

Licensing Act 2003 - Temporary Event Notices & Permitted Temporary Activities

Information and Guidance for Applicants

IMPORTANT NOTICE

Parties wishing to hold events must be aware of the requirements of Temporary Events. It is important that applicants are aware of the legal requirements PRIOR TO THE EVENT TAKING PLACE, and where necessary, make an application for a Temporary Event Notice (TEN).

THIS DOCUMENT IS DESIGNED AS A GUIDE ONLY AND IS NOT INTENDED TO BE EXHAUSTIVE OR REPRESENT DEFINITIVE LEGAL OPINION. EASTBOURNE BOROUGH COUNCIL CANNOT BE HELD RESPONSIBLE FOR ANY ERRORS OR INACCURACIES HEREIN. APPLICANTS SHOULD SEEK INDEPENDENT LEGAL ADVICE WHERE APPROPRIATE.

1. What is a Temporary Event Notice? (TEN)

A Temporary Event Notice is a time-limited licence which authorises specified "licensable activities" at a defined location or "premises". A premise may be one room, a series of rooms, a whole building, a field or other open space. One TEN may be sufficient to cover a "premises" with several areas, but this depends on the types of licensable activity, hours and the numbers attending.

The event may last for up to 168 hours (seven days) and no more than **499** people may be on the "premises" at any one time, including staff. There are limits on the number of applications which may be made by any one person or in respect of any premises (see note 7 on the application form).

The licensable activities which may be authorised are:

- a) the sale by retail of alcohol
- b) the supply of alcohol by or on behalf of a club (applies to Registered Clubs only – these are now called "Qualifying Clubs")
- c) the provision of "regulated entertainment"
- d) the provision of late night refreshment

You may apply to carry on any one, or any combination, of a), c) and/or d) (or in the case of a club which holds a Club Premises Certificate b), c) and/or d) at the same event.

The **Sale of Alcohol** includes events where alcohol is included in the ticket price or no specific price is quoted per drink but "donations" are requested or accepted in respect of the alcohol. If the alcohol is given completely free of charge, a licence is not required for its sale.

Events involving the sale of alcohol are **always** licensable, whether or not they include Regulated Entertainment (see below).

Regulated Entertainment, subject to specified conditions or exemptions, includes:

- i) the performance of a play
- ii) an exhibition of a film (this includes the display of lyrics for "Karaoke")
- iii) an indoor sporting event (this could include, darts, pool, snooker etc. but only where the entertainment is in the presence of an audience who have gathered mainly for the purpose of watching that event)
- iv) a boxing or wrestling entertainment
- v) a performance of live music
- vi) any playing of recorded music (including disco)
- vii) a performance of dance (before an audience)
- viii) entertainment of a similar description to that falling within v), vi) or vii). (This might include a magician, or a comedian)

"Regulated Entertainment" also includes the "provision of entertainment facilities" for

- i) making music (this could include Karaoke)
- ii) dancing (where people are using a building/marquee/dance floor for the purpose of dancing, probably to live or recorded music as at v) or vi) above.

if the "facilities" are provided **"for a consideration or with a view to a profit"**. Thus private parties held in your own home or your own premises with no view to a profit and where alcohol is not sold are **not** licensable.

However, fundraising events involving music, dancing or any other regulated entertainment are almost certainly licensable, even if the event is not open to the public because you are providing regulated entertainment and/or facilities for providing entertainment.

If you are in any doubt as to whether an event is licensable you should speak to your local Licensing Department and/or seek independent legal advice.

Late Night Refreshment is defined as the sale or supply of hot food and/or drink between the hours of 11pm and 5am – a licence is not required if the food and/or drink is supplied free of charge or, if sold, is supplied outside these hours. “Free of charge” means just that – including the cost in a ticket price or requesting “donations” to cover the cost still constitutes a “sale”.

2. Health & Safety

Whatever the size of your event, Health and Safety issues must be at the top of your list of priorities. Should you require advice or guidance you are strongly recommended to contact the enforcing authority. The Eastbourne Council’s Health & Safety Enforcement Officers can be contacted on 01323 415939 or information is available to download at www.eastbourne.gov.uk/safety The HSE (Health and Safety Executive) can be contacted on 01342 334200. Eastbourne Borough Council highly recommended that you contact East Sussex Fire and Rescue Service for advice relating to matters concerning fire safety on 0845 130 8855.

There is a wide range of Health and Safety issues which you may need to consider if you are employing staff or if you are a voluntary organisation.

