

LICENSING ACT 2003

TEMPORARY EVENT NOTICES (TENs) - EXPLAINED

The Licensing Act 2003 ("the Act") introduced a 'light touch' system of licensing permitted temporary activities. It replaced occasional entertainment licences and occasional alcohol permissions granted in respect of one-off, short-term events.

What are licensable activities?

Licensable activities requiring the authorisation of either a Premises Licence/Club Premises Certificate or the giving of a TEN are:

- 1) Sale by retail of alcohol;
- 2) Supply of alcohol to members of a qualifying club and/or guests;
- 3) Provision of late night refreshment (after 23.00 hours and before 5am the following morning); and
- 4) Provision of Regulated Entertainment – defined as:
 - the performance of a play;
 - an exhibition of a film;
 - an indoor sporting event;
 - boxing or wrestling entertainment;
 - a performance of live music;
 - any playing of recorded music;
 - a performance of dance;
 - or entertainment of a similar description to live music, recorded music or dance.

When can a TEN be given?

It is intended that TENs can be used to authorise relatively small-scale, ad hoc events, held in or on any premises (or land) that do not have a Premises Licence authorising one or more particular activities. For example, a charity fund-raising event with the sale of alcohol; or if a premises licence holder wishes to use his/her pub for the exhibition of a film, or an indoor sporting event attended by spectators, and the premises licence already held does not authorise either activity as permitted regulated entertainment. One TEN can be given to cover one or more licensable activities at a single event – a wedding party with a paying bar, would need a TEN to allow sale of alcohol and the provision of regulated entertainment and possibly the provision of late night refreshment.

A TEN can be given in respect of both indoor and outdoor events. "Premises" for the purposes of the Act means any place, whether indoors or outdoors - it could be a building, a public park or part of it, a town square, a street, a field, or a marquee on land etc.

Consumption of alcohol on or off the premises?

If the TEN indicates that alcohol will be supplied for consumption on the premises, **only**, the premises user will be required to ensure that no person leaves the premises with alcohol supplied there. If such a supply takes place, the premises user may be liable to prosecution for carrying on an unauthorised licensable activity. The 'premises' will need to be clearly and specifically defined in the Notice.

Similarly, if the premises user gives notice that only supplies of alcohol for consumption off the premises will take place, (s)he must ensure that alcohol supplied is sold sealed and not consumed on the premises. The premises user is free to give notice that (s)he intends to carry on both types of supplies.

Does a TEN need to be given if alcohol is supplied in exchange for a donation?

In those cases where the alcohol is being supplied as part of the sale of the ticket for an event, it would be difficult to argue that this was not in some way payment for the alcohol, and would have to be classed as a sale by retail of alcohol – this would need the authorisation of a TEN or a Premises Licence. It would be similarly difficult to argue that giving alcohol away free of charge at an event, in exchange for a donation, was anything other than a 'sale'. Only Case Law will determine whether these circumstances will be specifically exempted in the future. If in doubt, check with the Licensing Authority.

How is a TEN given to the Licensing Authority and the Police Authority?

The system involves an event organiser (the "premises user") giving a temporary event notice (TEN) to the licensing authority and copying this to the police. A temporary event notice may only be given in the name of an individual and not, for example, in the name of an organisation, club or business; [within businesses, clubs or organisations one individual will therefore need to be identified as the proposed premises user for the occasion].

The premises user must give the TEN to the Licensing Authority (Derbyshire Dales District Council) at least **10 clear working days before** the day on which the event is to start. Notices received outside this timescale may be rejected. The Licensing Authority must be given **2** copies of the notice with the fee of £21 [prescribed in the Licensing Act 2003 (Fees) Regulations 2005].

NB: **At least** 3 weeks notice should be allowed, particularly during the Summer months and Christmas period when the number of notices being processed is expected to be unusually high.

At the same time, a copy of the notice **must** be given to the relevant chief officer of police for the area in which the premises are situated. **Failure to do this will result in the Licensing Authority rejecting the Notice.**

For premises in Derbyshire Dales, a copy should be sent to: PC Sandra Barlow, Divisional Licensing Manager, Derbyshire Constabulary, Buxton Police Station, Silverlands, Buxton, Derbyshire, SK17 6QJ.

PLEASE READ THE GUIDANCE NOTES ACCOMPANYING THE TEN BEFORE COMPLETING THE FORM – INCOMPLETE NOTICES WILL BE RETURNED WHICH COULD RESULT IN THE EVENT NOT BEING AUTHORISED AND UNABLE TO GO AHEAD.

Are there any limitations/restrictions on giving a TEN?

- 1) No more than 499 persons may be on the premises for a temporary event at any one time, when the licensable activities are being carried on. The maximum figure of 499 does not just include the audience, spectators or consumers - it includes, for example, staff, organisers, stewards and performers who will be present on the premises.
- 2) If the premises user **does not hold** a Personal Licence, (as long as (s)he is 18 years old or older), (s)he can give a maximum of 5 TENs in any calendar year, anywhere in England and Wales. Anyone **with** a valid personal licence can give a maximum of 50 TENs a year, although there are strict limits on the number that can be given in respect of the same premises. (NB: calendar year is defined in the Act as 1 January – 31 December inclusive, and if an event straddles two calendar years, it will count against the limits on temporary event notices for both years, however, only one notice needs to be given.
- 3) Temporary Event Notices given by an 'associate' or a person who is in business with a premises user (and that business involves carrying on licensable activities) will count towards the above totals.

