

**IMPLEMENTATION EXECUTIVE  
13 MAY 2009**

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**PUBLIC PROTECTION LICENSING POLICIES**

**Executive Summary**

This report recommends the Implementation Executive approves the Statement of Licensing Policy under the Licensing Act 2003, the Statement of Principles under the Gambling Act 2005 and the Sex Establishments Policy.

It describes the results of public consultation exercises on the draft policies and explains how the comments received have been considered in amending the final policies attached to this report.

**Recommendations**

**It is recommended:**

- a. That on behalf of Council, the Implementation Executive adopts the following:
- Statement of Licensing Policy under the Licensing Act 2003
  - Statement of Principles under the Gambling Act 2005, and
  - Sex Establishments Policy.

**Reason for Proposal**

Statutory requirements for the Council.

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## **PUBLIC PROTECTION LICENSING POLICIES**

### **Purpose of Report**

1. From 1 April 2009 Wiltshire Council became responsible for the implementation and enforcement of all the licensing duties which were formerly the responsibility of the district councils. These include the duties contained within the Licensing Act 2003 and the Gambling Act 2005 for which the Council has become the Licensing Authority. In addition the Council has taken on responsibility for the licensing of sex establishments under the Local Government (Miscellaneous Provisions) Act 1982. The Implementation Executive considered a report on licensing functions at its meeting on 28 January 2009.
2. The Council is required to prepare and publish a statement of its licensing policy under the Licensing Act and a statement of principles under the Gambling Act. Transitional legal arrangements allow the former district council policies to remain until the newly created unitary councils adopt policies of their own.
3. This report informs members of the results of the public consultation exercises on the three policy statements and asks members to approve the policies for the new Wiltshire Council. The policies have to be approved by the Implementation Executive as this function cannot be delegated to officers.

### **Background**

4. In order for the licensing authority to discharge its licensing functions it is required to draw up a Licensing Statement or Statement of Licensing Policy (Licensing Act) and Statement of Principles (Gambling Act) to which it must have regard to when undertaking its licensing functions. These policies have to be reviewed every three years and be the subject of a full consultation process. In addition there are a number of policies relating to the licensing of sex establishments across the former district council areas.
5. It is an objective of the service to harmonise these policies as soon as possible. To this end three new policies have been drafted and were published for consultation at the end of last year.

### **The Licensing Act 2003**

6. The Licensing Act 2003 was designed to be light touch legislation covering a number of 'licensable activities'. Such activities are defined within the Act and broadly relate to the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment. There are close links to Wiltshire's Alcohol Strategy.
7. Wiltshire Council is now the Licensing Authority, and is required to discharge its responsibilities under the Act with a view to promoting a number of licensing objectives, namely:
  - a. The prevention of crime and disorder

- b. Public safety
  - c. The prevention of public nuisance, and
  - d. The protection of children from harm
8. The Act also places a duty on the Council to appoint a Licensing Committee to discharge these functions and for this Committee to delegate functions that it considers appropriate to sub-committees and officers.
  9. Transitional legislation allows the former district council policies to remain in force until a new unitary council policy is adopted.
  10. A new draft licensing policy was published for consultation between 5 December 2008 and 4 March 2009. A list of consultees is produced in Appendix 1.
  11. Twelve responses were received on the draft licensing policy from a range of consultees, including the police. A summary of consultation responses with officer comments is included in Appendix 2 to this report. The draft policy has been amended to address the issues raised by the consultees where the legislation permits. However there are two issues raised by the former Salisbury District Council's Licensing committee which are highlighted in this report.
  12. The first response from the licensing committee suggested was that the policy should specify hours where licensable activities should not take place, as was the case in the former Salisbury District Council's licensing policy. This is suggesting a "terminal hour" is established. It is the officers' recommendation that the policy should not seek to restrict what an applicant can or cannot apply for in line with the Government's desire for a light touch on applications. This recommendation is supported by case law (June 2005 - The British Beer and Pub Association, The Association of Licensed Multiple Retailers, The British Institute of Innkeeping v Canterbury City Council). Also Guidance issued under section 182 of the Licensing Act 2003 states that the Government wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time economies which are important for economic viability, investment and employment. If a "terminal hour" was to be included in the licensing policy there is a high risk that it would result in a legal challenge to the council.
  13. The second response suggested that parish councils should be notified of licensing applications in their area. The Licensing Act sets out the specific requirements for advertising applications. Whilst this includes the applicants advertising at the premises and in a local newspaper, it does not include notifying parish councils. It is considered that the legislative requirements are adequate. It is proposed to publicise licensing applications on the council's website.
  14. Guidance to the Act makes it clear that parish councils are entitled to represent individuals or groups of interested persons who have concerns on any particular application, and have requested the council to represent them. However parish councils cannot make representations unless they are specifically requested to act on behalf of local residents or businesses.

