

WILTSHIRE COUNCIL

LICENSING COMMITTEE

30 NOVEMBER 2010

LICENSING ACT 2003
REVIEW OF STATEMENT OF LICENSING POLICY

Executive Summary

This report reviews the statement of licensing policy following its approval by Wiltshire Council on 1 December 2009.

It informs members of the Licensing Committee of relevant changes that have occurred in the year since the policy was approved and suggests a way forward.

Recommendations

It is recommended:

- **That the Licensing Committee note this review of the policy and agree to continue the use of the existing statement of licensing policy as approved by council on 1 December 2009.**

Reason for Proposal

Statutory requirements for the Council.

Author: John Carter, Head of Environmental Protection and Licensing,
Public Protection Services.

Corporate Director: Maggie Rae, Public Health & Wellbeing

Contact Details: john.carter@wiltshire.gov.uk

REVIEW OF THE STATEMENT OF LICENSING POLICY

Purpose of Report

1. Wiltshire Council approved the Statement of Licensing Policy under the Licensing Act 2003 at its meeting on 1 December 2009. It was agreed at that time that the policy would be reviewed after a year.
2. This report forms this review, details the changes which have occurred in licensing issues since December last year, and advises members on the way forward.

Background

3. Wiltshire Council, as the Licensing Authority, is required to discharge its responsibilities under the Licensing Act 2003 with a view to promoting the four licensing objectives, namely:
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance, and
 - The protection of children from harm
4. The Act was originally 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.
5. The existing licensing policy is attached at Appendix 1 to this report.
6. Since the policy was approved a number of significant changes, both local and national, have occurred which are relevant to both the policy and licensing regime as a whole.
7. National legislation currently requires that Licensing Act policies undergo extensive review every three years. As Wiltshire Council produced a new policy at the end of 2009, it is not required to undertake such a review until 2012.

Issues affecting the policy

National issues

8. Since the Licensing Act came into force it has been heavily criticised, claiming that the light touch approach has resulted in a regime which is biased towards businesses.
9. Following the election in May, the Coalition Government has stated that reviewing the Licensing Act is one of its priorities. As a result the Home Office issued a major consultation on the Act in July this year entitled "Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing."

10. The key proposals in the consultation are listed below:
 - Licensing authorities to become responsible authorities
 - Burden of proof to be reduced for bringing a review
 - The term “vicinity” to be abolished
 - A fifth licensing objective on health to be added
 - Interested parties widened
 - Early morning restriction orders
 - Cumulative impact policies easier to introduce
 - Late night levy and hours policies strengthened
 - TENS process to be amended
11. It is likely that the changes to the Licensing Act will be fully implemented in 2012.
12. A copy of the council’s response to the Home Office consultation is attached at Appendix 2 to this report.
13. New mandatory licensing conditions have also been introduced during this year. Conditions relating to irresponsible drinks promotions, directly dispensed drinks and the provision of free tap water came into force in April. In October further conditions on age verification policies and drinks measures were also introduced.
14. With the introduction of the new condition on age verification there has been greater interest in the Challenge 25 scheme. Challenge 25 is a retailing strategy that encourages anyone wishing to buy alcohol, who is over 18 but looks under 25 to provide a form of ID such as a passport or driving licence.
15. In January this year new legal powers were introduced which meant that local members are now included as interested parties and can call in licensing applications to hearing and review.
16. The Government’s proposed Decentralisation and Localism Bill may also have an impact on licensing issues; however the effect of the proposed legislation is as yet unknown.

Local issues

17. In February this year changes were made to the out of hours response service which is provided by the council’s Public Protection Services. This had the effect of introducing a higher level of responsive service to the former Salisbury District Council area. Since its introduction in February there have been no complaints received out of hours relating to noise from licensed premises in the Salisbury city centre area.
18. Since June this year a new Wiltshire Licensing Tasking Group has started meeting on a monthly basis. The group, operating as part of the Wiltshire Community Safety Partnership, uses the principles of the National Intelligence Model to gather and share evidence on alcohol related crime and disorder. The aim of the multi agency group is to target their joint resources to reduce crime and disorder from the most problematic premises in Wiltshire. To date the group has been successful

in reducing incidents of crime and disorder associated with licensed premises in Chippenham, Trowbridge and Salisbury.

19. The tasking group has also produced a draft tactical toolkit, which details the legal powers and tools each agency has to address problems from licensed premises, and has commented on a joint council and Police protocol.
20. Further training for members on the Licensing Act was also provided in September by Philip Kolvin QC, the current Chairman of the Institute of Licensing.
21. Since the policy was approved there have been seven hearings and two reviews of licensed premises in the Wiltshire Council area. One of these resulted in the closure of premises for 3 months. At these sub committee meetings the new policy has been shown fit for purpose. In addition no appeals have been lodged following these hearings, which suggests that the policy is robust.
22. Between 1 January and 3 November this year the licensing team across the Wiltshire Council area has received 2,684 applications under the Licensing Act 2003. A breakdown of this figure is given in Appendix 3.
23. A comprehensive review of the policy as required by the Licensing Act would require extensive consultation with all licensees, licensed premises in the county, members, town and parish councils, trade representatives as well as police, fire and rescue, Wiltshire NHS and a variety of other agencies.

Options

There are two options:

- Change the policy
- Keep the existing policy

Change the policy

24. The policy could undergo a comprehensive review. This would have to include an extensive consultation process, detailed in paragraph 23, as was done prior to the introduction of the existing policy.
25. As stated earlier in the report, the Act requires that statements of policy must be reviewed every three years. Any review now could be regarded as being premature by two years. In addition, the current legislative and political climate indicates that substantial changes to the laws are likely in 2011 or 2012, which will also subsequently require a full review of the policy.

Keep the existing policy

26. The existing policy has been tested through the hearing and review processes since its introduction, and has not been contested by any licensees, or their legal representatives.
27. The police have considered the current licensing policy and believe it to be fit for purpose within the current legislative framework. Given the potential for future

national change and the recent progressive inter-agency progress which requires a period of consolidation to become embedded, the police would not be supportive of a policy change at this time.

28. The lack of a terminal hour requirement has not resulted in any increased problems in the control of alcohol related crime and disorder for residents living in the vicinity of licensed premises. Late night/early morning complaints in Salisbury have reduced from 27 in 2009 to 15 in 2010 (up to 15 November).

Environmental Impact of the Proposal

29. There is minimal environmental impact of these proposals. Successful application of the Licensing Act functions will reduce the impact of licensable activities on the public i.e. noise and public disorder.

Equality and Diversity Impact of the Proposal

30. 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 33 below.

Risk Assessment

31. The existing policy is fit for purpose and as such the council is not subject to any significant risks.

Financial Implications

32. If the existing policy is retained there are no additional costs. Further consultation may attract some minor additional costs.

Legal Implications

33. 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 licences. A robust licensing policy will assist the Council to comply with the Human Rights Act.
34. The licensing service is a high profile regulatory service important for protecting the public but also for ensuring the development of the leisure industry, economic viability and a safe night time economy. 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

35. Following this limited review of the statement of policy it is concluded that a full review process is not warranted at present.

36. Carrying out a comprehensive review of the licensing policy at this time of significant change in the legislative and policy regime is likely to result in having to repeat the review process during 2011/12. At this time of dramatic change this course of action is not recommended, and members are recommended to approve the continued use of the existing statement of licensing policy.
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Background Papers

None

Appendices

Appendix 1: Existing Statement of Licensing Policy

Appendix 2: Wiltshire Council's response to "Rebalancing the Licensing Act "

Appendix 3: Applications received under the Licensing Act 2003 since 1 January 2010.