

APPENDIX

C

Licensing Policy



A great place to live, work & play

SCARBOROUGH BOROUGH COUNCIL

Statement of Licensing Policy

Licensing Act 2003

2018-2023

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Contents	Page
Part 1	
Introduction	5
Geographical area covered by the Policy	5
Consultation on this Policy	6
Part 2	
The Policy	7
Cumulative Impact Policy	8
Part 3	
Principles	8
Conditions	9
Licensing Hours	10
Early Morning Restriction Orders	10
Late Night Levy	10
Representations	11
Reviews	11
Licensing authority as a responsible authority	12
Deregulation of entertainment	12
Immigration matters	12
Minor variations	13
Sexual Entertainment Venues	13
Children	13
Part 4	
Licences	15
General	15
Late night refreshment	15
Part 5	
Personal licences	16
Part 6	
Temporary event notices	17
Part 7	
Club premises certificates	18
Part 8	
Operating schedule	19
Part 9	
Enforcement	21

Part 10	
Licensing Committee	21
Part 11	
Administration, Exercise & Delegations of Functions	22
The role of Borough Councillors	22
Part 12	
Appeals	23
Part 13	
Complaints against licensed premises	23
Appendix A – Scheme of delegation	25
Appendix B – Glossary	27

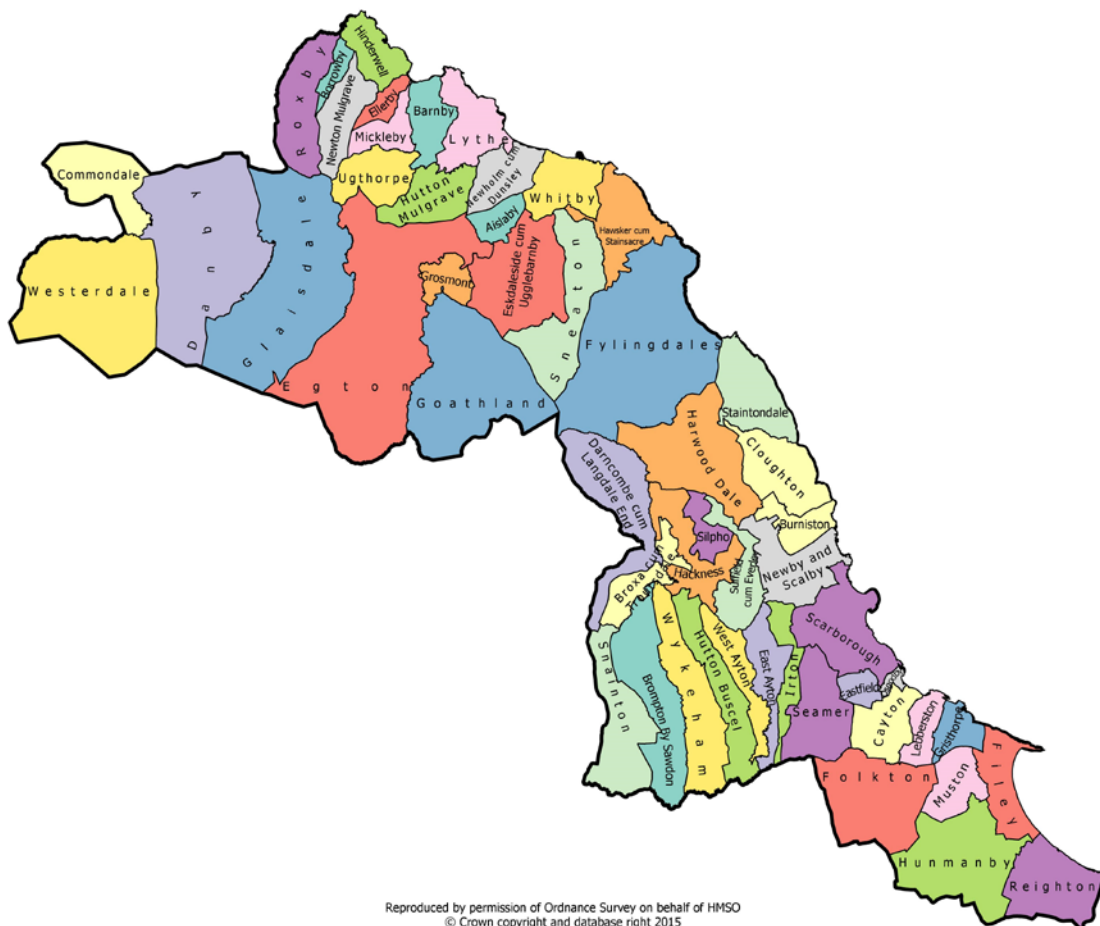
Part 1

Introduction

- 1.1 This Statement of Licensing Policy (the Policy) sets out the principles we will apply in exercising our licensing functions under the Licensing Act 2003 (the 2003 Act). It replaces the previous Policy published 4 November 2013 and covers the period from 2018 to 2023.
- 1.2 The Policy is formally reviewed every 5 years, however during this period the Policy will be kept under review so that amendments can be made as necessary.
- 1.3 To avoid duplication this Policy should be read in conjunction with the 2003 Act, its regulations and the latest edition of the Home Office Revised guidance issued under section 182 of the Licensing Act 2003.

Geographical area covered by the Policy

- 1.4 This Policy applies to the whole of the Borough of Scarborough which covers an area of 81,654 hectares and has a population of approximately 108,000 with 60% of residents living in the three major urban areas of Scarborough, Whitby and Filey. The map below shows the geographical area to which this Policy applies:



- 1.5 The Borough of Scarborough is home to a number of popular restaurants, bars and entertainment venues. As a tourist destination there are competing demands between catering for visitors whilst ensuring that these activities do not impact upon residents in a negative way. It is recognised that there is a need to find an acceptable balance between these potentially conflicting aims.
- 1.6 We are also aware of the value to the community of a broad range of cultural entertainments, such as live music, dancing and theatre which should be encouraged for the benefit of all. When writing this Policy a wide range of licensed premises have been considered such as casinos, pubs, members' clubs, nightclubs, social clubs restaurants, cafes, cinemas, theatres, hotels and late night takeaways.
- 1.7 This Policy intends to shape the future of licensing, entertainment and related social activities within the Borough and has been produced after consultation with all responsible authorities, premises and club premises certificate licence holders, personal licence holders, licensed trade representatives and a wide section of the general public incorporating businesses and residents within the Borough of Scarborough.