15. The revised statement of licensing policy is attached at Appendix 3 to this report.

### **The Gambling Act 2005**

16. Like the Licensing Act 2003, the Gambling Act 2005 is a deregulatory measure designed to consolidate licensing functions undertaken by Councils and the magistrate's courts. It also establishes the Council as the Licensing Authority whose role is to discharge licensing functions relating to the Gambling Act and to work with the Gambling Commission, established as an independent national regulator of commercial gambling.
17. The Gambling Act has three objectives which are set out in the Act:-
  - a. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
  - b. Ensuring that gambling is conducted in a fair and open way
  - c. Protecting children and other vulnerable persons from being harmed or exploited by gambling.
18. As with the Licensing Act the responsibilities of the Licensing Authority relate to the issue and review of premises licences for a range of different premises, the granting of permits mainly for gaming machines and registrations of small society lotteries and occasional use notices. The Gambling Act delegates these functions to the Licensing Committee of the Council under Section 154. Similarly functions can also be delegated to sub-committees and officers where this is considered appropriate. The Licensing Authority is also responsible for drawing up a Statement of Principles commonly referred to as the Gambling Policy.
19. A new draft gambling policy was published for consultation between 5 December 2008 and 4 March 2009. A list of consultees is produced in Appendix 1.
20. Seven responses were received on the draft policy. A summary of consultation responses and officer comments are attached at Appendix 4 to this report. The draft policy was amended to address the issues raised where the legislation permits.
21. One issue identified by several respondents was that town and parish councils should be notified of any applications made in their areas. The Gambling Act requires applicants to advise responsible authorities of their application, and must advertise the application both at the premises, and in the local newspaper. The policy implements the advertising requirements contained in the Act for new applications but does not go beyond what the legislation requires.
22. The revised Statement of Principles under the Gambling Act 2005 is attached at Appendix 5 to this report. If approved, the Gambling Act requires a period of a month to allow advertising before the policy can come into effect.

### **Licensing of Sex Establishments**

23. The Local Government (Miscellaneous Provisions) Act 1982 introduced a licensing regime to control sex establishments. A sex establishment means a

sex shop or sex cinema. Currently there are four licensed sex establishments in Wiltshire.

24. Wiltshire Council has adopted schedule 3 of the Act by virtue of being as successor authority to the four district councils which had adopted the Act. This means that the Council can control and regulate the operation of certain kinds of sex establishment within its area.
25. No sex establishment can operate unless it has obtained a licence from the Council. Any such licence will contain conditions that will restrict how that premises may trade.
26. Under the legislation the Council cannot refuse any application for a sex establishment on moral grounds.
27. A new draft policy on the licensing of sex establishments was published for consultation between 5 December 2008 and 4 March 2009. A list of consultees is produced in Appendix 1.
28. Eleven responses were received on the draft policy. A summary of consultation responses and officer comments are attached at Appendix 6 to this report. The policy was amended to address issues raised and to protect areas from proliferation of such establishments.
29. Comments were again made by respondents on notification of town and parish councils of any applications in their areas. The policy has been amended to include notification of the local member, as this is allowed under the legislation. The policy is attached at Appendix 7 to this report. If approved, Schedule three of the Local Government (Miscellaneous Provisions) Act requires a period of a month to allow advertising before the policy can come into affect.

### **Environmental Impact of the Proposal**

30. There is minimal environmental impact of these proposals. Successful application of the licensing functions should reduce the impact of licensable activities on the public i.e. noise and public disorder.

### **Equality and Diversity Impact of the Proposal**

31. The impact of these proposals is assessed as 'low' against the Council statutory responsibilities. There are potential implications with respect to human rights and these are considered in paragraph 34 below.

### **Risk Assessment**

32. Licensing is a statutory undertaking. Should the policies detailed in this report not be adopted it would leave the Wiltshire Council in a position of being unable to undertake its statutory responsibilities and functions under the Acts. This will result in criticism of the Council and damage the reputation of the new Wiltshire Council. In addition it would make the Council vulnerable to legal challenges for failing to have policies which comply with the legislation and guidance in these areas of licensing. This is a particular risk in relation to the Licensing Act.

## **Financial Implications**

33. The integration of the licensing functions across the county should afford efficiency savings for the Wiltshire Council in terms of officer and Member costs in the long term although this has yet to be quantified. As described above, failure to adopt robust licensing policies could result in legal challenges to the Council with both potential costs and financial penalties being imposed.

## **Legal Implications**

34. The provisions contained within the Licensing Act 2003 are, in the Government's view compatible with the requirements of the Human Rights Act 1998. However whilst it appears that the Licensing Act itself is compatible with the Human Rights Act there remains an obligation on the authority itself to act in a way that is also compatible with this Act. The possibility of acting in an incompatible way may arise at various stages such as during the review of premises licenses. A robust set of licensing policies will assist the Council to comply with Human Rights Act.
35. The licensing service is a high profile regulatory service important for protecting the public but also for ensuring the development of the leisure industry and economic viability. The balanced application of licensing functions is critical for the reputation of the Council and for building trust and confidence in its service provision.

## **Conclusion**

36. The adoption of policies for the implementations of the Licensing Act 2003, the Gambling Act 2005 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 are statutory requirements of the Council. This report has outlined the policies which should be adopted to ensure that the Council acts in accordance with these legal obligations, and in doing so will protect the Council from potential claims of unfairness or bias when considering applications made under the relevant licensing schemes. If adopted, the licensing act policy will come into effect immediately, whilst the gambling Act and Sex Establishments policies require a period of advertisement and will therefore come into effect on 29 June 2009.

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## **Background Papers**

None

## **Appendices**

- Appendix 1: List of consultees for draft Statement of Licensing Policy, draft Statement of Principles under the Gambling Act and draft Sex Establishments Policy
- Appendix 2: Summary of consultation responses and officer comments for the Statement of Licensing Policy under the Licensing Act 2003
- Appendix 3: Proposed Statement of Licensing Policy
- Appendix 4: Summary of consultation responses and officer comments for the Statement of Principles under the Gambling Act 2005
- Appendix 5: Proposed Statement of Principles under the Gambling Act 2005
- Appendix 6: Summary of consultation responses and officer comments for the licensing of Sex establishments under the Local Government (Miscellaneous Provisions) Act 1982
- Appendix 7: Proposed Sex Establishments Policy