistrates Court to the Council. Existing legislation concerning public entertainment, theatres, cinemas and late night refreshment licensing has also been replaced under the Act – all these activities are now covered by the new regime.

What do I need a licence for?

You need to obtain a licence for the following activities:

- To sell alcohol by retail
- If you are a qualifying club, to supply alcohol to a club member, or to sell alcohol to a guest of a club member
- To provide regulated entertainment
- To sell late night refreshment - selling hot food or drink between 11.00pm and 5.00am for consumption on or off the premises, unless you are a hotel, staff canteen or campsite

What are the fees for the various licences?

The fees for the different types of licences and permissions have been set in regulations by Parliament. The fees and charges under the Licensing Act 2003 are shown at Appendix A.

Entertainment

What is regulated entertainment?

The following kinds of entertainment are subject to regulation:

1. Plays
2. Film exhibitions
3. Indoor sporting events
4. Boxing or wrestling exhibitions
5. Live music (karaoke included)
6. Recorded music
7. Dancing by the public or performers
8. Any entertainment similar to that described in 5, 6 or 7 above.

But only where –

- The entertainment is provided in front of an audience or spectators and is for the purpose of entertaining those persons AND
- The entertainment is:
 - To any extent to members of the public OR
 - Exclusively to members of a qualifying club and their guests; OR
 - For consideration and with a view to profit. The charge must be made by or on behalf of the organisers or management of the entertainment or the premises, and must be paid for by or on behalf of some or all of the persons for whom the entertainment or facility is provided. This would include, for example, letting out a room in your premises for people to use for wedding receptions.

What about music in small premises?

A Premises Licence for regulated entertainment is required in premises with a maximum capacity of less than 200 persons, and where the sale alcohol is the main activity. However, any conditions on your licence relating

to the following licensing objectives:

- Prevention of Public Nuisance, and
- The Protection of Children from Harm

will be automatically suspended. These conditions can be applied to a licence if the Licensing Authority carries out a formal review of the licence.

However, conditions related to the above two licensing objectives, can be imposed on a licence as a result of something you have put in your operating schedule.

Are there any exemptions for un-amplified music?

A Premises Licence is still required for regulated entertainment involving un-amplified music. In premises that:

- Are licensed for the sale of alcohol and provision of entertainment, and
- Have a maximum capacity of less than 200 persons, and
- Provide un-amplified music between 8.00 pm and midnight, and
- Have no other forms of entertainment on the premises

all conditions on the licence are suspended. As with small premises:

- Conditions can be applied to a licence if the Licensing Authority carries out a formal review of the licence.
- Conditions can be imposed on a licence as a result of something you have put in your operating schedule.

What about providing entertainment facilities?

You still need a licence for regulated entertainment, even if you are just providing facilities for making music, dancing, or entertainment of a similar description.

This means, for example, that you require a licence for:

- Having a piano on the premises for the use of customers or performers;
- Having a dance floor on the premises;
- Providing a video jukebox.

When do I not require a licence for regulated entertainment?

- Films which are solely or mainly to demonstrate a product, advertise goods or services, or provide information, education or instruction;
- Films as part of an exhibition in a museum or gallery;
- TV and radio broadcasts, providing they are shown "live" and not recorded;
- Religious meetings or services;
- Entertainment in places of public religious worship;
- Garden fetes (unless held for private gain);
- Entertainment provided in a moving vehicle;
- Morris dancing;
- Incidental entertainment.

What does "incidental entertainment" mean?

Consent for regulated entertainment is not needed when the entertainment is provided for background entertainment. This is sometimes a difficult area and if you are unsure you should contact us for advice. Examples of "incidental" entertainment are:

- a supermarket playing background music (people go there to shop - the music is not an influencing factor);
- music during keep fit classes (people are there to exercise);
- salsa dance classes (people are there to learn to dance);
- a pub jukebox playing in the background (people are there to drink, the music is not an influencing factor).

Is there still a “two in a bar” rule?

No. Under the new Act, it doesn't matter how many performers you have, or whether you just have a DJ and no dancing. You still need a licence for regulated entertainment, even to carry on providing duos or a DJ.

Late Night Refreshment

“Late night refreshment” means the supply of hot food or hot drink to the public, for consumption on or off the premises, between 11.00pm and 5.00am. It includes takeaways, cafes, fast food outlets and mobile catering vehicles. Premises that provide late night refreshment will need to hold a Premises Licence once the Act comes into effect.

The Government believes it is necessary to protect local residents because premises, which serve late night refreshment, can be used by customers who may have been drinking at other premises earlier in the evening, thereby creating the potential for disorder on and near the premises. Also, because large numbers of customers may gather at places serving late night refreshments, there is a potential for nuisance and disturbance for local residents. The regulation of late night refreshment will tackle these issues and allow residents and other interested parties and responsible authorities to make representations about new, and seek reviews of existing licences where they are concerned that the licensing objectives below will be or have been affected.

