



COMMUNITY SERVICES DEPARTMENT
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LICENSING ACT 2003

TEMPORARY NOTICE EVENTS (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.

Please note that The Police Reform and Social Responsibility Act 2011 has amended the TENs regulations made under the Licensing Act 2003 and introduced a new system for giving TENs. The new system came into effect on 25 April 2012, and these guidance notes have been revised accordingly.

What are licensable activities?

Licensable activities requiring the authorisation of a Premises Licence, a Club Premises Certificate or 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 or other temporary structure on land etc.

Consumption of alcohol on or off the premises?

If the TEN indicates that alcohol will only be supplied for consumption **on** the premises, the premises user will be required to ensure that no person leaves the premises with alcohol which has been sold or 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' (ie the actual area to be authorised) will need to be clearly and specifically defined in the Temporary Notice Event. 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 in a sealed container and is 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 you are in any doubt, check with the Licensing Authority.

How is a TEN given to the Licensing Authority, the Police Authority and to the District Council's Environmental Health Section?

The process has been revised and requires the event organiser (the "premises user") to give a Temporary Notice Event (TEN):

- (a) to the Licensing Authority (Derbyshire Dales District Council) by means of a relevant electronic facility (ie via the Council's Website or Business Link website),
- OR
- (b) by other means (i.e. by hand or ordinary post – Royal Mail) to the Licensing Authority (only one copy).

In both cases the TEN must be given to the Licensing Authority with the fee of £21 [as prescribed in the Licensing Act 2003 (Fees) Regulations 2005].

- (c) to send a copy of the Notice to the Police Authority and Derbyshire Dales District Council's Environmental Health Section, at the same time the Notice is given to the Licensing Authority.

Failure to do this will result in the Licensing Authority having to reject your Notice.

For TENs that are given to the Licensing Authority electronically, the Licensing Authority will forward these to the Police and Environmental Health Authorities. If the TEN is given by post – the premises user must post a copy to both of these Authorities at the same time as to the Licensing Authority.

For premises situated in the Derbyshire Dales please send copies to:
The Divisional Licensing Manager, Derbyshire Constabulary, Buxton Police Station, Silverlands, Buxton, Derbyshire, SK17 6QJ (Tel: 01298 762015); and to the Head of Environmental Health, Community Services Department, Derbyshire Dales District Council, Town Hall, Matlock, Derbyshire, DE4 3NN (Tel: 01629 761212).

Alternatively you can email your completed copy of the Notice (must be signed) to:
BDiv.Licensing@Derbyshire.PNN.Police.uk or Fax: 01298 762017 and
envhealth@derbyshiredales.gov.uk or Fax: 01629 761165.

A Temporary Notice Event 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].

What is the timescale for giving TENs?

The new system has introduced two timescales for the premises user to give a TEN as follows:

- **Standard Temporary Notice Event** – the premises user must give a TEN to the Licensing Authority (Derbyshire Dales District Council) at least 10 clear working days before the day on which the event period begins, together with the fee of £21.

When calculating the 10 clear working days, you must not include the day that the Licensing Authority receives your notice or the day of the event, so in reality the required amount of notice is nearly 3 weeks.

If the required notice is not given the TEN may be treated as a Late TEN as outlined below:

- **Late Temporary Notice Event** – the premises user must give a TEN to the Licensing Authority (Derbyshire Dales District Council) no later than 5 working days but no earlier than 9 working days before the day on which the event period begins. The Council does not have any discretion to waive this timescale. When calculating the timescale, you must not include the day that this Council receives your TEN or the day of the event.

Please note that the Council does not have any discretion to waive this timescale.

NB: It is advisable to give Notices with **at least** 3 weeks notice (or longer if possible), particularly during if the event is a Wedding or similar event where a third party is relying on you to get the authorisation. You should also be aware that during the summer months and Christmas period the number of Notices being processed is likely to be high.

Please read the following guidance notes before completing the form as incomplete Notices will have to 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 (this includes 2 Late TENs) in any calendar year, anywhere in England and Wales. Anyone with a valid Personal Licence can give a maximum of 50 TENs (this includes 10 Late 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 Notice Events for both years, even though only one Notice needs to be given.

