

Licensing Committee – 8th October 2013

5. Statement of Licensing Policy under the Licensing Act 2003

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Purpose of the Report

To inform the Licensing Committee of the new draft Statement of Licensing Policy and the revised contents therein. This document has been sent to Members under separate cover.

Recommendation

To recommend that the Licensing Committee approve:

- (1) the draft Statement of Licensing Policy; and
- (2) the draft policy be published and the consultation process commenced as stated in the report.

Background

Under section 5 of the Licensing Act 2003, the Council must, every 5 years¹, determine its policy with respect to the exercise of its licensing function, and publish a statement of that policy as per statutory requirement in January 2014.

During the five-year period, the policy must be kept under review and the Council may make such revisions to it, as it considers appropriate.

Exceptionally, Full Council, as opposed to the Licensing Committee, must approve the revised Statement of Licensing Policy. Members are therefore asked to recommend this policy to Full Council.

The first Statement of Licensing Policy was approved in December 2004, which was re-published with minor amendments in January 2005. Statutory reviews took place in 2007 and 2010. The current version of the policy is known as Edition 4; therefore this edition will therefore be known as Edition 5 and is attached at Appendix A.

Consultation

Before determining its policy for the next five year period, the following must be consulted:-

- The chief officer of police;
- The fire authority;
- Public Health;
- Persons/bodies representative of local holders of premises licences;
- Persons/bodies representative of local holders of club premises certificates;

¹ Changed from 3 years to 5 years by s122 Police Reform and Social Responsibility Act 2011

- Persons/bodies representative of local holders of personal licences;
- Persons/bodies representative of businesses and residents.

The views of all these bodies listed should be given appropriate weight before the policy is determined.

Members should also note that the terms of the Act do not prevent them consulting other bodies or persons before determining the policy, the Licensing Service have therefore also consulted with recognised trade bodies.

The consultation period will be for a eight-week period, which commences on Wednesday 9th October 2013 and closes on Tuesday 3rd December 2013. Notification of the consultation will be by letter with a link to the draft Statement of Licensing Policy and questionnaire published on the SSDC website.

The reason for an eight instead of the more usual twelve week consultation period, is that experience has shown there will not be many responses as during the previous consultation, of the 550 letters sent out and publication on our website, only 8 responses were received; further that most of the changes to the policy are due to changes to legislation.

Any responses to the draft policy will be brought to the Licensing Committee for discussion at the next scheduled meeting on Tuesday 10th December 2013.

Fundamental Principles of the Statement of Licensing Policy

In determining the policy, the Council must have regard to the Guidance issued under Section 182 of the Act by the Secretary of State for Culture, Media and Sport, as well as to the views of those it has consulted.

The draft policy does not depart from the Guidance from the Government. If, however, following the consideration of representations, it is decided that a departure from the guidance is necessary to ensure the licensing objectives are met locally, then the reasons for that departure must be recorded. This is particularly important in view of the increased likelihood of legal challenge if making policies not in accordance with the Section 182 Guidance.

Whilst the Statement of Licensing Policy should set out the approach that the Licensing Committee and Sub Committee will adopt when considering different kinds of applications and representations, it should not ignore or be inconsistent with provisions within the Act. For example, an individual's right to apply for a variety of permissions and to have any application considered on its own merits should not be undermined.

Details of Amendments from the Previous Policy

The major changes are the inclusion of the provision for a Late Night Levy and Early Morning Restriction Orders, the inclusion of Public Health and the Licensing Authority as Responsible Authorities, changes to Temporary Event Notices and the removal of vicinity test.

The section on Large Scale Events has been lengthened as applications for this type of event have been received without sufficient information which has resulted in some Responsible Authorities making representations that it should be refused.

The section on personal licences has also been lengthened due to experience both during inspections and administratively and best practice, further this section deals with the requirement for a designated premises supervisor to be dis-applied in community premises where alcohol is sold subject to successful application. Links and contact details have also been updated. It is not proposed to change the areas covered by the Cumulative Impact Policy, due to the crime statistics provided by the Avon and Somerset Constabulary.