This is particularly relevant when events are being conducted other than in permanent premises (i.e. in temporary structures, marquees or the open air). This might include enabling access to the event for Emergency Services, fire safety precautions, door supervision and stewarding arrangements.

Where appropriate, the event organiser is strongly recommended to seek independent legal advice.

“The Event Safety Guide”, (universally referred to as the “Purple Guide”) published by the Health and Safety Executive (HSE) (ISBN 0-7176-2453-6) is the nationally recognised guidance document for the organisers of music and similar events. It is obtainable direct from the HSE at www.hse.gov.uk

3. Application

APPLICANTS ARE ADVISED TO READ THE GUIDANCE NOTES PRIOR TO THE COMPLETION OF THE NOTICE.

The application **must** be made in the name of an individual, **not** a charity, group, organisation or committee. When the TEN is granted, the named individual becomes the “premises user” and assumes certain responsibilities as detailed. **(See 14. Responsibilities of Premises User.)**

4. Application Deadlines

There are annual limits to the number of TENs for which an individual may apply. The application **must** be made **at least ten working days** prior to the date of the event for which you are applying – “ten working days” excludes Saturday, Sunday, Christmas Day, Good Friday or recognised Bank Holidays and excludes the day of the event itself or the day on which it is to start.

There will be two types of TENS. A ‘standard’ TEN, as currently exists, must be served on the Licensing Authority, Police and Environmental Health (Noise Team) 10 working days before the first day of the event. If objections are received to a standard TEN, the Licensing Authority must hold a hearing to determine the TEN.

There will also be a ‘late’ TEN. A ‘late’ TEN may be served on the Licensing Authority, Police and Environmental Health (Noise Team) between 5 and 9 working days before the first day of the event. However, if objections are received to a late TEN, the event will not be permitted to go ahead and there will not be any right of appeal against this decision.

However, Eastbourne Borough Council wish to receive applications at least one calendar month before the date of your event. This will enable the Licensing Authority and the Police to examine the application in good time of your event. This may resolve any issues and any possible objection and ensure the smooth transition of your application.

5. The Premises

In Section 2 of the application, it is essential that you accurately identify the premises to which the application relates. For example, if all the licensable activities are taking place in “The Red Room”, then there is no point in applying for a TEN for the other areas of the same premises.

You only need to apply for a TEN for premises where “licensable activities” are taking place. **(See 1. What is a Temporary Event Notice?)**

For example, if you are applying for a licence only to sell alcohol at any event which does not involve any other licensable activity (e.g. at an agricultural or horticultural show), then you only need to apply for a licence for the premises where the sale of alcohol takes place, for example the beer tent. It is the **sale** of alcohol which is the licensable activity, not the consumption of it. However, it is advisable to check whether the area is subject to any legislation appertaining to street drinking.

Make sure that your definition of “the premises” is wide enough to include all areas where licensable activity is to take place. If any form of licensable activity does take place elsewhere than on the premises you specify, it will be unlicensed, and you may be prosecuted for inter-related offences

If you are unsure as to what to specify as the premises for your event, speak to our Licensing Team or seek independent legal advice.

If you are hiring a Community or Village Hall, or a function room in an hotel or pub, a Premises Licence may already be in force for some or all of the licensable activities you wish to take place. It is advisable to check with the publican or hotelier, or, in the case of a Community Premises, the management committee prior to organising events.

Community Premises within the Eastbourne area may be licensed for some or all forms of Regulated Entertainment. However, this may vary from premises to premises, so check whether the type of Regulated Entertainment you wish to provide is already included on the Premises Licence.

However, very few are licensed for sale of alcohol and will rely on the hirer to obtain a TEN for the sale of alcohol to take place on an event-by-event basis. Only 15 TENs are permitted at each premises in any calendar year, so you will need to seek the permission of the site operators as they will need to account for every TEN applied for.

6. The Applicant

Applications may only be made by a person over the age of 18 years - no qualifications are required, but restrictions are placed on the number of Tens applied for by non Personal Licence holders.

7. Frequency & Duration of TENs

- A person who hold a Personal Licence, issued under the Licensing Act 2003 may only give up to 50 Notices in a calendar year, of which only 10 can be 'late' Notices.
- A person who does not hold a Personal Licence may only give 5 Notices in a calendar year, of which only 2 can be 'late' Notices.
- The number of times a Notices may be given in respect of any particular premises is 15 in any calendar year.
- The maximum number of persons attending the site, including staff, at any one time, shall not exceed 499 persons.
- The maximum aggregate duration of the periods covered by Notices at any individual premises in any calendar year is 21 days.