Consultation on this Policy

- 1.8 When changes are made to the Policy we are required by the 2003 Act to consult the following groups of people:
- a) The Chief Officer of Police
 - b) The Fire Authority
 - c) Representatives of holders of existing premises licences, personal licences and club premises certificates in the Borough.
 - d) Such other persons considered to be representatives of business and residents in the area.
- 1.9 In addition to the groups that we are required to consult, the scope of the consultation has been extended to include the following:
- a) Residents groups
 - b) Community associations
 - c) Faith groups
 - d) Trader's associations
 - e) Neighbouring licensing authorities
 - f) Relevant Council Departments
 - g) Responsible authorities
 - h) Ward Councillors
 - i) Parish Councils
- 1.10 In preparing this Policy, a public consultation was carried out between 1 May 2018 and 31 July 2018 which included the groups listed in paragraphs 1.8 and 1.9 above. Comments received during that consultation were then considered before making the changes included in this Policy.

Part 2

The Policy

- 2.1 The 2003 Act requires a licensing authority to prepare and publish a ‘Statement of Licensing Policy’ (“the Policy”) that sets out the principles we will apply to promote the four licensing objectives set out below. When determining applications and attaching any conditions to licences or certificates our decisions will be based on the promotion of these objectives.
- 2.2 This Policy encompasses experience gained in the implementation and regulation of the 2003 Act. The overriding aim of the Policy is to promote the four licensing objectives, each is of equal importance:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 2.3 This Policy was prepared in accordance with the provisions of the 2003 Act having had due regard to the Guidance issued under s182 of the 2003 Act (“the Guidance”). This Policy was reviewed in 2018 following extensive consultation with due consideration given to all responses received.
- 2.4 This Policy shall be kept under review and changes may be made in relation to:
- local circumstances;
 - the Licensing Act, associated regulations or statutory guidance;
 - national legislation;
 - changes to the cumulative impact policies; or
 - the policies and practices of a responsible authority
- 2.5 This Policy shall not undermine the right for any individual to apply for a variety of permissions under the terms of the 2003 Act and to have any such application considered on its individual merits. Similarly the Policy shall not override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act. Each application shall be treated on its own merit.
- 2.6 This Policy is intended to provide clarification to responsible authorities, applicants and any other person on how we will determine applications and reviews. Representations will be considered from any person, but particularly those immediately affected by the premises and its operation.
- 2.7 We may depart from this Policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the four licensing objectives. Where this occurs full reasons shall be provided.

- 2.8 Where revisions are made to the Guidance there may be a period of time when this Policy is inconsistent with the Guidance. In these circumstances the revised Guidance shall be considered in conjunction with this Policy.

Cumulative Impact Policy

- 2.9 Cumulative Impact Policies have previously existed as an appendix to this Policy, however following the incorporation of cumulative impact assessments within the 2003 Act, a legal framework now exists under which such policies are to be developed and reviewed. As a consequence any Cumulative Impact Policy will now exist independently to this Policy, enabling it to be developed and reviewed in accordance with this framework.
- 2.10 Where representations are received relating to applications for premises within the cumulative impact area, we shall consider whether it would be justified in departing from the CIP in the light of the individual circumstances of the case.

Part 3

Principles

- 3.1 We seek to encourage the provision of a culturally diverse range of regulated entertainment within the Borough, particularly live music and dance that are accessible to all people.
- 3.2 In determining applications, reviews and enforcement under the 2003 Act we shall take the following into consideration:
- The promotion and compliance of the four licensing objectives;
 - Representations or complaints and evidence or supporting documentation provided;
 - S182 Guidance to licensing authorities; and
 - This Policy.
- 3.3 It is recognised that the existence of planning permission, building regulation approval or outside table licences must be properly separated from licensing applications to avoid duplication and inefficiency. Similarly, the existence of a premises licence or club premises certificate shall not prejudice the consideration of any planning, building regulation approval or outside table applications. Applicants shall be expected to have obtained the appropriate consents or licences prior to operation.
- 3.4 Where premises have not obtained such consents or licences, they will be liable for enforcement action under the appropriate legislation. There may be circumstances when as a condition of planning permission; a terminal hour is set for the use of commercial premises. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Licensing applications will therefore not be a re-run of the planning application process and licensing decisions will not cut across decisions taken by the Planning Committee or permissions granted on appeal.

- 3.5 To ensure effective communication exists between responsible authorities, regular joint agency meetings shall be held throughout the year. These meetings include discussions on the general impact of alcohol-related crime and disorder and public nuisance within the Borough.
- 3.6 Operators are expected to minimise the impact of their activities on the surrounding area and any anti-social behaviour created by their customers in and within the vicinity of their premises by taking appropriate measures and actions consistent with that responsibility. In addressing this matter we will focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned. Applicants are therefore advised to carefully consider any recommendations given in respect of these matters when preparing applications.
- 3.7 The Policy is not intended to duplicate existing legislation and regulatory regimes that already place obligations on employers and operators. It is also recognised that licensing should not be the primary mechanism for the general control of nuisance, noise or anti-social behavior, particularly once individuals have left the vicinity of the licensed premises and therefore beyond the direct control of the individual, club or business holding the licence or certificate. However licensing controls and targeted enforcement should have a positive impact on the immediate vicinity of the licensed premises and assist in the management of the evening and night time economy.
- 3.8 The Council has a duty under Article 8 of the European Convention on Human Rights to protect the rights of its residents to privacy and family life. The Council also acknowledges the rights of businesses in its area to operate, but this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises.
- 3.9 It is acknowledged that the Council has a duty to exercise its functions with a due regard to the likely effect of the exercise of those functions on, and the need to do all that it can to prevent, crime and disorder in its area. In addition we will seek to support strategies where they are allied to the licensing objectives.

