

## PART A

**Report to:** Licensing Committee (Licensing Act 2003)  
**Date of meeting:** 18 March 2013  
**Report of:** Head of Environmental Services  
**Title:** Review of Licensing Act 2003 Statement of Licensing Policy

### 1.0 SUMMARY

1.1 In its role as the licensing authority under the Licensing Act 2003 the Council has a duty to prepare, and keep under review, a statement of licensing policy (SLP). This sets out how the authority approaches its responsibilities under the Act. A number of legislative and other changes have prompted a need to review the policy, which must be publicly consulted upon before it can be adopted.

1.2 A number of changes to the policy are being proposed in this review of which the most significant are:

- (1) recognising the introduction of the Live Music Act 2012
- (2) clarifying our policy on licensing alcohol sales at petrol-filling garages
- (3) acknowledging that we may consider the need for an Early Morning Restriction Order in the town centre at some future date
- (4) clarifying that “café bars” and “other entertainment venues” can be considered exceptions to policy LP3
- (5) impose additional requirements on premises granted licences to sell alcohol within the town centre
- (6) deleting a cumulative impact policy for off-licences and introducing Sensitive Licensing Areas in three specific areas of the Borough
- (7) recognising changes made to the temporary event notice system and the new role for Environmental Health Officers
- (8) enhancements to protect children from harm
- (9) a move away to more pro-active licensing inspections
- (10) clarification on the scheme of delegation under the Licensing Act
- (11) acknowledgement of the future role to be played by the Police and Crime Commissioner for Hertfordshire and the Director of Public Health in Hertfordshire.

1.3 A more detailed list of the amendments appears below at paragraph 3.6.

### 2.0 RECOMMENDATIONS

2.1 That the Licensing Committee adopts the draft statement of licensing policy at

appendix 1, with any amendments it thinks appropriate.

- 2.2 That officers consult with the parties set out in paragraph 3.8 below and report to the Licensing Committee at its meeting on 15 July 2013.

**Contact Officer:**

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**Report approved by:** Alan Gough, Head of Environmental Services

3.0 **DETAILED PROPOSAL**

- 3.1 The Council is the licensing authority under the Licensing Act 2003 for alcohol, regulated entertainment and late-night refreshment within the Borough. It is required to prepare, consult and keep under a review a statement of licensing policy (SLP) that sets out how it approaches its responsibilities under the Act, so that applicants, other statutory bodies and local bodies can ascertain its general approach to particular situations.
- 3.2 In preparing the SLP, the authority must have regard to the statutory guidance published under the Act by the Secretary of State and approved by Parliament.
- 3.3 The Act has been amended and clarified on a number of occasions since it was implemented in November 2005. Most significantly, as part of the Government's commitment in the Coalition Agreement to "rebalance" the Act.<sup>1</sup> In November 2012, it published a further consultation paper concerning its alcohol strategy, and measures to reduce red-tape associated with the licensing process.<sup>2</sup>
- 3.4 This commitment resulted in a number of amendments in the Police Reform and Social Responsibility Act 2011 (PRSR Act), which also additionally introduced the concepts of Early Morning Restriction Orders and Late Night Levies. The Live Music Act 2012 made further changes by exempting some live and amplified musical performances from the need for a licence. The statutory guidance was updated in October 2012 to reflect those changes in government policy.
- 3.5 As a consequence of these changes officers have reviewed the current SLP, which would otherwise be in force until January 2014. Under the PRSR Act the SLP can now be in force until 2018 unless it is revised beforehand.
- 3.6 The changes in the draft SLP printed at appendix 1 are shown in the table below:

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<sup>1</sup> See <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation?view=Binary>.

<sup>2</sup> See <http://www.homeoffice.gov.uk/media-centre/news/alcohol-consultation-launched>.