8. Service of Notice

When you send your application for a Temporary Event Notice (TEN) to the Licensing Authority (in this instance, Eastbourne Borough Council.)

Send the **original** document to:

Licensing Team
Eastbourne Borough Council
1 Grove Road
Eastbourne
East Sussex
BN21 4TW

Email: **licensing@eastbourne.gov.uk**

A copy will be returned to you, endorsed by the Licensing Authority to acknowledge receipt. You must retain this copy, display it at the event and have it available for inspection as required (**See 10. Acknowledged Application**).

At the same time as sending your application to the Licensing Authority, you must also send a copy of your application to the Environmental Health (Noise Team) and a copy to the Chief Officer of Police.

Environmental Health (Noise Team)
Eastbourne Borough Council
1 Grove Road
Eastbourne
East Sussex
BN21 4TW

In respect of Eastbourne Borough Council, the Police copy must be sent to:

Sussex Police
The Licensing Unit
Police Station
Terminus Road
Bexhill-on-Sea
East Sussex
TN39 3NR

9. Fees

There is a fee of £21 per application, i.e. per event, which must accompany the application form. Cheques should be made payable to Eastbourne Borough Council.

10. Acknowledgement of Application

When you receive the Licensing Authority endorsed copy of the application, unless you are advised that the Police have issued an Objection Notice, you become the authorised "premises user". You are now the licence holder and are authorised to carry on the **specified** licensable activities at the nominated premises.

11. Counter Notice

If, instead of the endorsed copy of the application, you receive a Counter Notice, (see below) the event may not take place.

A Counter Notice may be issued where one or more of the limits set by the Licensing Act 2003 in relation to TENs has been exceeded, for example:

- a) If you are the holder of a Personal Licence, you have already applied for at least 50 TENs.
- b) If you do not hold a Personal Licence, you or an "associate" (see note 13 on the application form) have already applied for at least 5 TENs.

- c) 15 TENs have already been applied for at the premises you have nominated
- d) TENs covering at least 15 days have already been applied for at the premises you have nominated.
- e) The Chief Officer of Police has lodged an objection to the application on the grounds of crime prevention (**See below – 12. Police Objection**).

NB All limits relate to a calendar year.

12. Objections to TENs:

Both the Police and Environmental Health (Noise Team) Responsible Authorities will be able to object to a TEN under any one of the licensing objectives. This means that the person giving the TEN must serve the notice on the Environmental Health (Noise Team) Responsible Authority as well as the Police, unless the application is given electronically. The Police and Environmental Health Responsible Authorities will have three working days in which to make an objection. Where an objection is received to a TEN, conditions may be applied to the event if the Licensing Authority considers it appropriate for the promotion of the licensing objectives. This can only be done if the conditions are also on a premises licence or club premises certificate that has effect in respect of the same premises as the TEN.

Once an Objection Notice has been issued, the Police may, with your consent, modify the application and then re-submit it to the Licensing Authority. If you do not consent to the modifications sought by the Police, then the application and the Police objection must be heard by a Licensing Sub-Committee within seven working days of the end of the period in which the Police may object.

13. Acknowledged Applications

When you receive the endorsed copy of the application from the Licensing Authority, unless you are subsequently told that the Police have issued an Objection Notice, you become the "premises user".

This means that you are now the holder of a licence to carry on the specified licensable activities at the nominated premises. You are now the "premises user" and have a number of important responsibilities to discharge and of which you must be aware.

14. Responsibilities of the "Premises User"

i) Duty to keep and produce Temporary Event Notice (Section 109, Licensing Act 2003)

The premises user must either secure that a copy of the temporary event notice (TEN) is prominently displayed at the premises, or

secure that TEN is kept at the premises in their custody or in the custody of a person who is present and working at the premises and whom he has nominated for the purpose, and

Where the TEN is in the custody of a person so nominated, secure that a notice specifying that fact and the position held at the premises by that person is prominently displayed at the premises.

A Constable or authorised officer (for example, a Local Authority Licensing Officer) may require the TEN to be produced for inspection.

ii) Unauthorised licensable activities (Section 136)

Subject to certain specific exceptions, a person commits an offence if:

- a) s/he carries on or attempts to carry on a licensable activity on or from any premises otherwise than in accordance with an authorisation (i.e. a licence or TEN), or
- b) s/he knowingly allows a licensable activity to be so carried on.