Conditions

- 3.10 The licensing authority is unable to refuse or impose conditions on valid applications where no relevant representations have been made. Where conditions are imposed, they shall be appropriate and proportionate and shall be tailored to the size, style, characteristics and activities that take place at the premises concerned.
- 3.11 In addition conditions imposed shall be precise and enforceable, clear in what they intend to achieve, shall not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation, shall not replicate offences set out in the 2003 Act or other legislation, shall be justifiable and capable of being met and shall not seek to manage the behaviour of customers once they are beyond the direct management of the licence/certificate holder and their staff.
- 3.12 It is recommended that conditions volunteered in the operating schedule should be:
- targeted on the deterrence and prevention of crime and disorder

- appropriate for the promotion of the licensing objectives;
 - proportionate and enforceable;
 - consistent and not conflicting;
 - relevant, clear and concise;
 - not duplicate other legislation; and
 - expressed in plain language capable of being understood by those expected to comply with them.
- 3.13 When considering conditions we shall not simply replicate the wording from an applicant's operating schedule but will interpret conditions in accordance with the applicant's overall intentions.
- 3.14 With reference to the protection of children from harm licensing objective, those conditions relating to the admission of children to any premises remain a matter for the individual licensee or club or person who has given a temporary event notice (TEN).

Licensing Hours

- 3.15 With regard to licensing hours we will consider each application on its own merit and shall not seek to impose predetermined licensed hours. It is recognised that in some circumstances flexible licensing hours for the sale of alcohol may help to ensure that concentrations of customers leaving premises simultaneously are avoided.

Early Morning Restriction Orders

- 3.16 Early Morning Restrictions Orders ("EMROs") are a discretionary power enabling licensing authorities to restrict sales of alcohol with the aim of tackling high levels of alcohol related crime and disorder, nuisance and anti-social behaviour. The EMRO may be applied to the whole or part of the licensing authority area and, if relevant, on specific days and at specific times. A statutory process must be undertaken before it is introduced and the licensing authority must be satisfied that such an order would be appropriate to promote the licensing objectives.

Late Night Levy

- 3.17 The Late Night Levy ("the levy") is a discretionary power enabling licensing authorities to charge an additional fee to persons who are licensed to sell or supply alcohol late at night as a means of raising a contribution towards the costs of policing the night-time economy. Any net revenue from the levy must be split between the licensing authority and the Police, with at least 70% of the 'net' levy paid to the Police.
- 3.18 The legislative provisions relating to the levy are not part of the 2003 Act but are contained in Sections 125 to 139 of the Police Reform and Social Responsibility Act 2011.
- 3.19 It is recognised that this levy would cover the whole of the Borough and not just those premises that are causing problems in the Borough or those premises within the cumulative impact area. In light of this the introduction of a levy would require careful consideration.

Representations

- 3.20 Responsible authorities and other persons may make representations on licence/certificate applications and review existing premises licences/certificates.
- 3.21 'Other persons' is defined as any individual, body or business that may be affected by the operation of a licensed premises regardless of their geographical location. Although the other person may be in any geographical location, any representation they make must be relevant to one or more of the licensing objectives and specific to the premises in question and not to the area in general.
- 3.22 In determining whether a representation from an individual, body or business is relevant, frivolous, repetitive or vexatious, the benefit of the doubt will be given to the person or body making that representation.
- 3.23 Any person aggrieved by a rejection of their representation may lodge a corporate complaint through the Council's complaints procedure or alternatively by way of judicial review.

Reviews

- 3.24 Responsible authorities and other persons may apply to review a licence or certificate where it is believed an operator of a licensed premises is in their opinion managing their business in a manner that does not promote one or more of the licensing objectives.
- 3.25 Examples of triggers for a review may be: continual complaints of noise from or in the vicinity of the premises; continual complaints of noise or intimidation from customers outside the premises; an accumulation of breaches of licensing conditions; poor management where the licensing objectives are undermined; underage sales of alcohol (persistent or otherwise); crime-related activity; anti-social behaviour; sales of alcohol outside of the permitted hours; consideration of the track record/history of a premises; any safeguarding concerns identified relating to children, young people or vulnerable adults; and the persistent or otherwise sales of alcohol to drunken or disorderly individuals, etc.
- 3.26 Consideration will be given as to whether or not a review application is relevant, frivolous, vexatious or repetitious. In borderline cases the benefit of the doubt will be given to the person making that application.
- 3.27 Applicants shall be expected to gather sufficient and relevant evidence relating to the specific premises that is subject to the review. This may include a diary of events, photos, police incident numbers and any potential witnesses. With regard to reviews on noise complaints, applicants are encouraged to liaise with the Council's Commercial Regulation team who may be able to assist with and support the review process.
- 3.28 Prior to a review North Yorkshire Police, other responsible authorities or the licensing authority may seek to meet with the licence/certificate holder to address issues through a premises improvement plan.

Licensing authority as a responsible authority

- 3.29 The 2003 Act enables the licensing authority to act as a responsible authority in its own right with powers delegated to officers within the service. Officers may choose to intervene where they consider it appropriate for the promotion of the licensing objectives without having to wait for representations from other responsible authorities. For example, where an application is in a cumulative impact area and officers have concerns about additional harm, they may make representations to that effect. Representations may also be made in respect of a premises which has a history of complaints, as additional activity may undermine the licensing objectives.
- 3.30 Steps have been taken to achieve a line of separation between those officers processing applications and those making representations. The officer presenting any application to a Licensing Sub-Committee will also be different from the officer acting as the responsible authority.

