

Committee Name and Date of Committee Meeting

Cabinet – 10 June 2019

Report Title

Licensing Act 2003 – Statement of Licensing Policy

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

Lewis Coates, Head of Regulation and Enforcement
01709 823117 or lewis.coates@rotherham.gov.uk

Alan Pogorzelec, Licensing Manager
01709 254955 or alan.pogorzelec@rotherham.gov.uk

Ward(s) Affected

Borough-Wide

Report Summary

Under Section 5 of the Act, a licensing authority must prepare a Licensing Act 2003 Statement of Licensing Policy (a ‘Statement of Licensing Policy’) which effectively sets out the principles it proposes to apply in exercising functions under the Act.

The Council is now seeking to develop a revised Licensing Act 2003 Statement of Licensing Policy, which balances the need to encourage a vibrant and dynamic entertainment industry as part of the regeneration of the Borough, and the need to ensure that concerns relating to health and public disorder are effectively addressed. To support this, the Council proposes to undertake consultation to seek the views of key stakeholders and residents of Rotherham, to inform the development of a draft Policy.

In addition the Council proposes to undertake a ‘Cumulative Impact Assessment’, to identify any potential parts of the Borough where further granting of licences or variations to licences could impact on the Council’s obligations in respect of the Licensing Objectives. This would be used to support determinations under the Policy.

This report is presented to Cabinet for consideration, comment, and for approval to commence a consultation process to inform the development of a Licensing Act 2003 Statement of Licensing Policy.

Recommendations

1. That approval be given to begin public consultation, in line with Option 3 (section 3), to inform the development of the Council's Licensing Act 2003 Statement of Licensing Policy.
2. That Cabinet agree that Officers undertake a Cumulative Impact Assessment in respect of licensable activities, to support the development of a Licensing Act 2003 Statement of Licensing Policy.

List of Appendices Included

Appendix A Rotherham Metropolitan Borough Council Licensing Act 2003
Statement of Licensing Policy

Appendix B Licensing Act 2003 Equalities Analysis initial screening

Background Papers

The following documents have been considered when preparing this report:

- Guidance issued under section 182 of the Licensing Act 2003.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Licensing Act 2003 – Statement of Licensing Policy

1. Background

1.1 As the licensing authority under the Licensing Act 2003 (the Act) the Council is responsible for licensing:

- the sale and supply of alcohol;
- regulated entertainment such as live and recorded music, performances of theatre, dance, cinema and indoor sports;
- the sale of hot food and drink between 11 pm and 5 am.

1.2 Under Section 5 of the Act, a licensing authority must prepare a Licensing Act 2003 Statement of Licensing Policy (a 'Statement of Licensing Policy') which effectively sets out the principles it proposes to apply in exercising functions under the Act. This Statement of Policy must be published at least every five years.

1.3 The Statement of Licensing Policy has a number of key objectives including:

- Providing applicants with a clear, consistent basis for submitting applications and notices in the Borough;
- Providing a clear, consistent basis for determining licensing applications in Rotherham;
- Ensuring the relevant views of those affected by licensed premises are taken into consideration;
- Ensuring that local area issues are taken into account by licensed premises; and
- Supporting the wider strategies of the Council and the approach to licensed activities and premises across the Borough.

1.4 Rotherham Metropolitan Borough Council's (RMBC's) Statement of Licensing Policy was last published in 2011, and was therefore due for review and republication in 2016; however this review did not take place due to the Council's focus on taxi and private hire licensing.

1.5 The Council is now in a position to review the Statement of Licensing Policy, and this report is brought before Cabinet to agree the commencement of a consultation process to support the development of such a Policy.

2. Key Issues

2.1 The licensed entertainment and hospitality industry is a major provider of full time, part time and casual employment and it makes a significant contribution to the local economy. It fulfils an important social and community role, providing facilities for both residents and businesses, and provides vital support for related sectors such as retail and tourism. Table 1 describes the number and type of Licensing Act licences in place in May 2019.

