

**LICENSING ACT 2003
GUIDANCE**

(Report by Head of Administration)

1. Introduction

- 1.1 The Licensing Act 2003 states that, in carrying out its licensing functions, an authority must have regard to its licensing statement and to any guidance issued by the Secretary of State. The former must be reviewed every three years, while the latter may be changed at any time. The Council's initial Statement of Licensing Policy expires in January 2008 and the Secretary of State issued new guidance in the summer. The purpose of this report is to update Members on those issues.

2. Secretary of State's Guidance

- 2.1 A copy of the new guidance has been sent to all Members of the Committee under separate cover. The authority can depart from the guidance where this is felt appropriate but must have good reason for doing so and must be able to substantiate its decision if challenged through the courts. Members should familiarise themselves with the guidance if taking part in sub committee hearings.
- 2.2 The alterations compared with the earlier guidance are not significant, although the document has been re-ordered and updated to reflect legislative change and Government thinking since 2004. The main alterations in terms of the former are –
- a new offence of persistently selling alcohol to children,
 - new powers for the Police and the authority to designate Alcohol Disorder Zones as a last resort to tackle alcohol related crime and disorder,
 - a power to attach interim conditions to licences pending a full review, following an application by a senior police officer in cases of serious crime and disorder,
 - an additional power to issue a fixed penalty notice to licensing premises emitting noise between 11.00 p.m. and 7.00 a.m., and
 - a ban on smoking in all enclosed workplaces and public places.
- 2.3 The guidance also draws attention to the changes introduced by a new Fire Safety Order that covers general fire precautions and other fire safety duties and requires responsible persons to carry out fire risk assessments focusing on the safety of all relevant persons. Any conditions imposed by a licensing authority relating to requirements or prohibitions that could be imposed by the Order automatically have ceased to have effect without licences being varied. A licensing authority should no longer seek to impose fire safety conditions where the Order applies.
- 2.4 Clarification is contained in the guidance on the authorisation of sales of alcohol. It confirms that a personal licence holder may authorise another person to sell alcohol and be absent from the premises when the transaction takes place. The designated premises supervisor and personal licence holder will not escape responsibility for any actions taken by anyone authorised to make sales. Whether an authorisation has been made will be a matter of fact

decided by the courts but the Secretary of State considers that there should be an overt act of authorisation in writing, with the person so authorised being clearly identifiable and the personal licence holder monitoring the activity on a reasonably regular basis.

- 2.5 The Secretary of State has also stated that temporary events notices may be given for different rooms in a premises or for individual plots in a wider area of land as long as these are identifiable. Representations made by ACRE to increase the number of TENS that can be submitted in respect of village halls have been unsuccessful but the opportunity to submit TENS for different rooms and the ability for personal licence holders to authorise others to make sales should create greater flexibility for parish councils and village hall committees in managing community premises.
- 2.6 The guidance reminds councillors that they can make representations on an application in their own right as an interested person, where appropriate, but they can also act on behalf of a constituent if asked to do so in circumstances where that person (or business) is an interested person for the purposes of the Act. The legislation itself has not changed however inasmuch as a councillor cannot take it upon him or herself to submit representations simply as a ward councillor.

3. Statement of Licensing Policy

- 3.1 The Act requires each licensing authority to publish a statement of licensing policy, explaining how it will implement its licensing functions. Approval of the statement cannot be delegated by the Council. Again regard must be had to the statement by the authority and there must be good reasons for deviating from its content.
- 3.2 The existing statement came into effect in January 2005 and must be renewed in January 2008. The present statement reflects the Secretary of State's updated guidance and the authority did not attract any adverse challenge to its implementation, nor to its application in the transitional stage and subsequently.
- 3.3 The new draft statement has been modelled on the existing document and changes have been made only where it would otherwise conflict with the Secretary of State's updated guidance. A copy has been distributed previously to all Members and comments have been invited from a wide variety of organisations. The closing date is 5th November. It is intended that a summary of the comments will be submitted to Cabinet on 22nd November with final approval at the Council meeting held on 5th December 2007. An update of any comments received to date will be submitted at the Committee's meeting but to avoid the necessity of calling a special meeting to formulate recommendations to Cabinet, it is suggested that consideration of any consultation replies be delegated to the Head of Administration after consultation with the Chairman and Vice Chairman of the Committee.

4. Conclusion and Recommendation

- 4.1 Comments are invited from the Committee on both the Secretary of State's revised guidance and, more particularly, on the draft statement of licensing policy and it is

Recommended

that the Head of Administration, after consultation with the Chairman and Vice Chairman of the Committee, be authorised to make any changes to the statement of licensing policy as a result of the replies received during the consultation period and the Cabinet be requested to endorse the document for submission to the Council for approval.

Background Papers:

- Guidance issued by the Secretary of State for Culture, Media and Sport under section 182 of the Licensing Act 2003
- Statement of Licensing Policy of the authority dated January 2005
- Draft statement of Licensing Policy of the authority dated January 2008.

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