Deregulation of entertainment

- 3.31 The Legislative Reform (Entertainment Licensing) Order 2014 and Deregulation Act 2015 deregulated some of the licensable activities under the 2003 Act in addition to the deregulation created by the Live Music Act 2012.
- 3.32 Some of the activities which may no longer require authorisation are:
- Exhibitions of films where they are incidental to another activity which is exempt from licensing.
 - 'Not-for-profit' film exhibitions between 08:00 and 23:00 on any day held in community premises provided that the audience size is no more than 500 and the organiser gets consent from the person who is responsible for the premises and ensures that age classification ratings are complied with.
 - A performance of amplified live music or playing of recorded music between 08:00 and 23:00 on any day on premises authorised to sell alcohol for consumption on the premises provided that the audience size is no more than 500.
 - A performance of amplified live music or playing of recorded music between 08:00 and 23:00 on any day in a church hall, community hall, or other similar community premises, that is not licensed to sell alcohol, provided that the audience size is no more than 500 and the organiser gets consent from the person responsible for the premises.
 - A performance of amplified live music or playing of recorded music between 08:00 and 23:00 on any day at the non-residential premises of a local authority, a school or a hospital provided that the audience size is no more than 500 and the organiser gets consent from the local authority or the school or the health care provider for the hospital.

Immigration Matters

- 3.33 The commencement of the Immigration Act 2016 made it a requirement for licensing authorities to be satisfied that an applicant has the right to work in the UK. An application made by someone who is not entitled to work in the UK must be rejected.

- 3.34 Licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from doing work relating to the carrying on of a licensable activity.
- 3.35 A premises or personal licence issued in respect of an application made on or after 6 April 2017 will lapse if the holder's permission to live or work in the UK comes to an end.

Minor Variations

- 3.36 Minor variations generally fall into four categories: minor changes to the structure or layout of premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions. In all cases we will consider whether the proposed variation would adversely impact on any of the four licensing objectives.
- 3.37 In considering applications we may consult relevant responsible authorities if there is any doubt about the adverse impact of the variation on the licensing objectives and take their views into account when reaching a decision.

Sexual Entertainment Venues (SEVs)

- 3.38 Where an operator seeks to provide activities that include striptease or any other kind of nudity or sexual entertainment (for example, lap dancing clubs or topless waitresses), an application will need to be submitted for a sexual entertainment venue (SEV) licence under the Local Government (Miscellaneous Provisions) Act 1982 as amended by the Policing and Crime Act 2009. However, it is recognised that there is an exception that allows premises to provide sexual entertainment no more than 11 times per year and no more frequently than monthly. Where this exemption is exercised and concerns are identified with a licensed premise this may lead to a review of the premises licence and the imposition of conditions.
- 3.39 Where an application for an SEV is submitted for a licensed premises Scarborough Borough Council has a Policy in force setting out standard conditions. Operators are reminded that where there are similar conditions in the two regimes, the more onerous conditions shall apply.

Children

- 3.40 With regard to the protection of children from harm licensing objective, the licensing authority recognises The Director of Children and Young People's Services at North Yorkshire County Council as the responsible authority competent to act in relation to this licensing objective. Considerable weight will be given to representations on child protection matters.
- 3.41 We shall not seek to limit the access of children to any licensed premises unless it is necessary for the prevention of physical, moral or psychological harm. In all other cases it will be left to the discretion of the licensee but it is expected that the licensee shall give

full consideration of access by children at all times and ensure that there is a policy in place to promote this licensing objective.

3.42 Where there are concerns with regard to access of children the Director of Children and Young People's Services shall be consulted. However, where our discretion is engaged the merits of each application will be judged before deciding whether or not to impose conditions limiting the access of children.

3.43 The following are examples of premises that are likely to raise concern:

- Where entertainment or services of an adult or sexual nature are common thereby likely to undermine the licensing objectives;
- Where relevant premises are known to allow unaccompanied children;
- Where the applicant has described in the operating schedule that '*no adult or similar entertainment shall take place on the premises*' but intends to hold an event liable to compromise the protection of children from harm licensing objective;
- Where there has been early indication and subsequent evidence of poor management of the premises leading to undermining of the licensing objectives;
- Where the premises have a known association with drug taking or dealing;
- Where the current staff have received convictions or cautions for serving alcohol to minors or where the premises has a reputation for underage drinking or failures in test purchasing;
- Where there is a strong element of gambling on the premises;
- Where there is likely to be under age events with the intention of selling or exposing alcohol for sale or where the intention is to permit adults to this event;
- Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

3.44 Examples of entertainment likely to cause concern are entertainment or services of an adult or sexual nature including topless bar staff, striptease, lap, table or pole dancing, performances involving feigned violence or entertainment involving strong or offensive language.

3.45 Where there are events solely provided for children in licensed premises, it is strongly advised that no alcohol is served at such events. Where alcohol is available it is for the management of the premises to ensure that measures are in place to prevent sales to under aged persons. In addition, it is recommended that measures should be in place to prevent alcohol being brought onto those premises and to prevent under aged persons leaving and returning to the premises in order to consume alcohol in the vicinity of the premises.

3.46 The applicant in completing the operating schedule is required to describe the steps they intend to take to promote this licensing objective and highlight any adult entertainment or services, etc. that may give rise to concern in respect of children. However, where the applicant does not state the steps they intend to take to promote this objective but does state that "*no adult or similar entertainment shall take place on the premises*", this shall be considered a condition on even though it may not state it on the licence/certificate itself.

Part 4

Licences

General

- 4.1 Prior to submitting applications, applicants are encouraged to carefully consider this Policy and to consult all responsible authorities. In some cases, it may also be advisable to consult other persons such as Town or Parish Council or neighbouring properties.
- 4.2 Given that the operating schedule forms the basis of conditions that will be attached to a licence/certificate, applicants are also expected to have carefully considered the promotion of all four licensing objectives.
- 4.3 In respect of large scale events, organisers are recommended to consult with responsible authorities and the Safety Advisory Group in good time to discuss the operating schedule and any potential issues well before an application is submitted.
- 4.4 With regard to the licensing of garages and/or filling stations Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises that are primarily used as a garage. In determining whether or not a premises is used primarily as a garage, the accepted approach is based on “intensity of use” to establish “primary use”. As such applicants are expected to provide comprehensive statistical information with their application on the intensity of use to establish primary use.

