

Committee:	Licensing Task Group	Agenda Item
Date:	14 May 2012	2
Title:	Review of the Council's Licensing Policy Statement	
Author:	Michael Perry Assistant Chief Executive – Legal 01799 510416	Item for decision

Summary

The Police Reform and Social Responsibility Act 2011 made a number of amendments to the Licensing Act 2003 which were reported to the Licensing and Environmental Health Department at its meeting on 18 April 2012. Although one of the reforms provides that Councils' Statements of Licensing Policy need only be reviewed at 5, rather than 3, year intervals the duty to keep the policy under review and to make revisions at such times as it considers necessary remains. As a result of the amendments to the Licensing Act the Council's current statement of licensing policy is no longer consistent with the legislation. The Committee therefore resolved to establish this task group to advise the Committee on amendments to the Licensing Policy so that it may recommend a revised policy to Full Council for adoption (the Statement of Licensing Policy being a matter specifically reserved to Full Council by legislation).

Recommendations

The task group recommend to the Licensing and Environmental Health Committee:-

1. It recommend an interim statement to be published on the Council's website explaining the changes in the legislation
2. It recommend a revised draft Licensing Policy as a basis for consultation

Background Papers

The following background papers are supplied herewith:-

- Council's current Statement of Licensing Policy (also available at <http://www.uttlesford.gov.uk/uttlesford/file/Licensing%20Policy%20-%20updated%202011.pdf>)
- Report to the Licensing and Environmental Health Committee on 18 April 2012
- Extracts from the Home Office Amended Guidance issued under s.182 Licensing Act 2003 (the full document can be accessed at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-section-182-licensing?view=Standard&pubID=836513>)

Impact

Communication/Consultation	There is a statutory requirement to consult prior to the adoption of a revised Licensing Policy
Community Safety	This is encompassed in the licensing objective of public safety and the protection of children from harm
Equalities	None.
Finance	There will be costs involved in the consultation which can be met from existing budgets.
Health & Safety	This is encompassed in the licensing objective of public safety and the inclusion of PCTs as responsible authorities
Human Rights/Legal Implications	In the event that the Licensing Policy is not consistent with the legislation it is susceptible to challenge by way of judicial review. In the event that the Policy is inconsistent with government guidance and no good reason has been given for departure therefrom the Policy would also be susceptible to such challenge and the Authority would be at greater risk of adverse costs orders on appeal if the court decided the issue based on government guidance.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

1. The amendments to the Licensing Act 2003 are highlighted in my report to the Licensing and Environmental Health Committee on 18 April 2012. The following matters from that report would require changes to our Statement of Licensing Policy.
2. The amendments permit anyone to make representations on an application for the grant of a premises licence or club premises certificate or a variation of either. Further anyone can now apply for a review of a premises licence or club

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- premises certificate. Our Statement of Licensing Policy makes reference in a number of places to "interested parties" and how the licensing authority will determine whether someone who wished to make representations or call for a review falls within that definition. Clearly these provisions will need to be amended. Members are also requested to consider whether the policy should indicate that representations from persons unlikely to be affected by activities at the premises may be rejected as being frivolous or vexatious.
3. The Licensing Authority is now a responsible authority capable of making representations and calling for reviews in its own right. The power to do this was delegated to the Team Leader of the Enforcement Team by the Licensing and Environmental Health Committee on 18 April 2012. Members may wish to consider including guidance in the Statement of Licensing Policy as to when and how those powers may be used.
 4. The evidential burden on Licensing Authorities has changed so that now the steps to be taken by a Licensing Authority should be those "appropriate" to the promotion of the licensing objectives rather than being limited to those "necessary". Clearly the Statement of Licensing Policy will need to be amended to reflect this. Members may wish to consider whether any further guidance should be given as to how Members may determine what is "appropriate"
 5. Certain restrictions on TENs have been relaxed and the policy will need amendment to reflect these. In future if a TEN is applied for in respect of licensed premises (including those with a club premises certificate) if representations are made in certain circumstances conditions attached to the licence/certificate can be carried forward to the TEN. The policy will need to reflect this but Members are asked to consider whether the policy should give further guidance as to the approach the Committee is likely to take in such circumstances.
 6. Under the old law where the annual fee in respect of a licence was not paid the licensing authority had to resort to recovering this by legal action. The Act has now been amended to impose a duty on Licensing Authorities to suspend licenses in such circumstances. Whilst this need not be referred to in the Statement of Licensing Policy as being purely a legislative matter Members may consider it appropriate to include something regarding the Council's approach.
 7. I consider that it is important that the changes in the law are drawn to the attention of the public and trade as soon as possible, especially where there are inconsistencies between our policy statement and the legislation. I therefore append at Appendix A a suggested statement to be published on the Licensing page of the Council website for consideration by Members.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The recommended policy is contrary to the	1. Members have been given extracts of the relevant	3. There is a risk of judicial review and adverse costs orders on appeals	Members give sound reasons for any provisions of the Statement of

