

Licensing Acts Committee

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Report of Head of Legal and Democratic Services

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Wards affected: All

Report no. 27/10

Joint Statement of Licensing Policy

Recommendation

That the Committees approves the draft Joint Statement of Licensing Policy set out at Appendix One to this report for public consultation as required by Section 5 of the Licensing Act 2003

Purpose of Report

1. To present a draft Joint Statement of Licensing Policy to the two Licensing Acts Committees that will apply to both councils in order that the Committees can approve the draft for public consultation.

Strategic Objectives

2. The report complies with the councils' corporate priority to manage its business efficiently. The proposals in the report do not conflict with any of the councils' strategies or policies.

Background

- 3.1 Section 5 of the Licensing Act 2003 requires Licensing Authorities to publish a Statement of Licensing Policy every three years. The current individual policies were approved by South Oxfordshire District Council on 13 December 2007 and Vale of White Horse District Council on 4th December 2007 and came into force on 7th January 2008. These policies therefore have to be reviewed and any new policy agreed before 7th January 2011 in order for the councils to remain in compliance with the legal requirements of the Licensing Act 2003.
- 3.2 Before any new policy can be approved it must have been the subject of public consultation in accordance with the requirements of Section 5 and the Home

Office Code of Practice on public consultation requiring the period of consultation to last for at least 12 weeks. The draft Policy once agreed will also be posted on the councils' websites.

- 3.3 Over the past 12 months there have been a number of changes to licensing legislation culminating with revised statutory guidance under Section 182 Licensing Act 2003 being issued in March 2010. The opportunity has been taken to harmonise the two separate policies into a single policy updated to reflect the new legislation and statutory guidance. All of the changes to the policy are highlighted in shaded text for ease of identification.
- 3.4 The changes introduced into licensing legislation and guidance that affect this policy are as follows:
- statutory guidance issued under Section 182 Licensing Act 2003
 - new mandatory conditions
 - sexual entertainment venues
 - supervision of alcohol sales in church and village halls
 - minor variation procedure for premises licences and club premises certificates
 - individual members of licensing authorities to be Interested parties
- 3.5 The statutory guidance issued under Section 182 Licensing Act 2003 dictates those issues that the Licensing Authority's Statement of Policy must address and the stance that the Authority is able to take within its policy. The footnotes within the policy refer to the specific paragraphs within the statutory guidance and have been amended to reflect the new guidance and its paragraph numbers in order that anyone reading the policy is able to relate statements in the policy back to the guidance.
- 3.6 The Policing and Crime Act 2009 introduced new mandatory licensing conditions some of which came into force in April 2010 and the rest come into force on 1st October 2010. All of the new mandatory conditions have been included within the draft policy as the policy when approved will take effect in December 2010 when all the new mandatory conditions will be in force.
- 3.7 The Policing and Crime Act 2009 also introduced new provisions in relation to the licensing of sexual entertainment venues through a separate licensing regime under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. When this legislation has been adopted by both councils those venues that wish to provide entertainment that is classified as sexual entertainment will require an additional licence to their premises licence under the Licensing Act 2003 to authorise the provision of sexual entertainment. The Policing and Crime Act has introduced a definition of what constitutes sexual entertainment that contains two elements within the definition. The first part of the definition describes what sexual entertainment is and the second part of the definition sets out the number of times that sexual entertainment is provided within a year. Both elements of the definition have to be satisfied for the entertainment to require a licence under Schedule 3 Local Government

(Miscellaneous Provisions) Act 1982. A report on this issue will be brought forward to the council for the adoption of the legislation in the second half of 2010.

- 3.8 Where the entertainment is sexual entertainment under the first part of the definition set out in the Policing and Crime Act 2009 but fails the frequency test then that sexual entertainment is classed as regulated entertainment under the Licensing Act 2003 and is covered by this Statement of Licensing Policy and the provisions of this policy will apply. Where a licence is required under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 then different criteria will apply to determining that licence.
- 3.9 The Legislative Reform Supervision of Alcohol Sales in Church and Village Halls etc. Order 2009 amended the requirement for village halls etc. to have a Designated Premises Supervisor (DPS) to authorise the sale of alcohol for consumption on or off the premises. Previously if village and church halls wanted to sell alcohol on more occasions a year than could be authorised by Temporary Event Notices (i.e. 12 times per calendar year), then they were required to apply for a full premises licence and appoint a DPS (usually a committee member who held a personal licence) to authorise alcohol sales. This was raised during the recent review of the licensing legislation as an issue for village and church halls (who were reluctant to go down the route of appointing a DPS) and therefore affecting their viability. The above Order now allows village and church halls who want to hold a premises licence to apply for “the alternative licence condition” which sets out a revised mandatory condition as follows:-
- “that every sale of alcohol under the premises licence must be made or authorised by the management committee.”
- 3.10 The recent review of licensing legislation identified the need for a simplified procedure where only minor variations to licences were needed to premises licences, such as layout to the premises or minor changes to say remove licensable activities, as these changes would be unlikely to adversely affect the licensing Objectives. The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 introduced the simplified procedure where only minor variations that are unlikely to adversely affect the licensing objectives can be agreed. Any variation that would adversely impact on any of the four licensing objectives would have to be submitted as a full variation as now.
- 3.11 Previously individual members of the licensing authority were unable to be considered as interested parties under the Licensing Act 2003. The Policing and Crime Act 2009 changed this by amending the Licensing Act 2003 to include individual members as interested parties. Members will need to be aware of the procedures that apply within the relevant licensing authorities for members who have a personal and prejudicial interest in an item being discussed at a Licensing Acts sub committee/panel.
- 3.12 The opportunity has also been taken to tighten up on some of the procedures for dealing with applications and clarifying who will be consulted on an application and who can and cannot object to an application and the circumstances in which they can object.

Financial Implications

- 4.1 As this is a policy document there are no financial implications arising from its adoption.

Legal Implications

- 5.1 The joint policy has been drafted to reflect current legislative requirements and compliance with the statutory guidance issued under Section 182 of the Licensing Act 2003. As one of the purposes of the policy is to set out the requirements for applicants to take into account when making applications under the Licensing Act 2003 the policy also contains appropriate legal caveats reminding applicants that the legal provisions and statutory guidance were up to date at the time of publication and that it is their responsibility to ensure that any application made complies with the legislative requirements and statutory guidance in force on the date they make their application.

Risks

- 6.1 Failure to follow the requirements of the Licensing Act 2003 in respect of publishing a Statement of Licensing Policy or consulting on the draft policy in accordance with the requirements of the Licensing Act 2003 and the Home Office Code of Practice on Public Consultation would render the councils at risk of not having a policy in place by 7th January 2011. This would mean that the councils could be at risk of acting ultra vires and therefore liable to legal challenge.

Other Implications

- 7.1 None

Conclusion

- 8.1 The Committees are asked to approve the recommendation.

Background Papers

- Legislation referred to in the report.