Late Night Refreshment

- 4.5 It is recognised that the provision of late night refreshment forms an important part of the Borough’s late night economy. As such where late night refreshment is provided between the hours of 11pm and 5am applicants must demonstrate how they will promote the licensing objectives.
- 4.6 Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Licensing authorities can choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with anti-social behaviour, disorder associated with the night time economy, or illegal working in licensed premises.
- 4.7 Only the following types of premises may be exempt:
 - Motorway service areas;
 - petrol stations;
 - local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - hospitals (except domestic premises);

- community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
 - licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 23.00 and 05.00.
- 4.8 At present we do not consider it appropriate for the reasons of promotion of the licensing objectives to use the exemptions, and therefore require the provision of all late night refreshment to be licensed.
- 4.9 Where an applicant wishes to sell alcohol either on or off the premises in such an establishment or provide an alcohol delivery service, applicants are expected to set out specific measures to ensure the prevention of crime and disorder and public nuisance in the vicinity of the premises.
- 4.10 Where a delivery service is operated from these premises extra care must be taken by the operator with regard to compliance/breach of licensing hours. For example, a hot food order must be capable of reaching the customer at the delivery address by no later than the end of the permitted hours.
- 4.11 It is recommended that takeaways in particular have a responsible policy for regularly clearing litter from outside their premises and for 25 metres along the pavement in either direction as necessary, whilst the premises are open and at the end of the working day.

Part 5

Personal licences

- 5.1 Persons who wish to supply or authorise the supply of alcohol, in accordance with a premises licence must apply for a personal licence. Applicants who live in the Borough should apply to us but if applicants ordinarily live outside England or Wales, they can apply to any licensing authority. A personal licence does not have to be renewed.
- 5.2 Applicants must use the prescribed application form. We have provided further details regarding the qualifying conditions, the application procedure and application fee on our website at www.scarborough.gov.uk
- 5.3 Holders of a personal licence are required to inform the licensing authority (as soon as reasonably practicable) of any change to their name or address. Similarly should they receive a conviction for any relevant criminal offence or foreign offence or have been required to pay an immigration penalty they must report this in writing (again as soon as reasonably practicable). On receipt of which the licensing authority has the discretion to revoke or suspend the licence for up to 6 months.
- 5.4 A personal licence holder must authorise the sale of alcohol but does not have to be on the premises to do so.
- 5.5 We will have regard to the S182 Guidance when deciding whether a personal licence holder has given authorisation to supply alcohol. The following constitutes “authorisation”:

- the person(s) authorised to sell alcohol at any particular premises should be clearly identified;
 - the authorisation should have specified the acts which may be carried out by the person being authorised to supply alcohol;
 - there should be an overt act of authorisation, for example, a specific written statement given to the individual who is authorised to supply alcohol; and
 - there should be in place sensible arrangements for the personal licence holder to monitor the activity that they have authorised on a reasonably regular basis.
- 5.6 Although the 2003 does not require it, personal licence holders should consider giving specific written authorisations to individuals that they are authorising to retail alcohol. A single written authorisation could cover multiple sales over an unlimited period. This would assist personal licence holders in demonstrating due diligence should enforcement issues arise; and would protect employees if they themselves are challenged in respect of their authority to sell alcohol.
- 5.7 Although the DPS or a personal licence holder may authorise other individuals to sell alcohol in their absence, they will remain responsible for any sales. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises.
- 5.8 We expect licence holders to have regard to the Guidance when authorising non-personal licence holders to make sales of alcohol.

Part 6

Temporary event notices

- 6.1 A temporary event notice (TEN) is a notification submitted by an individual (the premises user) to conduct licensable activities on a temporary basis.
- 6.2 A TEN may be given for part of a building such as a single room within a village hall, a plot within a larger area of land or a discrete area within a marquee provided the area is clearly described.
- 6.3 Although premises users are not required to be on the premises for the event, they will remain liable for any offences that may be committed at the premises whilst the TEN is in place.
- 6.4 As a TEN does not relieve the premises user from other legislative requirements it is recommended the user contact the Planning, Highway and any other relevant authority well in advance of the event to ensure any other permissions are in place.
- 6.5 It is strongly recommended to avoid the potential of police objections to contact the North Yorkshire Police Licensing Officer together with the Council's Commercial Regulation team prior to the submission of the TEN and outline any measures in place to promote the licensing objectives.

- 6.6 For larger scale or outdoor events, event organisers are encouraged to seek advice from the Safety Advisory Group in advance of submitting their application. The group will be able to offer local advice on other legislative requirements, such as health and safety issues, road closures, the use of pyrotechnics, local byelaws, etc. along with the need to prevent anti-social behaviour.
- 6.7 The premises user must give the TEN using the prescribed form or use our website www.scarborough.gov.uk.
- 6.8 Unless it is sent electronically, the premises user must give the TEN to the licensing authority, the Council's Commercial Regulation team and the police no later than ten working days before the first day on which the event begins or no later than five working days for a late TEN. If the premises user gives the TEN electronically, we will send a copy to the Commercial Regulation Team and police.
- 6.9 Working days do not include the day the notice was given, the first day of the event, weekends or bank holidays. We encourage premises users to give as much notice as possible. The S182 Guidance contains further details regarding a TEN.
- 6.10 When serving notices the premises user should serve the notice on the licensing authority, police and Council's Commercial Regulation team at the same time.

Part 7

Club premises certificates

- 7.1 In order for a qualifying club to supply alcohol and provide other licensable activities, a club premises certificate is required. Qualifying conditions are specified in the 2003 Act and the licensing authority must be satisfied that these conditions have been met, including evidence to support the fact that the club is non-profit making. Additional information is available on the Council's website.
- 7.2 Clubs will be required to produce an operating schedule evidencing how it will promote the four licensing objectives which will form part of the club premises certificate.
- 7.3 Where a club intends to open its premises to the general public, a temporary event notice or premises licence is recommended. Whilst there is no definition of 'guest' within the 2003 Act, the term may include a wide variety of people who are invited by the club. The manner in which they are admitted as 'guests' would be for the club to determine and set out in its rules. Where the point is reached that a club is providing commercial services to the public it will no longer be considered to be conducted in good faith, this may result in the potential withdrawal of the club premises certificate.

