

REPORT TO: LICENSING COMMITTEE – WEDNESDAY 25 AUGUST 2010

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: NICKII HUMPHREYS

Licensing Act 2003 – Draft Statement of Licensing Policy for the period 2011-2014

The purpose of this report is for the Licensing Committee to consider the draft Statement of Licensing Policy prepared in accordance with Section 5 of the Licensing Act 2003 (“the Act”) and approve the timetable for the period of consultation.

RECOMMENDED:

- i) That the Licensing Committee approve the draft Statement of Licensing Policy as the consultation document for the purposes of the Licensing Act 2003; and**
- ii) That the Licensing Committee approve the timetable for the consultation period, consideration of responses to the consultation period and submission of reports on the final policy (including any amendments if necessary) to the Licensing Committee and Council as appropriate.**

1. Background Information

Section 5 of the Licensing Act 2003 (“the Act”) requires the Council to prepare and publish a statement of its licensing policy every three years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the Act.

The first statutory three year period began on 7 January 2005 and therefore subsequent three year periods, e.g. beginning 7 January 2008 etc, are fixed and the authority must ensure that it has in place its statement of licensing policy in order to fulfil its statutory obligations.

Before determining its policy for any three year period or if revising a policy within a period, the licensing authority must consult with persons listed in section 5(3) of the Act. These are:

- The chief officer of police for the area;
- The fire and rescue authority for the area;
- Persons/bodies representative of local holders of premises licences;
- Persons/bodies representative of local holders of club premises certificates;
- Persons/bodies representative of local holders of personal licences; and
- Persons/bodies representative of businesses and residents in its area.

Beyond the above statutory requirements, it is for each Council to decide whether to consult with any other representative bodies having regard to costs and time involved. The Government has indicated that where Council exceed the statutory requirements, they will have to absorb those additional costs that may not be met from the fee levels to be set by central Government.

A draft statement of licensing policy has been prepared in accordance with the Act for consideration by the Licensing Committee and for the consultation process to commence.

In preparing the draft statement, consultation has already taken place with the statutory responsible authorities which are outlined below and their comments have been incorporated into the draft statement:

- The Chief Officer of Police;
- The Chief Fire Officer;
- Head of Public Protection;
- Head of Planning Services; and
- Director of Children, Families and Learning.

The majority of proposed changes to the existing statement of licensing policy reflect amendments to the Statutory Guidance issued in accordance with section 182 of the Act together with best practice advice issued by LGR (Local Government Regulation – previously known as LACORS (Local Authorities Co-ordinators of Regulatory Services)). In addition, the current special policy area has been re-examined and further evidence has been provided by the Chief Officer of Police to justify retention of the existing cumulative impact special policy area.

A copy of the existing statement of licensing policy is attached as Appendix A and the proposed draft statement is attached as Appendix B.

Additionally, attached as Appendix C is a table which provides a summary of the amendments proposed for the new policy.

2. Timetable for Consultation

The draft timetable suggested is as follows:-

25 August 2010	Licensing Committee to consider and approve draft policy for public consultation;
1 September 2010	Consultation period commences;
26 November 2010	Consultation period ends and consideration of any representations takes place;

10 December 2010	Report to be considered by the Licensing Committee for final approval of the Statement of Licensing Policy and recommendation of adoption by Council;
14 December 2010	Statement of Licensing Policy to be considered by the Council for final approval and the new statement of licensing policy will come into effect on 7 January 2011.

3. Consultation Process

To ensure that the consultation process is as effective as possible, the following steps will be taken in addition to the statutory requirements:-

- Copies of the existing and draft Statement of Licensing Policy together with information as regards making representations will be available on the Council's website;
- Copies of the document will be sent to all libraries and will also be available at the Licensing Section and the City Helpdesk;
- A press release will be prepared for the media;
- An item on the proposed draft policy will be published in the Members Information sheet and distributed to all Members; and
- A copy of the draft policy will be made available in each of the Group Rooms together with a copy of the existing policy. A copy of the Act and the statutory guidance is already available in the Group Rooms.

4. Police Reform and Social Responsibility Bill - Effects upon the proposed consultation process

LGR have recently contacted licensing authorities to report that licensing officers have raised questions in relation to the recently published Home Office consultation "Rebalancing the Licensing Act" and how it impacts on the statutory requirement to review licensing policy statements and have a revised policy in place by 7 January 2011. This matter was raised directly with the Home Office by LGR, particularly the implications, including costs, of having to repeat this process again within a relatively short period of time.