- 3) Temporary Notice Events 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:

- (d) the spouse of that person;
- (e) a child, parent, grandchild, grandparent, brother or sister of that person;
- (f) an agent or employee of that person; or
- (g) 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) A TEN lasts for a maximum of 168 hours. (This is expected to be a continuous period). For example, one TEN can be given for a performance of a pantomime spanning 7 evenings – and assuming the 'first night' was a Wednesday, could run through until Tuesday, 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 one TEN can cover a number of days – however, the total number of days covered by the number of TENs given cannot exceed 21 days in any one calendar year. The Act defines 'day' for the purpose of giving TENs as ending at Midnight.
- 6) If the latest Temporary Notice Event given will exceed 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.
- 7) Only one TEN can be given in respect of any one 'premises' – and there must be a minimum of 24 hours between each event authorised by a TEN.

Who can object to a TEN being given?

Only the Police Authority and the Environmental Health Authority (as relevant persons) for the area in which the premises are situated can object to a TEN – but only if they are satisfied that allowing the premises to be used in accordance with the Notice would undermine any of the four Licensing Objectives specified in the Licensing Act 2003. These are, the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. If either of both of these Authorities wish to object they must, within 3 working days of being served with a copy of the TEN, give the premises user and the Licensing Authority an Objection Notice.

Objections to a Standard Temporary Notice Event:

If the Police Authority or Environmental Health Authority objects to a Standard TEN (please see page 3), the Licensing Authority must hold a hearing to consider the Notice unless all parties agree this is unnecessary. If the hearing is upheld the Licensing Authority will issue a Counter Notice if it considers it necessary for the promotion of the four licensing objectives. This will mean that the event cannot go ahead.

The TEN can be modified by the Police Authority or Environmental Health Authority 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.

Conditions imposed on a Standard Temporary Notice Event:

If an objection has been made by the Police Authority or the Environmental Health Authority, the Licensing Authority may impose one or more conditions if the authority considers it appropriate for the promotion of the licensing objectives, and at least a part of the premises in relation to which the Temporary Notice Event is given is already subject to a premises licence or club premises certificate. Any such conditions will be consistent with the activity authorised by the Temporary Notice Event and existing conditions attached to the subsisting licence or certificate.

If the Licensing Authority decides to impose one or more conditions on a standard Temporary Notice Event, the authority will give the premises user notice of the decision, which will be accompanied by a statement of conditions imposed on the Temporary Notice Event.

The notice and statement of conditions will be given to each relevant party (the premises user and the Police Authority or Environmental Health Authority) 24 hours before the beginning of the event period specified in the Temporary Notice Event.

Objections to a Late Temporary Notice Event:

If the Police Authority or Environmental Health Authority objects to a Late TEN (please see page 3), the Licensing Authority must issue a Counter Notice to a premises user. This will make the late Temporary Notice Event ineffective (without a right to a hearing and onward appeal, as applies to the process for giving a standard Temporary Notice Event) and the event to which it relates cannot lawfully take place.

What happens if the Licensing Authority Issues a Counter Notice?

If a Counter Notice has been issued, any licensable activities taking place would be unauthorised and the premises user would be liable to prosecution.

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 they are 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 Home Office Website – <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/alcohol-licensing/temp-event-notice>

or from the Council's website using the alcohol, entertainment and late night refreshment link: <http://www.derbyshiredales.gov.uk/services-business/licensing/alcohol-entertainment-a-late-night-refreshment>

(you do not need to re-type the links - just copy and paste the link of your choice into your web browser)

Forms and assistance can also be obtained by contacting the Council's Licensing Team on 01629 761313; or via email: licensing@derbyshiredales.gov.uk

This information is available free of charge in electronic, audio, Braille and large print versions, and in other languages on request. For assistance in understanding or reading this document, please call 01629 761288.

In offering this advice DDDC wishes to make it clear that: This leaflet has been produced based on information supplied via the Home Office website, the statutory guidance, the legislation and related regulations. The advice given is based on the information available at the time the guidance was produced, it is not necessarily comprehensive and is subject to revision in the light of further information. 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. Independent legal advice should be sought where appropriate.

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