If a supermarket or other business premises (i.e. garage) heats food or drink for customers between 11.00pm and 5.00am, or provides facilities for customers to heat food or drink above the ambient temperature, a premises licence is required. However, if the business is selling only cold food and drink, and not providing facilities to heat it, a premises licence is not required.

Are there exemptions for the requirement to obtain consent for late night refreshment?

The following are exempt from requiring a Premises Licences for the provision of late night refreshment:

- Alcoholic hot drinks or hot drinks containing alcohol (although consent to sell alcohol will still be required).
- Hot drinks distributed by a machine that is operated solely by the customer.
- Hot food or hot drink supplied free of charge, where there is also no charge for admission to any premises, or for some other item to obtain the hot food or hot drink.
- Hot food or hot drink supplied by a registered charity or by a person authorised by a registered charity (i.e. a charity which is registered under the Charities Act 1993 or a charity not required by the Charities Act 1993 to be registered).
- Hot food or hot drink supplied on a vehicle, which is not permanently or temporarily parked at the time.
- Hot food or hot drink supplied to members and guests of recognized clubs that hold a Club Certificate
- Hot food or hot drink supplied to hotel and bed and breakfast guests.
- Refreshments in staff canteens where the staff are required to work between 11.00pm and 5.00am.

What about if I already serve food after 11.00pm?

If you already sell food after 11.0pm because you hold a Section 77 or Section 68 certificate under the Licensing 1964, you must tick the box on the application form for late night refreshment. However this will *not* be a variation, as it is an activity already authorized by your existing licence.

If I hold a Theatre Licence can I still sell alcohol without a licence?

No, you will need to fill in part of the application form relating to variations if you wish to sell or supply alcohol.

So what happens with my application and how do I fill the form in?

See the separate sheet for full details of the application process.

What about one off events and special occasions?

If you are holding a licensable activity that falls in to the following categories:

- Less than 500 people attending, and
- Lasting for not more than 96 hours, with a break of at least 24 hours thereafter

You can hold your event by submitting a Temporary Event Notice (TEN) to the Council.

This notice allows you to hold a licensable activity on premises that are not currently licensed, or to hold activities your existing licence does not permit. This would include for example:

- Selling alcohol at a school fete
- Providing regulated entertainment at a pub where the current licence does not permit this
- Staying open to sell hot food in to the night on a special occasion (e.g. New Years Eve)
- Selling alcohol after the hours your normal licence permits, e.g. for a special occasion
- An amateur dramatics group putting on a play in unlicensed premises.

Are there any restrictions on TEN's?

- You can only have up to 50 TEN's a year if you are a Personal Licence Holder (see section below on Personal Licences);
- You can have only have up to five TEN's a year if you are not a Personal Licence Holder;
- You must be aged 18 or over;
- Restrictions apply where the applicant is an "associated person" of someone who has already given a TEN, including spouses, close relations, agents and employees, and their spouses. The word "spouse" also includes someone living with the notice giver;
- There can only be a maximum of 12 TEN's a year for any particular premises, subject to an overall limit of no more than 15 days in total (e.g. where the TEN lasts for more than one day).

If your event/activity falls outside these restrictions, you will require a full Premises Licence.

If the number of TEN's you seek in a year exceeds the limits above, the Council must serve a counter notice prohibiting the event from going ahead. This must be served at least 24 hours before the event.

We will consult the Police on your application. They can only object if they feel your event would undermine the Crime Prevention Objective. If they do object, we will hold a public hearing in front of our Licensing Sub-Committee to determine your application (unless all parties can agree a hearing is unnecessary). The Licensing Sub-Committee will listen to evidence from both sides before deciding whether the event can go ahead. However, Government guidance requires that we refuse permission for the event in these circumstances unless there are exceptional reasons not to.

Personal Licences

What is a Personal Licence?

All sales of alcohol must be made by, or under the authority of, a Personal Licence Holder. Not everyone who makes a sale has to hold a Personal Licence, so long as a Personal Licence Holder has authorised the sale. This does not apply to Qualifying Clubs or premises operating under a Temporary Event Notice.

You must apply for your Personal Licence to the Council in whose district you live.

You can have as many Personal Licence Holders on the premises as you wish, providing there is only one Designated Premises Supervisor (see below). You can also choose to become a Personal Licence Holder if you wish to apply for more than five TEN's a year, but otherwise would not require one.

Designated Premises Supervisor (DPS)

Additionally, all premises operating under a Premises Licence to sell or supply alcohol must appoint a Designated Premises Supervisor (DPS) for the premises. There can only be one DPS per premises. The DPS will be held as the person in overall charge of the premises. You should therefore choose this person with care.

You have to nominate the DPS on your application form. This person does not have to be on the premises at all times, but they must take responsibility for what happens there. This means the DPS should ensure any staff they appoint are appropriately trained in the requirements of the Licensing Act 2003 and of any specific conditions attached to the Premises Licence.

A person cannot become a DPS unless he is also a Personal Licence Holder.