Part 8

Operating schedule

- 8.1 The operating schedule is a key part of the application whereby applicants should describe the steps they intend to take in support of the licensing objectives including volunteered conditions. In completing an operating schedule, applicants are expected to have regard to this Policy.
- 8.2 Applicants are expected to include positive proposals in their operating schedule on how they will manage any potential risks. Where their operation is within the cumulative impact area, they will be expected to demonstrate how the operation of their premises will not add to the cumulative impact already being experienced in that area.
- 8.3 In completing their operating schedule applicants are advised to consider the following points:

General

- Premises log book
- Management and staff training and awareness of duties under the Licensing Act
- Policies and procedures relating to e.g. age restricted sales, capacity, noise monitoring, dispersal, queuing, etc.
- Safe capacities
- Evidence of competent management procedures

Prevention of Crime and Disorder

- Drugs policy
- CCTV
- Pub Watch and Radio links with other licensed premises
- Security Industry Authority Door supervisors and Approved Contractor Scheme
- Non-glass vessels
- An appropriate ratio of tables and chairs to customers
- Management of outside areas
- Use of anti-drink spiking devices
- Calming atmosphere at close of business/event
- Safe capacities
- Queuing policy
- Stewards for events and event plan

Public Safety

- Health and Safety and Fire Safety risk assessments and staff training
- Safeguarding measures
- CCTV
- Safe capacities and monitoring procedures
- Provision of local taxi companies who can provide safe transportation home
- Procedures to control access to and egress from premises
- Patrolling of premises
- Glass clearance policy

- Control of ventilation
- Control of litter immediately outside the premises
- First aid trained staff
- Adequate external lighting
- Consideration of the safety of performers appearing at any premises
- Indoor sporting events: medical practitioner; flame retardant material location of public to wrestling ring; water sports events – lifeguards
- Stewards for events and event plan; and regard to standards of the National Sporting Body
- Ensuring appropriate access for emergency services

Prevention of Public Nuisance

- Control of general noise, disturbance, light, odour, litter and anti-social behaviour
- Whilst regulated entertainment taking place, management of noise disturbance
- Control of litter (e.g. cigarette ends, rubbish, etc.), vomiting, urinating and anti-social behaviour in the vicinity of the premises
- Dispersal policy to ensure customers respect their neighbours
- Removal of persons causing disturbance
- Management of outside areas, e.g. pub gardens, smokers, etc.
- Control of deliveries in early hours
- Queuing policy
- Winding down period

Protection of Children from Harm

- Refusals book
- Consideration of access to premises where adult entertainment may take place
- Consideration to proximity of premises to schools and youth clubs
- Clarity on activities and times at which events take place to determine whether or not it is appropriate to allow access to children
- Age verification policies
- Prompting mechanism on tills at retail outlets
- Measures to control access to hotel minibars
- Operational measures to avoid proxy purchases
- How to prevent children from being exposed to alcohol sales at under age events, gambling, incidents of violence and disorder and drugs or drug taking
- Consideration of safeguarding issues
- Consideration of children as performers where relevant
- Supervision of children
- Under 18 event Code of Conduct, for example: searches, ticketed event, door supervisors, stewards monitoring event, set hours for event, restricted event, policy to ensure young people leave premise safely, etc.

8.4 These lists are not exhaustive and advice can be obtained from the relevant responsible authorities.

Part 9

Enforcement

- 9.1 With regard to enforcement action we will generally take a graduated approach and work with the licence/certificate holder, DPS and relevant responsible authorities in ensuring the premises complies with the licensing laws and promotes the licensing objectives. This may take the form of a premises improvement plan where appropriate.
- 9.2 Where the premises does not comply with an agreed improvement plan further sanctions may be considered. Any action taken will have regard to the Regulators' Compliance Code and the Enforcement Concordat together with the Council's own Enforcement Policy.
- 9.3 Enforcement action will be:
- Targeted toward those premises presenting the highest risk
 - Proportional to the nature and seriousness of the risk those premises present
 - Consistent
 - Transparent, so those who are subject to enforcement action know what to expect and
 - Accountable, with officers take responsibility for their actions
- 9.4 In accordance with the amendments introduced by the Police Reform and Social Responsibility Act 2011, premises licences and club premises certificates will be suspended on the non-payment of annual fees. Licence/certificate holders will be given at least 2 working days' notice of the suspension prior to it taking effect. Following suspension income recovery procedures will be commenced along with enforcement visits to ensure that the suspension is maintained until payment is received or licence surrendered.

Part 10

Licensing Committee

- 10.1 Decisions on all licensing matters shall be taken in accordance with an approved scheme of delegation. This is aimed at underlining the principles of timely, efficient and effective decision-making.
- 10.2 The Licensing Committee will consist of a maximum of 15 Members; A Licensing Sub-committees generally consist of 3 Committee Members who hear any relevant representations from responsible authorities and interested parties. Any of these individuals or groups may specifically request a representative to make representations on the applicant's behalf. This could be a legal representative, a friend, an MP or a Ward Councillor. Legal representatives and friends will be expected to provide confirmation from the interested party that they have been instructed to act on their behalf.
- 10.3 The Licensing Committee will not place themselves in situations where their honesty or integrity may be questioned, will make decisions on their merit and will reach their own

conclusions on the issues laid before them. The Licensing Committee will act in accordance with those conclusions taking into account the views of others as necessary.

- 10.4 The decision determined by the Sub-Committee will be accompanied with clear, cogent reasons for that decision, having had due regard to the Human Rights Act 1998 and all other legislation. A summary of the decision will be posted on the Council's website as soon as is reasonably possible after the decision has been confirmed which will form part of the statutory licensing register.
- 10.5 Where a Sub-Committee hearing is convened, we strongly recommend all applicants and objectors attend the hearing to allow the Sub-Committee to ask any relevant questions pertinent to the application.