An "associate" of the proposed premises user is:

- (a) the spouse of that person;
- (b) a child, parent, grandchild, grandparent, brother or sister of that person;
- (c) an agent or employee of that person; or
- (d) the spouse of a person within (b) or (c).

For these purposes, a person living with another as that person's husband or wife is to be treated as that person's spouse.

- 4) Each event covered by a TEN can last a maximum of 96 hours. (This is expected to be a continuous period). For example, one TEN can be given for a performance of a pantomime spanning 4 evenings – and assuming the 'first night' was a Wednesday, could run through until Saturday, and include a matinee performance, in addition to the evening performance on the Saturday.
- 5) No more than twelve TENs can be given in respect of any one particular premises in any calendar year. This does not necessarily mean that there are 12 separate occasions on which TENs can be given, as the total number of days covered by TENs cannot exceed 15 in any one calendar year. The Act defines 'day' for the purpose of giving TENs as ending at Midnight.

eg If each event were to finish before midnight on the day it started the number of TENs that could be given would be 12 and would only total 12 days. However if an event runs from 7pm in the evening until 1am the following morning this will count as one TEN, but **2 days** towards the aggregate total of 15.

The minimum number of TENs that could be given at any one premises in a calendar year could be as few as four; for example: 3 TENs, each for 96 hours equalling 12 days; plus 1 TEN for 72 hours equalling 3 days. Total number of TENs = 4 and total number of days = 15.

If the temporary event notice given exceeds the permitted limits the premises user will be given a counter notice by the licensing authority. This will mean that the event cannot go ahead.

- 6) Only one TEN can be given in respect of any one 'premises' - there must be a minimum of 24 hours between each event.

Who can object to a TEN being given?

Only the Police can object to a TEN – and then, only if they are satisfied that allowing the premises to be used in accordance with the TEN would undermine the prevention of crime and disorder licensing objective. They must, no later than 48 hours after being given a copy of the TEN, give the premises user and the licensing authority an objection notice. The authority must then hold a hearing to consider the notice unless all parties agree this is unnecessary and, having regard to the notice, will issue a counter notice if it considers it necessary for the promotion of the crime prevention objective to do so. This will mean that the event cannot go ahead. The TEN can be modified by the police with the agreement of the premises user prior to the consideration of the objection notice by the licensing authority, in which case the objection notice is to be treated as having been withdrawn and the provisions of 2003 Act will apply to the TEN as modified.

Can a TEN be withdrawn?

A TEN can be withdrawn, provided that at least 24 hours notice is given before the event would have taken place. A properly withdrawn TEN will not count towards the total number for any one premises in a calendar year.

If the event is re-arranged a new TEN will need to be given and the fee of £21 will be applied. The fees are set by Central Government, to cover the administrative and enforcement costs of the licensing service. The Licensing Authority does not have any discretion to waive the fee for a withdrawn TEN.

What relevant offences can be committed under the Licensing Act 2003?

- § the sale or supply of alcohol to children under 18 years of age (maximum fine on conviction is a fine up to level 5 on the standard scale, currently £5,000);
- § allowing the sale of alcohol to children under 18 (maximum fine on conviction is a fine up to level 5 on the standard scale, currently £5,000);
- § knowingly allowing the consumption of alcohol on the premises by a person aged under 18 (maximum fine on conviction is a fine up to level 5 on the standard scale, currently £5,000);
- § allowing disorderly behaviour on the premises (maximum fine on conviction is a fine up to level 3 on the standard scale, currently £1,000);
- § the sale of alcohol to a person who is drunk (maximum fine on conviction is a fine up to level 3 on the standard scale, currently £1,000);
- § obtaining alcohol for a person who is drunk (maximum fine on conviction is a fine up to level 3 on the standard scale, currently £1,000);
- § knowingly allowing a person aged under 18 to make any sale or supply of alcohol unless the sale or supply has been specifically approved by the premises user or any individual aged 18 or over who has been authorised for this purpose by the premises user (maximum fine on conviction is a fine up to level 1 on the standard scale, currently £200); and

§ knowingly keeping or allowing to be kept on the premises any smuggled goods which have been imported without payment of duty or which have otherwise been unlawfully imported (maximum fine on conviction is a fine up to level 3 on the standard scale, currently £1,000).

In addition, where the premises are to be used primarily or exclusively for the sale or supply of alcohol for consumption on the premises, it is an offence to allow children under 16 to be present when the premises are open for that purpose unless accompanied by an adult. In the case of any premises at which sales or supplies of alcohol are taking place at all, it is an offence for a child under 16 to be present there between the hours of midnight and 5am unless accompanied by an adult. In both instances, the penalty on conviction is a fine not exceeding level 3 on the standard scale, currently £1,000.

Application forms can also be downloaded from the DCMS website (Department for Culture Media and Sport) www.culture.gov.uk/alcohol_and_entertainment .

Forms and assistance can also be obtained by contacting the Licensing Section at the Council – 01629 761313. Email: licensing@derbyshiredales.gov.uk

This advice is not necessarily comprehensive and is subject to revision in the light of further information from the Department for Culture, Media and Sport. Only the courts can interpret statutory legislation with any authority. This advice is not intended to be a definitive guide to, nor substitute for, the relevant law, and independent legal advice should be sought where appropriate.