

**LICENSING ACT 2003
STATEMENT OF LICENSING POLICY**

(Report by Head of Administration)

1. Introduction

- 1.1 The Licensing Act 2003 requires the Council in its role as the licensing authority to adopt a statement of licensing policy and to have regard to that statement in the exercise of its functions under the Act. The existing statement came into effect on 7th January 2005 for a period of three years and will expire shortly. The Council must therefore review its policy and approve a new statement that will come into effect on 7th January 2008
- 1.2 The Act also requires each licensing authority to have regard to any guidance issued by the Secretary of State and revised guidance was issued at the end of June 2007.

2. Secretary of State's Guidance

- 2.1 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.
- 2.2 The alterations compared with the earlier guidance are not substantial, 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 licensed premises emitting excessive 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 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.

3. Statement of Licensing Policy

- 3.1 Approval of the statement cannot be delegated by the Council. Again regard must be had to the statement by the authority in carrying out its licensing functions and there must be good reasons for deviating from its content.
- 3.2 The existing statement reflected the Secretary of State's earlier guidance and has not attracted any adverse challenge to its implementation, nor to its application in either the transitional stage or subsequently.

- 3.3 The new draft statement has been modelled on the existing document and changes 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 invited from a wide variety of organisations with a closing date of 5th November. To avoid the necessity of calling a special meeting of the Licensing Committee to formulate recommendations to Cabinet, consideration of responses has been delegated to the Head of Administration after consultation with the Chairman and Vice Chairman of the Committee.
- 3.4 The replies received as a result of the consultation exercise are summarised in Annex A, together with a comment on the points raised. A copy of the proposed statement of licensing policy has been circulated separately with the agenda for the meeting.

4. Conclusion and Recommendation

- 4.1 Once adopted, the statement of licensing policy can be amended by the licensing authority at any time during the ensuing three years, prior to its renewal in 2011.
- 4.2 The consultation exercise on the revised statement has elicited few responses and the only comments of significance reiterate views and suggestions made by those organisations when the first statement was approved. It is therefore proposed that no change be made to the draft other than minor corrections and

Recommended

that 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.
- Consultation replies as set out in Annex A attached.

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Summary of Written Representations

British Beer and Pub Association

Welcomes the Council's positive approach to the licensing of the sale of alcohol and provision of public entertainment and in particular its recognition of the cultural and social contribution that the trade has to make and its importance as a local employer.

In paragraph 6.7, the Association suggests that the authority cannot 'expect' every person engaged in the sale or supply of alcohol to be authorised by a personal licence holder in the manner proposed as this is not a legal requirement. The Secretary of State's guidance merely outlines good practice for authorising sales of alcohol. Written authorisation is not a legal requirement and ultimately it is for the designated premises supervisor to decide how to manage this issue.

In paragraph 7.5, the Association points out that the Licensing Act does not require a risk assessment to be carried out by applicants and that instead of stating that 'an applicant should carry out a risk assessment', the statement should say 'it is recommended that an applicant carry out a risk assessment'.

The link to the National Pubwatch website quoted in Annex A has changed and attention is drawn to guidance for pub operators on compliance with the Disability Discrimination Act which is available from the Association's website.

Comment

If licensing policy served merely to reproduce legislative requirements, there would be no need for separate statements to be approved by all authorities. On the authorisation of alcohol sales, the Secretary of State's guidance states that advice should promote greater clarity and consistency and that the factors reproduced in paragraph 6.7 of the statement 'should be relevant in considering whether or not an authorisation has been given'. No change is therefore recommended.

With regard to risk assessments, the revised statement contains the same wording as the original, notwithstanding a similar representation at that time by the Association. It would be difficult for an applicant to complete the necessary operating schedule in an application effectively without first having undertaken a risk assessment and, as paragraph 7.6 points out, the Regulatory Reform (Fire Safety) Order 2005 now requires each responsible person who has control of premises to carry out a fire risk assessment. No change is therefore recommended.

The changes to the website addresses will be made.

Campaign for Real Ale (Huntingdonshire Branch)

Room divisions and separated areas could be set out in operating schedules and plans or encouraged as conditions when alcohol is to be sold. Use of separate areas in single room pubs can prevent the spread of disorderly activity and new or converted open plan premises are likely to make compliance with the licensing objectives harder to achieve. There should be a presumption to ensure, by means of appropriate conditions as necessary, that room plans incorporate divisions and the

Branch suggests that an appropriate condition be added to the pool of possible conditions in Annex F. It also suggests that there should be a presumption against permitting variations to remove partitions as this is likely to adversely impact on compliance with the licensing objectives.

Comment

The local branch of CAMRA made similar representations when the first statement was approved by the authority. The content of plans to accompany applications is defined in statutory regulations and includes internal walls. The authority must determine each application on its merits and cannot make general presumptions. No change is therefore recommended.

St Ives Town Council

Support the policy.

Comment

Noted.

Hemingford Grey Parish Council

Support the policy.

Comment

Noted.

Holywell-cum-Needingworth Parish Council

No adverse comment. Comprehensive document.

Comment

Noted.

Cambridgeshire Fire & Rescue Service

No comment.

Comment

Noted.

Somersham Parish Council

No comment but query what is meant in the statement by the term 'in the vicinity of' licensed premises.

Comment

Noted and explanation provided to Parish Council.