Part 11

Administration, Exercise and Delegations of functions

- 11.1 The 2003 Act provides that the functions of the licensing authority, including all its determinations, are to be taken or carried out by its Licensing Committee with the exception of the preparation of this Policy. Appreciating the need to provide a speedy, efficient and cost-effective service to all parties involved in the licensing process, the Licensing Committee has delegated certain decision and functions and has established sub Committees to deal with them.
- 11.2 Many of the decisions and functions are purely administrative in nature and the grant of non-contentious applications has in turn been delegated to the Director or to licensing authority Officers.
- 11.3 The table at Appendix 1 sets out the agreed delegation of decisions and functions to the Licensing Committee, Licensing Sub Committees and licensing authority officers.
- 11.4 The Licensing Committee has approved its own rules relating to the procedure of hearings by the Licensing Sub Committee under the Licensing Act 2003. A copy is available on request.

The role of Borough Councillors

- 11.5 Borough Councillors play an important role in the local community. They may make representations in writing and speak at the hearing on behalf of any other person such as a local resident or business if specifically asked to do so. They can also make representations in their own right if they have concerns about a premises. They may also apply for a review of a licence/certificate if problems at a specific premises justify intervention is brought to their attention.
- 11.6 Residents or businesses may wish to contact their local Borough Councillor in respect of a licence/certificate application. Details of how to contact Borough Councillors may be obtained from the Council's website. Where a resident or business seeks the assistance of the Borough Councillor it is helpful if they can send them any evidence that a premises is causing a problem in the area. It is also helpful if a resident or business that makes a representation on an application to send a copy of their representation to the

relevant Borough Councillor. This then helps them to gain an understanding of local feelings.

- 11.7 Borough Councillors may attend hearings of licensing sub committees considering applications and speak on behalf of local residents and businesses, but only if:
- They have made a personal representation;
 - They have made a representation on behalf of local residents or business as 'community advocates'
 - They have been nominated by (an objector) who cannot attend the hearing or prefers to be represented at the hearing.
- 11.8 Borough Councillors may however attend a hearing as an observer or as part of training for the Licensing Committee. It should be noted however that local Councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 (or its equivalent if amended). This Code applies to any elected Council member whether or not they are a member of the Licensing Committee.
- 11.9 A member of the Licensing Committee representing others or acting in their own right, should consider carefully at a Sub Committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. In addition, a Member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence/certificate in any other way.

Part 12

Appeals against licensing authority decisions

- 12.1 Following a hearing of an application by the licensing authority, the applicant or any objector has the right to appeal against that decision to the Magistrates' Court within 21 days. In hearing an Appeal against the licensing authority's decision, the court will have regard to this Policy and the Guidance issued under Section 182 of the Licensing Act 2003.
- 12.2 In respect of Personal Licences, appeals must be made to the Magistrates' Court in the area where the licence was issued. Appeals in relation to all other licences must be made to the Magistrates' Court where the premises or event is situated.

Part 13

Complaints against licensed premises

- 13.1 All complaints in the first instance should be addressed to Licensing Services, Scarborough Borough Council, Town Hall, Scarborough, YO11 2HG.
- 13.2 All complaints will be investigated in accordance with the Enforcement Policy, the Regulators' Compliance Code and the Enforcement Concordat. Complainants will initially be encouraged to raise the complaint directly with the licence/certificate holder.

Where it is a valid complaint, we will endeavour to seek a resolution through informal means.

- 13.3 With regard to noise related complaints, complainants are encouraged to liaise with the Council's Commercial Regulation team who are the primary agency in this regard.
- 13.4 With regard to whether or not a complaint is relevant, the Director shall decide on whether it is vexatious, frivolous, repetitive or not relevant (that is, in line with one or more of the four licensing objectives). Where the decision is made that a complaint is vexatious, frivolous, repetitious or irrelevant, the complainant will be informed of this in writing with full reasons being given for the decision.
- 13.5 The exclusion of a complaint on the grounds that it is repetitious does not however apply to responsible authorities, who may make more than one request for a review within the 12-month period or other reasonable interval agreed.

Appendix A – Scheme of delegation

Matters to be dealt with	Full Committee	Sub Committee	Officer	Director
Licensing Policy approval	Full Council			
Application for a Personal Licence		If Police objection	If no Police objection	
Application for a Personal Licence with unspent convictions		✓		
Application for a licence or Club Premises Certificate		If relevant representation made	If no relevant representation made	
Application for a Provisional Statement		If relevant representation made	If no relevant representation made	
Application to vary licence or Club Premises Certificate		If relevant representation made	If no relevant representation made	
Application to vary DPS		If Police objection	All other cases	
Request to be removed as DPS			✓	
Application for transfer of premises licence		If Police objection	All other cases	
Applications for interim authorities		If Police objection	All other cases	
Application to review licence or Club Premises Certificate		✓		
Decision on whether a complaint is irrelevant, repetitious, frivolous, vexatious or repetitious, etc.				✓
Determination of an objection to a TEN		✓		
Imposition of existing conditions on a standard TEN (s.106A of the 2003 Act)		✓		
Determination of application to vary licence at community		If police objection	All other cases	

Matters to be dealt with	Full Committee	Sub Committee	Officer	Director
premises to include alternative licence condition				
Decision on whether to consult other Responsible Authorities on minor variation application			Environment and Regulation Manager/ Commercial Regulation Manager	
Determination of minor variation application			Environment and Regulation Manager/ Commercial Regulation Manager	
Acting as a responsible authority on behalf of the licensing authority				✓
Suspension of a licence or Club Premises Certificate for non-payment of annual fee				✓
Specify the date on which suspension takes effect (min. 2 working days)				✓
Decision to make, vary or revoke an Early Morning Restriction Order	Full Council			
Decision on whether or not an EMRO is appropriate	✓			
Decision to introduce, vary or end a late night levy	Full Council			
Other decisions relating to administration and design of levy	✓			
Decision to revoke or suspend a personal licence		✓		

