

RYEDALE
DISTRICT
COUNCIL



RYEDALE DISTRICT COUNCIL

General Guidance

LICENSING ACT 2003

LEGAL DISCLAIMER

This booklet is intended to provide a brief overview of the main requirements of the Licensing Act 2003. **Its purpose is to give guidance to individuals and businesses.** The booklet is produced to give guidance only and the Council does not accept any responsibility or liability for any errors or omissions. **You are advised to seek your own independent legal advice if you think it necessary.**

The Licensing Act 2003 – A General Introduction

The Licensing Act 2003 received Royal Assent on 10th July 2003 and replaced existing licensing laws regarding licensable activities. The Act came into effect on 24 November 2005. The Act made district council's the Licensing Authority and the body responsible for dealing with all licence applications relating to licensable activities.

There are four licensable activities contained within the Act:

- The sale by retail of alcohol
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of a club
- The provision of regulated entertainment (see below)
- The provision of late night refreshment (i.e. supply of hot food and drink between 11pm and 5 am for on and off the premises)

With the Act therefore relating to, amongst others, the following Premises:

- Pubs
- Nightclubs
- Off-licenses
- Restaurants selling alcohol
- Businesses offering hot food/hot drinks between 11 pm and 5 am
- Hotels, guest houses and other places that sell alcohol
- Private member's clubs and social clubs
- Theatres
- Cinemas
- Indoor sporting venues
- Organisers of occasional entertainments
- Provision of public entertainment

The Act requires licence holders, the council and other identified agencies to promote the 4 Licensing Objectives:

- 1. Prevention of crime and disorder**
- 2. Prevention of public nuisance**
- 3. Public safety**
- 4. Prevention of harm to children**

The Act introduced the following forms of Licence and permissions:

1. Premises Licences
2. Personal Licences
3. Club Premises Certificates
4. Temporary Event Notices

Premises Licences

Under the 2003 Act any premises (excluding private clubs) used on a permanent basis for any of the 4 licensable activities is required to hold a Premises Licence

For this purpose Regulated Entertainment is defined as entertainment provided in the presence of an audience, for the purpose of entertaining that audience. For example:

- The performance of a play
- The exhibition of a film
- An indoor sporting event
- Boxing or wrestling
- A performance of live music
- Any playing of recorded music
- Any playing of recorded music
- Any performance of dance
- Entertainment of a similar description (for example a circus)

NB If your premises are licensed for the on-sales of alcohol you are exempt from the need for a licence for some forms of regulated entertainment between the hours of 08:00 and 23:00. For further details please contact the licensing team.

A premises licence can be granted for either a fixed period (for example, for a pop festival) or indefinitely for the life of the business.

When making an application for a premises licence applicants must submit a completed application form which includes an operating schedule and must be accompanied by:

- A plan of the building drawn to a scale of 1:100
- The appropriate fee, which are determined by the Non Domestic Rateable Value of the premises.
- If the licence is to authorise the retail sale or supply of alcohol it must include the details of the person nominated as the Designated Premises Supervisor (DPS)
- Documentation to show that the DPS has agreed to be so.

See details below for further information on the Designated Premises Supervisor.

When submitting an application for a premises licence the applicant must 'give' copies of the application to all the 'responsible authorities' on the same day that the application is made to the Licensing Authority.

Responsible authorities

- **Police Licensing Officer (Ryedale)**
- **North Yorkshire Fire Service**
- **Ryedale District Council's environmental health department (pollution control and health & safety sections) and development control department**
- **For properties within the North York Moors National Park area – North York Moors National Park Authority**
- **North Yorkshire County Council, Trading Standards**
- **The Licensing Authority**
- **North Yorkshire and York PCT**
- **North Yorkshire County Council, Social Services**

Any of the above or any other person likely to be affected by the application can make representations about the application, which may lead to conditions being imposed, or the application being refused.

Regulations require all applicants to advertise their application in a prescribed manner (outside their premises and in a local newspaper)

Where an application is made in the correct form the Licensing Authority must grant the application without a hearing and in the terms applied for unless representations (objections) are made against the application's proposals.

Representations

If a representation is made which cannot be negotiated through then unless the Authority considers the representation to be irrelevant, vexatious or repetitive the application must be determined by a hearing. In these cases Ryedale District Council's Licensing Committee comprising of elected Members of the Council will sit as the Licensing Authority and determine the application.