The majority of the proposals in the Home Office consultation are intended to be introduced by way of the Police Reform and Social Responsibility Bill which is due to be introduced into Parliament in October this year. Whilst the timescales for the passage of this Bill are not yet known, it is noted that the Bill will also contain proposals for Police Commissioners, which have to be in place by April 2012, so there is pressure in terms of obtaining Royal Assent for the Bill as soon as possible next year.

As well as the need for changes to the primary legislation in respect of the licensing proposals, amendments will also be needed by way of secondary legislation and updates to the Statutory Guidance issued in accordance with Section 182 of the Licensing Act 2003.

Therefore, even though one of the proposals in the consultation is to remove the statutory requirement to review licensing policy statements every three years, this proposed amendment to the primary legislation will NOT be implemented in time to change the current statutory provisions to review existing policies in time for January 2011.

The LG Group have given an undertaking that it will immediately write again to the Minister to highlight the costs and burdens upon both councils and businesses (and the likelihood of confusion for the public) of undertaking this exercise now and having to repeat it again within a short period of time to reflect all the proposed changes, some of which represent a significant change to the current licensing regime.

5 City Solicitor's Comments

The Council has a statutory obligation to undertake the consultation as set out above. Approval of the recommendations will ensure the Council's obligations can be met.

6. Appendices

Appendix A Existing Statement of Licensing Policy;

Appendix B Draft Statement of Licensing Policy for period 2011-2014;

Appendix C Summary of the amendments proposed for the new policy.



Licensing Manager

Background Papers - None

APPENDIX C

**Summary of the amendments proposed for the 2011-2014
Statement of Licensing Policy**

Paragraph	Item	Summary
2	Background information about Portsmouth	
2.1		Update and further information regarding the city of Portsmouth
3	Consultation on the statement of licensing policy	
3.4		Date of policy commencement
3.13		Amend address for further advice
4	Fundamental Principles	
4.5		Focus of conditions attached to various authorisations
7	Standardised Conditions	
7.2		Adds word "effectively"
8	Enforcement	
8.5		Inserts paragraph that licensing authority will process personal information in accordance with Data Protection Act 1998
8.6		Inserts paragraph detailing unannounced inspections or test purchases by authorised officers or responsible authorities
10.0	The Cumulative Impact of a concentration of licensed premises	
10.3		Recognition of need for evidential basis for special policies relating to cumulative impact

APPENDIX C
continued

Paragraph	Item	Summary
11.0	Limitations on special policies relating to cumulative impact	
11.1		Addition to this section to include consideration of “off sales” premises and the highlighting of specific problems
12.0	Special policy relating to cumulative impact in Portsmouth	
12.2		Re-evaluation of special policy in summer of 2010 and statement justifying its existence
12.3		Adds word “originally”
15.0	Children	
15.12		Relocated within policy to section 26.28.
15.13		Relocated within policy to section 26.29
25.0	Live music, dancing and theatre	
25.5		Disapplication of designated public places orders (DPPO) in certain locations/premises
25.6		Licensing Committee and its officers to adopt a neutral stance in circumstances where another part of the local authority applies for a premises licence
26.0	The licensing process and applications	Introduction of sub-headings for categories of nuisance
26.12		Addition to this section to reflect importance of protecting local communities as regards public nuisance

APPENDIX C
continued

Paragraph	Item	Summary
26.14		Relocation of section from 26.18 and slight re-wording
26.15		Previous wording deleted
26.15		New sections introduced relating to late night nuisance and commentary relating to types of nuisance affecting local communities
26.16		Addition to this section to include smoking ban
26.17 to 26.18		New sections relating to effect of smoking ban and use of outdoor areas
26.22		Additional category of restricting the type of musical entertainment provided
26.24		Additional examples of types of conditions that could be imposed in relation to prevention of nuisance, specifically related to smoking ban
26.25		New section relating to prevention of nuisance at open spaces
26.26 to 26.27		New heading for protection of children from harm and new sections giving advice to applicants regarding under-age and proxy sales.
26.28 and 26.29		Sections relocated from previous policy sections 15.12 and 15.13. Additional wording in 26.28 in relation to staff training.

APPENDIX C
continued

Paragraph	Item	Summary
26.30		New section for contact details for trading standards for advice and guidance.
27.0	Licence review process	
27.1 to 27.14		Inserts new section relating to reviews of premises licences
28	Administration, exercise and delegation of functions	Adds delegation for applications for minor variations of premises licences or club premises certifications to officers to decide.
29	Contact Details/Advice and Guidance	
29.1 to 29.3		Amends contact details of licensing section and responsible authorities
Annex B	Supporting information and map of special policy area relating to cumulative impact in Portsmouth	Updated and recent information from police to support retention of the cumulative impact policy