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government guidance	sections of the updated guidance and will have regard to it		Licensing Policy which they propose should be otherwise than in accordance with government guidance
The council does not review its licensing policy prior to the next scheduled review in 2016	1. The Licensing and Environmental Health Committee have appointed this group to advise on a review	3. The council would suffer reputational damage if its policy was seen not to be consistent with the legislation and may be the subject of adverse costs awards on appeal	Members recommend a revised policy for consultation as soon as possible and in the meantime recommend a statement to be published on the Council's website outlining the changes in the law.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX A

AMENDMENTS TO THE LICENSING ACT 2003

The Police Reform and Social Responsibility Act 2011 has made a number of amendments to the Licensing Act 2003 and the Home Office has issued revised guidance under s.182 of the 2003 Act. As a result of this the Council's Statement of Licensing Policy no longer reflects the legislation or guidance in all respects. The Council is carrying out an urgent review of its Licensing Policy and will be consulting upon this in due course. However until a new policy has been adopted where there is a conflict between the legislation or Home Office Guidance and the Statement of Licensing Policy the legislation or Home Office Guidance will prevail.

The main changes to the legislation are:-

- The list of responsible authorities which must be served with applications for the grant or variation of premises licenses and club premises certificates has been expanded to include Primary Care Trusts and the Licensing Authority. Contact details are available on the Council's website or can be obtained from the Licensing Team
- Anyone is now entitled to make representations on applications for premises licenses and club premises certificates or to apply for a review of licenses or certificates provided such representations are based upon one of the four licensing objectives. The only distinction between a responsible authority and another party is that the Licensing Authority may reject representations from other parties on the basis that they are frivolous or vexatious and may reject an application for a review on either of those grounds or on the basis that the application is repetitious.
- Where there is a hearing of an application for the grant, variation or review of a premises licence or club premises certificate the Licensing Authority is no longer limited to imposing conditions which it considers necessary for the promotion of the licensing objectives. The test now is whether conditions are "appropriate" for that purpose.

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- There are now provisions which permit some temporary event notices (“TENs”) to be served less than 10 working days before an event. TENs are now divided into two categories, “standard” and “late”.
- The overall limits on TENs in a calendar year remains the same (i.e. 50 for a personal licence holder, 5 for anyone else). The limit for late TENs is 10 for a personal licence holder and 2 for anyone else. However once the limit of late TENs has been reached in any calendar year no further standard TENs may be served by that person even if the overall limit has not been reached.
- TENs must now be served upon the Council's Environmental Health Department at the same time as they are served upon the Licensing Authority and the Police. Contact details are available on the Council's website or can be obtained from the Licensing Team. Either the Police or the Environmental Health Department may object to a TEN on the basis that to allow the event to proceed in accordance with the TEN would undermine any of the licensing objectives.
- If there are objections to a late TEN the event cannot go ahead.
- If there are objections to a standard TEN the Licensing Committee will hold a hearing as at present. Where the TEN is served in respect of premises which have a premises licence or club premises certificate any conditions on the licence or certificate may be carried forward onto the TEN if the Licensing Committee decide that it would be appropriate to do so to promote the licensing objectives unless the conditions would be inconsistent with the event going ahead.
- TENs may now cover a period of up to 168 hours (previously 96 hours) and the maximum number of days for TENs at any venue has been increased to 21 (previously 15).