It is not the purpose of the policy to reproduce legislation; therefore it has not detailed the changes to the licensing regime by other legislation such as the Police and Social Responsibility Act 2011, the Live Music Act 2012, and the Order² amending descriptions of entertainment under the Licensing Act 2003.

Other changes include additional or re-written paragraphs for the following headings:

Heading	Paragraph Added	Paragraph Removed	Paragraph Amended
Background			1.1.2 - Extra sentence at end of para 1.1.4 reference to the DCMS removed
Purpose	1.3.2		1.3.1 - Interested Parties replaced with 'other persons' and extra sentence added to para
Consultation			1.4.1 - 3 year policy changed to 5 year policy
Fundamental Principles	1.5.2 New	1.5.2 Old - replaced as out of date	1.5.7
Areas of concern			2.2.3
Children and Cinemas. Now heading Children	2.3.6, 2.3.7, 2.3.8, 2.3.9 2.3.10	2.3.2 - last sentence of paragraph removed	
Licensing Hours			2.4.2 sentence removed concerning advice 2.4.5
Maximum Capacities Section removed as now dealt with under other legislation			

² SI 2013 No. 1578 The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013

New heading Late Night levies and Early Morning Restriction Orders	New 2.5.1, 2.5.2, 2.5.3, 2.5.4, 2.5.5		
Late Night Refreshment			2.6.4
Local Strategies and Policies			3.3.1
Vicinity – heading deleted		3.6.1 Old, 3.6.2 Old	
Representations New heading	3.6.1, 3.6.2, 3.6.3, 3.6.4		
Conditions	New 3.7.1, 3.7.2, 3.7.3, 3.7.4	Old 3.7.1, 3.7.2, 3.7.3, 3.7.4 Removed as stating position of law	
Enforcement	3.8.7 New, 3.8.8 New, 3.8.10		3.8.1 Enforcement action will be Targeted etc. 3.8.7 re-numbered as 3.8.9 3.8.8 re-numbered as 3.8.11
Live Music and Dancing	3.10.3		
Premises Licence	4.1.4		4.1.1, 4.1.2, 4.1.3
Temporary Event Notices	4.4.1 New 4.4.2 New 4.4.3	4.4.1 Old 4.4.2 Old	
Personal Licence & Exemption of DPS	4.52, 4.53, 4.54, 4.54, 4.55 4.5.6		
Large Scale Events	4.6.2, 4.6.3, 4.6.4, 4.6.5		4.6.1 4.6.2 (now 4.6.7) (4.6.3 now 4.6.6)
Reviews of Licence or Club Premises Certificate	New 4.7.2 New 4.7.3, New 4.7.4 4.7.5, 4.7.6		4.7.1, Old 4.7.2, 4.7.3, 4.7.4
Administration, Exercise and Delegation of Functions	Delegation table – 11 more functions; added to bottom of table		
Licensing Authority as a Responsible Authority - New Heading	4.9.1, 4.9.2, 4.9.3		
Glossary	Other Persons Safety Advisory	Responsible Authorities - Fire Authority	Entertainment Facilities

	Group	now Fire and Rescue Authority. Licensing Authority and Public health added as Responsible Authorities Temporary Event Notice – 96 hours changed to 168 hours. Maximum capacity removed	Interested Party Regulated Entertainment – Sentence about facilities removed
Cumulative Impact Policy			All renumbered due to numbering error in 2010 policy. 3.2 sentence added at end of paragraph.

Financial Implications

The government has indicated that they expect the centrally set fees of the Licensing Act 2003 to cover the cost to the council of administering the licensing regime, which would include the preparation of the revised policy, and the mailshot.

It is expected that locally set fees will be introduced during the term of this policy, which will be cost neutral.

There would be risk to the Council of a judicial review if a Statement of Licensing Policy were not published in accordance with the requirements of section 5 of the Act.

Implications for Corporate Priorities

None

Other Implications

None

Background Papers: *Licensing Act 2003*
Police Reform and Social Responsibility Act 2011
Guidance issued under section 182 of the Licensing Act 2003
SI 2013 No. 1578 The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013