Please note – although qualifying clubs don't need a DPS to sell alcohol to members and their guests, this exemption does not apply if you hire the premises out for wedding receptions and the like. You do need a full Premises Licence for these activities (unless you are only holding a small number of events, which you can hold under a TEN) and therefore you will need to appoint a DPS (but see notes on holding multiple licences below).

The application procedure is described in the notes attached to the application form.

All applications, notices and representations shall be in writing. E mail may be used in respect of representations, but applications will need to be accompanied by plans and the fee, so will need to be in writing.

This guidance note has been made as comprehensive as possible. However, in attempting to simplify the law, certain requirements have been omitted. Full details of what you must do are in the legislation itself. The information in this guidance was accurate when produced but you are always advised to seek your own legal advice should you have any queries.

Please contact us should you require any further information or assistance.

	Licensing Unit
Tel	01643 703704
Fax	01984 633022
E-mail	customerservices@westsomerset.gov.uk

LICENSING ACT 2003 CHARGES

Rateable values and Bands (Non Domestic Rateable Values)

Table 1

Band	Rateable Value
A	£0 - £4,300
B	£4301 - £33,000
C	£33,001 - £87,000
D	£87,001 - £125,000
E	£125001 and above

Information on non domestic rateable values (Business Rates) can be obtained from the Valuation Office Agency at their website: www.voa.gov.uk

Premises Licences and Club Premises Certificates (new and variations)

(based on the rateable value of the premises as detailed in the table above)

Table 2

Band	Fee
A	£100
B	£190
C	£315
D*	£450
E*	£635

* Fee multiplier:

For premises exclusively or primarily used for the supply of alcohol on the premises, the fees in the above table will be increased as follows:

Band D – 2x's the fee (£900)

Band E – 3x's the fee (£1905)

Annual Fee for Premises Licences and Club Premises Certificates

Table 4

Band	Fee
A	£70
B	£180
C	£295
D*	£320
E*	£350

Miscellaneous Fees

Table 5

Application or notice	Fee
Theft, loss etc, of a premises licence or summary	£10.50
Application for a provisional statement where a premises is being built	£315.00
Notification of change of name or address	£10.50
Application to vary licence to specify individual as premises supervisor	£23.00
Application for transfer of premises licence	£23.00
Interim authority notice following death etc. of licence holder	£23.00
Theft, loss etc. of certificate or summary	£10.50
Notification of change of name or alteration of rules of club	£10.50
Change of relevant registered address of club	£10.50
Temporary event notice	£21.00
Theft, loss etc. of temporary event notice	£10.50
Application for a grant or renewal of personal licence	£37.00
Theft, loss of a personal licence	£10.50
Notification of the change of a name and address	£10.50
Notification of a freeholder of licensing matters	£21.00

Additional Fees**Additional fee to be paid for premises where there are 5000 or more persons specified on the licence****Table 6**

Number	Additional Fee (new)	Additional Fee (annual charge)
5,000 – 9,999	£1,000	£500
10,000 – 14,999	£2,000	£1,000
15,000 – 19,999	£4,000	£2,000
20,000 – 29,999	£8,000	£4,000
30,000 – 39,999	£16,000	£8,000
40,000 – 49,999	£24,000	£12,000
50,000 – 59,999	£32,000	£16,000
60,000 – 69,999	£40,000	£20,000
70,000 – 79,999	£48,000	£24,000
80,000 – 89,999	£56,000	£28,000
90,000 and over	£64,000	£32,000

Notes

1. The preferred method of payment is by cheque, made payable to West Somerset District Council.
2. Premises fees are calculated by firstly determining the non-domestic rateable value for the premises or business (NDRV) (Table 1). This determines the fee band for the premises or business. Reference to table 2 will show the licence fee payable for the conversion of the licence.
3. Where applications are for a simultaneous conversion and variation, and those premises relate in any way to the supply of alcohol, an additional fee is required to be paid as indicated in table 3. This table also includes the combined fee for such applications.
4. For premises in Bands D and E that are exclusively or primarily used for the supply of alcohol for consumption on the premises, the fee has to be increased as indicated by the note at the bottom of table 2.
5. Premises seeking a licence with a capacity of 5000 or more persons will be required to pay an additional fee as indicated in table 6.
6. An annual fee shall become due and payable each year on the anniversary of the date of the Grant of the Licence/Certificate as indicated in Table 4.
7. For premises or businesses without a non-domestic rateable value, the following applies:
 - Premises with no NDRV – will be allocated to Band A
 - Premises under construction – will be allocated to Band C
 - Licensed areas that form part of a larger premises – the NDRV for the whole premises will be used for licence fee calculation purposes
 - Premises which are part of two or more premises with separate NDRV's – the higher NDRV will be used for licence fee calculation purposes
8. Fee exemptions are available, but only in relation to schools and community buildings that are licensed for regulated entertainment. If the licence includes alcohol sales, no fee exemptions can be given.
9. The various fees and charges under the Licensing Act 2003 are shown at table 5.