Page	Description of change
3	Confirmation that the policy will now last for five years until 2018, and a description of the consultation exercise that was undertaken.
3	Changing the annual report to the Licensing Committee from each January to each Spring.
4	Updating the details and description of the Borough.
6	Amending the SLP to acknowledge the award of Purple Flag status for the town centre.
7	Amended to recognise the introduction of the Live Music Act 2012 and that the Government is proposing to deregulate “regulated entertainment” even further.
8	When the Act was first implemented, officers established a Licensing Consultative Group of local licensees, statutory bodies and residents’ groups to keep the SLP under review. Although this was replaced in 2011 by an open annual meeting, officers instead will use existing consultation structures and report on the Act’s operation to the Licensing Committee each Spring.
9	The term “interested parties” has been deleted from the Act and has been deleted from the SLP.
9	Make it clear that conditions, when added following relevant representations, will be tailored to the style and characteristics of the individual premises in question.
9	Include a reference to Environmental Health being able to object to a temporary event notice.
13 - 14	The reference to paragraph 13.41 of the <u>previous</u> statutory guidance, which refers to providing choice and flexibility for consumers whilst balancing the rights of local residents to peace and quiet, has been replaced with a reference to paragraph 13.42 of the <u>current</u> guidance that different licensing approaches may be required for different areas, that licensing authorities – in consultation with others – are best placed to make those decisions, providing that opening hours must not be pre-determined without each case being considered on its own merits.
14	Amend policy LP2 to state the aim of the policy is for all parties to be clear as to whether a licence granted for a petrol filling station is effective or not.
14	Strengthen paragraph 1 of policy LP2A to show that evidence of how intensively a petrol filling station is used will be required before a licence can be granted.

14	Inserts a new paragraph 2 into policy LP2A.
15	Amends the SLP to reflect the Government's proposals to abolish the need for circuses to obtain licences for regulated entertainment.
16	Included a new paragraph to recognise the possibility of an Early Morning Restriction Order being considered later in 2013.
16	Include café-bars and other entertainment venues as the types of premises within policy LP3 which will be considered as an exception to the general policy, and where the starting point will be to grant applications subject to conditions if representations have been made.
17	Paragraph 6 has been strengthened. When applicants wish to show they should be an exception to policy LP3 (which restricts alcohol sales in the town centre), they may need to demonstrate that they have an effective dispersal management plan in place and an electronic identification entry system in addition to the existing requirements of installing CCTV and having use of a Pubwatch radio.
18	The crime and disorder statistics for the town centre covered by policy LP3 has been updated, and reference is also made for the first time to statistics of alcohol-related injuries provided by Watford General Hospital.
18	The list of measures in the town centre to combat alcohol-related crime has been updated.
18	Updated the number of times the Council has successfully defended appeals involving the SLP before the magistrates' courts.
18	Introducing a new concept of Sensitive Licensing Areas. There are three areas of the Borough where licensable activities have either caused concern to local residents and businesses or have resulted in licence reviews initiated by the police. However, there is no evidence that the problems in those areas are so considerable as to justify a cumulative impact policy similar to the one for the town centre under policy LP3. The new policy LP4 (which also replaces the cumulative impact policy for Whippendell Road) means that (a) the licensing authority itself is particularly likely to make representations about applications in those areas; and that policies LP6, LP7 and LP8 will be strictly applied to applications for premises in those three areas where representations have been made.
20	The justification for policy LP4 (Sensitive Licensing Areas) is set out here. Evidence will be particularly requested during the consultation period in order to support this in the final published policy.
22	A number of changes to the temporary event notice scheme are set out here: that "late" notices of five working days can now be given; that Environmental Health as well as the police are now consulted once

	notices are received; and that conditions from a pre-existing premises licence or club premises certificate can be added to temporary event notices following police or Environmental Health representations.
22	The SLP confirms that licensing sub-committees will consider the individual merits of a TEN should the police or Environmental Health object to a temporary event notice within the town centre (LP3 area).
23	Reference to a licensing enforcement officer visiting many events held under a TEN has been deleted.
24	The current policy recommends that where an applicant for a personal licence has a current criminal conviction, they should first discuss their application with both licensing authority and police licensing officers. This has been deleted to bring the policy in line with the established statutory process which is for the licensing authority to advise the police where applicants have relevant criminal convictions and for the police to decide whether those convictions are likely to undermine the crime prevention objective.
24	A recommendation that a joint interview with the police is conducted when the police are minded to object to the transfer of a designated premises supervisor (on the grounds that the crime prevention objective may be undermined) has been deleted.
24	A new paragraph has been inserted setting out the authority's expectations of the responsibilities of designated premises supervisors.
25	References to Off-Watch schemes have been deleted.
31	Two new paragraphs have been added setting out the licensing authority's expectations in relation to age verification procedures for selling alcohol to under 18s, and for internet or telephone sales.
32	Policy LP9 has been amended so that appropriate conditions will be added following representations that an application does not adequately address age verification sufficiently.
32	The licensing authority has a long-standing power to restrict films viewed at public screenings. This is delegated to officers and policy LP10 codifies the existing position, making it clear that they will apply the same guidelines that the British Board of Film Classification would apply.
33	The first paragraph has been revised to reflect that anyone within the Borough who may have an interest in an application may now make representations, and not just "interested parties" (which have now been abolished). The chapter heading and the first paragraph have also been amended to make clear that representations can be either for or against applications.
33	A new paragraph has been added setting out the circumstances in