There is a defence of "due diligence" to this offence (Section 139).

iii) Exposing alcohol for unauthorised sale (Section 137)

A person commits an offence if, on any premises, s/he exposes for sale by retail any alcohol in circumstances where the sale by retail of that alcohol on those premises would be an unauthorised licensable activity.

There is a defence of "due diligence" to this offence (Section 139).

iv) Keeping alcohol on premises for unauthorised sale (Section 138)

A person commits an offence if s/he has in their possession or

under their control alcohol which s/he intends to sell by retail or supply in circumstances where that activity would be an unauthorised activity.

There is a defence of "due diligence" to this offence (Section 139).

v) Allowing disorderly conduct on licensed premises, etc (Section 140)

Where premises are being used for a permitted temporary activity (*i.e. in accordance with a TEN*), the premises user in relation to the TEN in question commits an offence if s/he knowingly allows disorderly conduct on the premises.

vi) Sale of alcohol to a person who is drunk (Section 141)

A person commits an offence if, on relevant premises, s/he knowingly –

- a) sells or attempts to sell alcohol to a person who is drunk, or
- b) allows alcohol to be sold to such a person.

In the case of premises which may be used for a permitted temporary activity (*i.e. in accordance with a TEN*), this applies to the premises user in relation to the TEN in question.

vii) Keeping of smuggled goods (Section 144)

A person commits an offence if he knowingly keeps or allows to be kept, on any relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.

In the case of premises which may be used for a permitted temporary activity (*i.e. in accordance with a TEN*), this applies to the premises user in relation to the TEN in question.

viii) Unaccompanied children prohibited from certain premises (Section 145)

A person commits an offence if –

- a) knowing that the premises are "relevant premises" (*see below*), he allows an unaccompanied child to be on the premises at a time when they are open for the purposes of being used for the supply of alcohol for consumption there, or

- b) s/he allows an unaccompanied child to be on relevant premises at a time between the hours of midnight and 5 a.m. when the premises are open for the purposes of being used for the supply of alcohol for consumption there.

For the purposes of this section –

- i) “child” means an individual aged under 16
ii) a child is unaccompanied if s/he is not in the company of an individual aged 18 or over.

In the case of premises which may be used for a permitted temporary activity (*i.e. in accordance with a TEN*), this section applies to the premises user in relation to the TEN in question.

“Relevant premises” includes premises which are open for the purposes of being used for the supply of alcohol for consumption on the premises by virtue of a TEN and, at the time the TEN in question has effect, they are exclusively or primarily used for such supplies.

No offence is committed under this section if the unaccompanied child is on the premises solely for the purpose of passing to or from some other premises to or from which there is no other convenient means of access or egress.

ix) Sale of alcohol to children (Section 146)

A person commits an offence if he sells alcohol to an individual aged under 18.

There is an defence of due diligence to this offence.

x) Allowing the sale of alcohol to children (Section 147)

A person commits an offence if he knowingly allows the sale of alcohol on relevant premises to an individual aged under 18, where that person works at a premises in a capacity, whether paid or unpaid, which authorises him to prevent the sale.

xi) Delivering alcohol to children (Section 151)

A person who works on relevant premises in any capacity, whether paid or unpaid, commits an offence if he knowingly delivers or knowingly allows any body else to deliver, to an individual aged under 18 alcohol sold on the premises.

xii) Prohibition of unsupervised sales by children (Section 153)

A responsible person commits an offence if, on any relevant premises, he knowingly allows an individual aged under 18 to make on the premises any sale or supply of alcohol unless the sale or supply has been specifically approved by that or another responsible person.

“Responsible person” includes, in relation to premises which may be used for a permitted temporary activity (i.e. in accordance with a TEN), the premises user or any individual aged 18 or over who is authorised for the purposes of this section by the premises user.

“This authority is under a duty to protect the public funds it administers, and to this end may use the information you have provided on this form for the prevention and detection of fraud. It may also share this information with other bodies responsible for auditing or administering public funds for these purposes.”

Further information, application forms and additional copies of this document are available from our website

www.eastbourne.gov.uk/licensing

Or contact us at:

Customer First

Eastbourne Borough Council
1 Grove Road
Eastbourne
East Sussex
BN21 4TW

Tel: 01323 410000

Email: customerfirst@eastbourne.gov.uk

Website: **www.eastbourne.gov.uk/licensing**