At that hearing the Authority may:

- Decide to grant the licence in the same terms as it was applied for.
- Decide to refuse the application if they believe it is necessary to do so to promote the Acts objectives.
- Decide to grant the licence but impose conditions on a licence to promote the licensing objectives (e.g. requiring door supervisors in a bar to promote the crime prevention objective, the installation of CCTV, noise control measures to prevent public nuisance.)
- Exclude from the scope of the licence a licensable activity if they believe it is necessary to do so to promote the Acts objectives.

The Licensing Act 2003 (Hearings) Regulations 2005 regulations specify how hearings are conducted, and the type of evidence that may be presented at a hearing if you wish to make representation against a grant or variation.

Individuals will not be able to claim expenses for costs incurred in making a representation or for their attendance at hearings.

Appeals against a Council's licensing decision can be made to the Magistrates' Court.

Review Hearings

Sometimes, the way licensed premises are run can lead to problems. When this happens any of the 'responsible authorities' or any other person, e.g. a local resident, or business, can request a review of the premises licence.

Providing the grounds for the request are not frivolous, vexatious or repetitious a hearing **will** be held to review the licence. At that review the Authority may decide to do nothing, impose conditions, remove certain activities from the licence, suspend or revoke the licence.

Village Halls and Community Centres, etc

Village halls, Community centres, Church and Parish halls, schools, hospitals and local authority premises are now exempt from the need to licence many forms of regulated entertainment on their premises between the hours of 08:00 and 23:00. For further details please contact the licensing team.

Private Clubs (Members Clubs)

A club premises certificate authorises a members' club to carry out licensable activities. The licensable activities it can carry out are:

- Sale or supply of alcohol to members or guests
- Provision of regulated entertainment
- Provision of hot food / drink at any time between 11pm and 5am

There is no requirement for a qualifying club to have a Designated Premises Supervisor named on the certificate or a personal licence holder present to authorise the supply of alcohol.

What is a club premises certificate for?

A club premises certificate is only for use by qualifying clubs. A number of criteria must be met to be considered a qualifying club. These are:

- That under the rules of the club, persons may not be admitted to membership or be admitted as candidates for membership, to any of the privileges of membership without an interval of at least two days between their nomination for membership and their admission
- That the club is established and conducted in good faith as a club
- That the club has at least 25 members
- That alcohol is not supplied to members on the premises otherwise than by or on behalf of the club

Also to qualify as a club authorised to supply alcohol to its members and guests, additional conditions must be met. These are:

- The purchase and supply of alcohol by and for the club is managed by a committee made up of elected members of the club all aged over 18 years

- No arrangements may be made for any person to receive any commission, percentage or similar payment at the expense of the club with reference to purchases of alcohol by the club
- No arrangements may be made for any person to derive directly or indirectly any monetary benefit from the supply of alcohol to members or guests apart from to benefit the club as a whole or any indirect benefit a person derives by reason of the supply contributing to a general gain for the clubs as a whole.

Provisional Statements

People who are considering opening licensed premises may apply for a provisional statement. This allows new premises to be prepared in the knowledge that a full licence will be granted, providing that it is built according to the original Operating Schedule and plans submitted to the council, and that there have been no material changes in the meantime.

Temporary Event Notices

A Temporary Event Notice (TEN) is a notification given by an individual (the premises user) to the Licensing Authority (Ryedale District Council) giving notice of an event that is to take place which involves licensable activity for which a premises licence is not in force.

TEN's relate to small events where less than 500 people are likely to attend and will last for less than 168 hours.

Holders of a Personal licence will be able to hold up to 50 temporary events(including 10 late TENs) in any 12-month period at premises that are not suitably licensed. Non-personal licence holders can(subject to other conditions) hold up to 5 temporary events (including 2 late TENs) in any 12-month period. Individual premises may be used for temporary events on a maximum of 12 occasions in any calendar year covering a period not exceeding 21 days but there must be at least 24 hours between events at the same premises.

The '**premises user**' must give at least one copy of the Temporary Event Notice (TEN) to the Council's Licensing Team which must be accompanied by the appropriate fee, (£21) and at the same time also provide a copy to both the police and the Council's Environmental Protection Team. **This must be done at least 10 working days prior to the event or at least 5 working days for a Late TEN.** The '**premises user**' who must be 18yrs or over.