	which the licensing authority is likely to make representations in its own right in one of three particular situations.
36	A paragraph has been deleted which stated the licensing authority cannot start reviews of licences itself, as the PRSR Act now allows that to happen.
37	Policy LP14, which set out how licensed premises were inspected on a proactive risk-based approach, has been deleted as a change in the way we now conduct monitoring of premises means that we target high risk premises that give rise to complaints or concerns. Regular proactive night time operations are still undertaken in the town centre.
38	The scheme of delegation from the licensing authority has been amended so that the full Licensing Committee will consider evidence relating to an Early Morning Restriction Order if necessary and make recommendations to the full Council.
38	The scheme of delegation also sets out the specific powers delegated to officers which are not explicit in the Act.
40	The role of the Police and Crime Commissioner, and of the Director of Public Health, are acknowledged.

3.7 For the sake of simplicity, changes to the paragraph numbering in the October 2012 version of the statutory guidance have not been included in the above table.

### 3.8 Consultation

The licensing authority is under a statutory duty to consult with representatives of residents and businesses in its area, representatives of licence-holders and responsible authorities. Previous Cabinet Office guidelines which recommended a 12-week written consultation exercise have now been superseded by more flexible arrangements.

3.9 Officers propose consulting with the bodies set out on page 3 of the draft SLP. In addition, it is proposed to place a copy on the Council website for comments to be made by other parties, either online or by paper. It is suggested that the consultation runs until 30 April 2013, in order that comments can be reported to the Committee at its next meeting on 15 July 2013. Officers believe that most of the proposed amendments – with the exception of the new LP4 Sensitive Licensing Areas – are largely uncontroversial and technical in nature, justifying a shorter than normal consultation period.

## 4.0 **IMPLICATIONS**

### 4.1 **Financial**

4.1.1 The Head of Strategic Finance comments that there are no financial implications associated with this review.

## 4.2 Legal Issues (Monitoring Officer)

- 4.2.1 The Head of Legal and Property Services comments that the SLP is not only important in setting out the licensing authority's approach to the Licensing Act, but it must also be applied by the magistrates' courts on appeal unless they have good reason to depart from it otherwise. The Committee must be satisfied that the SLP is not irrational, beyond the legal powers of the Committee, or so unreasonable that no other reasonable licensing authority would have adopted it.

## 4.3 Equalities

An Equalities Impact Assessment has been conducted. As the licensing process is regulated by statute and regulation, any negative effects would have to be addressed by Parliament. However, the council can ensure that:

- (a) licence conditions are not imposed that have a negative impact on an equality group
- (b) information and awareness about the licensing scheme is made available (commensurate with the information provided by the council for other regimes, e.g. planning permissions)
- (c) steps are put into place to accommodate people from equality groups who might wish to put forward their representations to licensing sub-committees (and this equally applies to any member of the public who wishes to address a Council or committee meetings)
- (d) officers follow the published enforcement policy which itself has been the subject of an equalities impact assessment

## 4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Further legislation or reported cases during the revision process	1	4	4
<i>Policy departed from by court on appeal</i>	1	4	4
Legal challenge arising from failure to properly adopt the policy	2	3	6
Legal challenge from failure to properly consult	1	3	3
Deadlines for consultation, committee meetings etc not met	1	1	1
Policy is unreasonable, irrational, discriminatory etc	1	3	3

## Appendices

- Appendix 1 – draft statement of licensing policy 2013 - 2018.

## Background Papers

The following background papers were used in the preparation of this report. If you wish to inspect or take copies of the background papers, please contact the officer named on the front page of the report.

Local Government Association Best Practise Framework for the Review of Licensing Policy Statements (October 2012)

## File Reference

- Licensing policy review 2013