

Committee: Licensing & Environmental Health Committee **Date:**
Title: Licensing Act 2003 – Revised Statement of Licensing Policy 10th August 2023
Report Author: Steve Mahoney, Licensing Manager

Summary

1. In accordance with section 5 of the licensing Act 2003 the Licensing Authority is required to review and publish its statement of licensing policy every 5 years. The committee is therefore asked to approve the following recommendations. During the five-year period, the policy must be kept under review and the Licensing Authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met.
2. Guidance also states “where revisions to the section 182 guidance are made by the secretary of state, it will be for the licensing authority to determine whether revisions to its own policy statement are appropriate.

Recommendations

3. That members recommend that Full Council adopt the proposed statement of licensing policy with effect from 1 December 2022.

Financial Implications

4. The costs involved in consultation and advertising have been met from within existing budgets.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

Uttlesford’s Draft Statement of Principle Policy document.
Revised Guidance issued under sections 182 of the Licensing Act 2003 (Dec 2022 version)

Impact

- 6.

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| Communication/Consultation | There was a statutory requirement to consult prior to the adoption of a revised Licensing policy. |
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| Community Safety | This is encompassed in the licensing objective of public safety and the protection of children from harm |
| Equalities | There are no equality issues arising from this report |
| Health and Safety | Public safety is one of the licensing objectives promoted by the draft policy statement. |
| 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 on appeal if the court decided the issue based on government guidance. |
| Sustainability | None |
| Ward-specific impacts | None |
| Workforce/Workplace | None |

Situation

7. The Licensing Act 2003 which has been in force since 2005 requires that the authority produces a Statement of Licensing Policy and reviews it at least every 5 years. The current policy was last reviewed in 2017 and approved by Full Council.
8. In accordance with the requirement to keep the Policy under review the Policy has now been updated for the five-year period 2022 to 2027.
9. In exercising its duties under the Act the Licensing Authority must act in accordance with the general principles of public administration, and under a duty to promote the statutory licensing objectives of preventing crime and disorder: preventing public nuisance: protecting public safety; and protecting children from harm.
10. During the life of the current policy, it has proved satisfactory there have been no challenges made to any parts of the Policy. This revision contains additional supportive information and is in accordance with the revised guidance issued by the Secretary of State under section 182 of the Act 2003.
11. The Secretary of State's guidance however, requires Members to specifically consider the issue of a Cumulative Impact Policy and Late Night Refreshment Exemptions as part of the Licensing Policy process.

12. Cumulative Impact means the potential impact on the promotion of the licensing objectives of having a significant number of licensed premises concentrated in one area. It is open to Licensing Authorities to adopt a Cumulative Impact Policy, which creates a rebuttable presumption that applications for the grant or variation of licences or certificates which are likely to add to the cumulative impact will normally be refused, following relevant representations. Such a special policy needs to be set out within the Statement of Licensing Policy.
13. However, any decision to include a Cumulative Impact Policy within the Statement of Licensing Policy needs have an evidential basis. The Licensing Authority has not previously felt that there was any evidence of cumulative impact, and this was reflected by such statements in its previous Licensing Policies. Up to the point of this review, no evidence has been received by the Licensing Authority that indicates a Cumulative Impact Policy would be appropriate, and therefore no change has been made to the status quo.
14. Similarly, the Deregulation Act 2015 gives Licensing Authority powers to exempt certain premises, in certain circumstances, from the requirement to have premises licences to provide late night refreshment (the supply of hot food or drink between 23.00 and 05.00). These powers allow licensing authorities to choose to apply an exemption where they think it will be helpful to businesses and where there are no problems with anti-social behavior or disorder associated with the night time economy.
15. Government guidance advises that licensing authorities should consider deregulation where possible. The decision to make an exemption is a licensing function that should be included in their statement of licensing policy. However, there is no obligation on a Licensing Authority to use the exemption powers.
16. The Licensing Authority has not received any comments from businesses that the current rules are too restrictive or costly, and the number of premises with Late Night Refreshment only licences is small, and therefore it is not considered appropriate to make any exemptions at this stage. The details of the types of premises that could benefit from any exemption, and the types of exemptions that could be made are set out in the draft policy for information.

17. Consultation on the draft policy took place over a 12-week period after the licensing committee approval. The licensing team consulted with all the persons listed in s5(3) of the Act, being responsible authorities under the Act, all premises licensed in the district, local businesses, Councilors, and Town & Parish Councils. Annex A
18. The draft licensing policy statement was also displayed on the Council's website throughout the consultation period. It was accompanied by an invitation to submit relevant comments.
19. The consultation period having been concluded and with no amendments requested I present this to the committee for approval and thereafter be published.

Risk Analysis

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| Risk | Likelihood | Impact | Mitigating actions |
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| The recommended policy is contrary to the government guidance | 1. Members have been given copies of the updated guidance and will have regard to it | 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 government guidance and Licensing Policy which they propose should be otherwise that in accordance with government guidance. |
| The council does not review its licensing policy prior to the next scheduled review | 1. The licensing and environmental health committee have previously approved draft Licensing Act policies in a timely manner | 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 publication |

- 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.