Objections against a TEN can be made by both the police and the local authority exercising environmental health functions on any of the four licensing objectives.

Planning Laws

The giving of a temporary event notice does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required

Children

Under the Act it is unlawful to allow any unaccompanied child under the age of 16 to be present on premises where a Premises Licence or Temporary Event Notice is exclusively or primarily used for supply and consumption of alcohol. e.g. a Beer Tent.

It is also unlawful between midnight and 5 a.m. to permit a child under 16 that is not accompanied by an adult to be present on any premises supplying alcohol for consumption and operating under Premises Licence or Temporary Event Notice.

Personal Licence Holders

The sale of alcohol in any premises operating under a Premises Licence must be under the supervision of a Personal licence holder.

Persons holding a recognised qualification and over 18 yrs may apply for a personal licence to the council for the area in which they live. Personal licences will be valid for 10 years.

Personal Licence holders must:

- Be over 18 years old
- Not have any relevant criminal convictions as set out in the Act
- Possess an approved licensing qualification
- Pay the required fee

Designated Premises Supervisor

What is a Designated Premises Supervisor (DPS)?

Where the supply of alcohol is one of the licensable activities there must be a DPS. (There is an exception for community premises in respect of which a successful application has been made to disapply the usual mandatory conditions (Further information on this can be obtained from the Licensing Team) . There can only be one DPS and this person will generally be the individual who is in day-to-day control of the premises. The DPS must be appointed by the premises licence holder, must be the holder of a personal licence and must consent to the appointment. The premises licence holder may also be the DPS.

Does the DPS have to be on the premises at all times when alcohol is being sold?

No. However, it will be expected that the DPS will spend a significant amount of time on the premises. It is essential that the DPS is contactable at all times, particularly when problems arise on the premises.

Can anyone object to a person who is specified as a DPS?

Only the Chief Officer of Police will be able to make representations about the specification of any DPS if he feels, in the exceptional circumstances of the case, that the crime prevention objective could be undermined by that specification. This could include fears that the DPS would not be able to fulfil the responsibilities in respect of the crime prevention objective for more than one premise at the same time. Where the Chief Officer of Police makes representations about the DPS, the licensing authority must hold a hearing to consider them (unless all parties agree that this is unnecessary).

Can there be more than one DPS at the same premises?

The Act and Guidance specifies that there may only be one DPS for any premises.

What happens if the DPS leaves his employment?

The DPS must inform the relevant licensing authority if he or she wishes to be removed as DPS. Within 48 hours of the notice being given to the licensing authority, the individual must also give the premises licence holder a copy of the notice sent to the licensing authority and a notice directing the licence holder to send the premises licence to the relevant licensing authority. If that is not practicable, a statement of the reasons for the failure to provide the licence within 14 days of receiving the notice should be issued to the licensing authority. If the holder fails to comply with the direction he/she will commit an offence.

Can I be a DPS at more than one premises at the same time?

Yes. The only requirement for being a DPS is that the individual concerned must be the holder of a personal licence. This ensures that where the activities concern the supply of alcohol, there is a person who supervises the premises who has an understanding of the social issues, potential problems associated with the sale of alcohol and who is responsible for licensable activities at the premises.

How do you change the DPS?

A change of DPS is a variation of the premises licence and the application must be sent to the licensing authority, together with the appropriate fee and the written consent of the proposed DPS. The application form must be copied by the applicant to the existing DPS and to the Chief Officer of Police who may, within 14 days, object to the proposed appointment

Licensing Policy

The Council's Statement of Licensing Policy is available on request or may be downloaded from the Council's web site @ www.ryedale.gov.uk.

Further information on The Licensing Act 2003 may be obtained from:

Department for Culture, Media and Sport website at www.culture.gov.uk or

HOW TO CONTACT US

By Personal visit to:

Ryedale District Council Offices, Ryedale House, Old Malton Road, Malton.
Please telephone first to make an appointment.

By writing to us at:

The Licensing Team, Health and Environment, Ryedale District Council, Ryedale House, Old Malton Road, Malton YO17 7ZG

By phone:

Licensing Team: (01653) 600666 ext 250/253

Fax us on: (01653) 600764

Internet: www.ryedale.gov.uk

Email: licensing@ryedale.gov.uk