Appendix B - Glossary

Authorised Persons/Officers	<p>Officers empowered by the Act to carry out inspection and enforcement roles. This group includes:</p> <ul style="list-style-type: none"> • Officers of the licensing authority • Fire authority inspectors • Inspectors locally responsible for the enforcement of the Health and Safety at Work, etc. Act 1974; and • Environmental health officers • Trading Standards Officers <p>North Yorkshire Police are separately empowered and not included in the above list.</p>
Child	Any person who is under the age of 16 years.
CIP	Cumulative Impact Policy
Club Premises Certificate (CPC)	A Licence to supply alcohol to members of a Qualifying Club and sell it to members and their guests on the premises without the need for any member or employee to hold a Personal Licence.
Conditions:	
Proposed Condition	Conditions proposed by the applicant in the Operating Schedule.
Imposed Condition	Conditions imposed by the licensing authority after a licensing hearing
Mandatory Condition	Conditions laid down by the Licensing Act 2003 as amended
Cumulative Impact	Where there is a potential impact on the promotion of the Licensing Objectives of a significant number of licensed premises concentrated in one area.
Designated Premises Supervisor (DPS)	A specified individual holding a Personal Licence, who is responsible for the day to day running of the business and whose name will appear on the Premises Licence.
Frivolous representation	Representation or objection that is categorised by its lack of seriousness.

Late night refreshment	The supply of hot food and drink between the hours of 11pm and 5am for consumption on or off the premises.
Licence holder	Licence holder is defined as the Premises Licence Holder or Club Premises Certificate Holder.
Licensable activities	<ul style="list-style-type: none"> • The sale of alcohol by retail • 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 • The provision of late-night refreshment
Licensing objectives	<ul style="list-style-type: none"> • Prevention of Crime and Disorder • Public Safety • Prevention of Public Nuisance • Protection of Children from Harm
Licensing qualification	Qualification obtained from the British Institute of Inn keeping and a requirement for a Personal Licence.
Occupancy levels	Safe occupancy limits for a premises or venue is determined by the size of the premises or venue combined with ensuring that escape routes are adequate for the people, and numbers of people, who are likely to use them. This prevents over crowding which can lead to crime, disorder and concerns over public safety.
'Other Persons'	Defined as any individual, body or business affected by the operation of a licensed premises, regardless of their geographic proximity to the premises.
Operating schedule	<p>This forms part of the completed application form for a Premises Licence and must promote the 4 Licensing Objectives. It must include:</p> <ul style="list-style-type: none"> • The relevant licensable activities • The times during which the applicant proposes that the relevant licensable activities are to take place • Any other times during which the applicant proposes that the premises are to be open to the public • Where the applicant wishes the licence to have effect for a limited period, that period • Where the relevant licensable activities include the sale by retail of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified as the Designated Premises Supervisor • Whether the relevant licensable activities include the supply of alcohol, whether such sales are proposed to be for consumption on the premises or off the premises, or both • The steps which the applicant proposed to take to promote the 4 Licensing Objectives.

Personal licence	A Licence to authorise individuals to sell or supply alcohol or authorise the sale or supply of alcohol for consumption on or off the premises for which a Premises Licence is in force for the carrying on of that activity. Valid for 10 years.
Prejudicial Interest (Members)	An interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest.
Premises licence	A Licence in respect of any premises, such as land or buildings within the community that are to be used for one or more licensable activities. Valid for an indefinite period unless reviewed or revoked.
Proprietary clubs	Clubs run commercially by individuals, partnerships or business for the purpose of profit.
Provisional statement	A statement where premises are being constructed or extended or substantially altered that the licensing authority would be provisionally minded to grant a Licence on completion of the works.
Proxy purchases	Illegal purchasing of alcohol on behalf of a person under the age of 18.
Qualifying club	Where members have joined together for particular social, sporting or political purposes and then combined to buy alcohol in bulk as members. Examples of Qualifying Clubs are: <ul style="list-style-type: none"> • Conservative, Labour and Liberal Clubs • Royal British Legion • Ex-Servicemen's Club • Working Men's Club • Social and Sports Clubs
Regulated entertainment	Entertainment that is provided to members of the public, to members of a Qualifying Club and is an event held with a view to profit and where spectators are involved: This includes: <ul style="list-style-type: none"> • Performance of a play • An exhibition of a film • Indoor sporting events • Boxing or wrestling entertainment (indoors or outdoors) • Performance of live music • Any playing of recorded music, except incidental • Performance of Dance (exception being Morris Dancing). This list is not exhaustive.
Relevant licensed premises	Premises that are authorised to supply alcohol for consumption on the premises by a premises licence or CPC.
Relevant offences	As set out in Schedule 4 to the Licensing Act 2003.
Relevant representations	Representations, or objections, are relevant if they relate to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives.

Responsible authorities	<p>This group can make relevant representations and includes public bodies such as:</p> <ul style="list-style-type: none"> • Relevant licensing authority • North Yorkshire Police (Chief Officer of Police) • Children and Young People's Service • North Yorkshire Fire & Rescue Authority • North Yorkshire Trading Standards • Home Office (Immigration Enforcement) • The Local Enforcement Agency for the Health and Safety at Work, etc. Act 1974 • The Local Authority Environmental Health Service • North York Moors Planning Authority/Local Authority Planning Service • Primary Healthcare Trust (or its equivalent) • Maritime and Coastguard Agency (if applicable)
Safety Advisory Group	Safety Advisory Group – a group of officers from Licensing, Planning, Highways, Police, Fire, Ambulance, Health and Safety, Emergency Planning formed to offer advice to applicants on carrying out events either under a TEN or a restricted Premises Licence
Temporary Events Notice (TEN)	A Notice served on the licensing authority for the temporary carrying on of the sale of alcohol, provision of regulated entertainment or late-night refreshment at a premises not authorised by a Premises Licence or Club Premises Certificate. This Notice is subject to certain limitations as laid down by the Licensing Act 2003.
TEN – 10 working days' notice	10 working days <u>exclusive</u> of the day on which the event is to start <u>and</u> exclusive of the day on which the Notice is given to the licensing authority.
Types of authorisation	<ul style="list-style-type: none"> • Premises Licence • Club Premises Certificate • Personal Licence • Provisional Statement • Temporary Events Notice
Vexatious representation	A representation may be considered vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification.
Working days	Any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971