Table 1 – Licensing Act Licences – May 2019

License Type	Number
Club Certificate with alcohol (e.g. private member's club)	56
Premises license with alcohol (e.g. pub, restaurant, shop)	627
Premises license without alcohol (e.g. late night food takeaway)	136
Personal alcohol licence (for individuals to hold an alcohol licence)	1,681
TOTAL	2,500

- 2.2 The Council's Statement of Licensing Policy should strike a balance between the need to encourage a vibrant and dynamic entertainment industry as part of the regeneration of the Borough, and the need to ensure that concerns relating to health and public disorder are effectively addressed. It contributes to making the Borough as a whole, and its town centre in particular, pleasant, safe and prosperous places in which to live, work, learn and relax. The Council wants to work with partners and the licensed trade to provide a safe, diverse and family orientated night time economy for all to enjoy.
- 2.3 The Council's current Statement of Licensing Policy (see Appendix A), whilst focused directly upon the Licensing Objectives, therefore contributes significantly to a range of priorities and strategies, particularly those related to crime and disorder and health and well-being.
- 2.4 The sale and supply of alcohol in particular is key, not only to issues of crime and disorder, but also to critical public health concerns. The relationship between alcohol, health and social harms, and crime is well documented.¹ Critically, the development of the Policy will explicitly take account of the wider crime and public health agendas. The Council's Statement of Licensing Policy has a role to play in delivering a licensing approach that seeks to address these concerns and to focus on the prevention of harm at the earliest stages.
- 2.5 The way that licensable activities are managed on site can often influence the wider issues that arise through the sale and supply of alcohol or the provision of late night refreshments. Critically, there are areas of the Statement of Licensing Policy that can direct the way that establishments are managed and operated, including setting standards for training around key priorities through to requirements for security staff and their training and accreditation.

¹ The Public Health Burden of Alcohol and the Effectiveness and Cost-Effectiveness of Alcohol Control Policies An evidence review, Public Health England, 2016: <https://www.drinkaware.co.uk/>; Violent Crime and Sexual Offences - Alcohol-Related Violence, Office for National Statistics, 2015

- 2.6 It is recognised that the night time economy of Rotherham is changing. It is important that the impact of this is fully understood, both in terms of the positive impact on local amenity and economy, and potential negative effects in relation to health, social harm and crime. Residents and businesses are therefore well placed to provide a view on the impact of licensable activities within their local areas. This is particularly so where the night time economy has expanded outside of the town centre. It is therefore important that residents have a say on issues related to their communities.
- 2.7 The Council will consider a number of aspects in the development of a revised Statement of Licensing Policy, via public consultation, including:
- Identification of sensitive locations, where the granting of further licenses or variations might have a negative impact on licensing objectives;
 - Consideration of whether the restriction of sales of certain items, for example single cans of alcohol in certain areas, might benefit reductions of harms associated with consumption of excessive alcohol, including anti-social behaviour;
 - Training of licence holders, door supervisors, and other workers, and potential accreditation of door supervisors to Security Industry Authority (SIA) standards or equivalent;
 - Requirements for safeguarding measures relevant to licence holders and workers including criminal checks and appropriate training.
- 2.8 In support of the Statement of Licensing Policy, the Council is also able to identify areas within the Borough where the further granting of licences or variations to licences could impact on the Council's obligations in respect of the Licensing Objectives. This 'Cumulative Impact Assessment' (see Appendix A, Section 3) is likely to change over time, and whilst not forming part of the Policy, will be a key supporting document to aid the determination of matters under the Licensing Act by Licensing Committee.
- 2.9 In particular, following the development of a Cumulative Impact Assessment, a Cumulative Impact Policy for a particular locality can be considered which might:
- “... limit the number or type of licence applications granted in areas where the number of licensed premises is causing problems. Such problems typically include crime and disorder or public nuisance caused by large numbers of drinkers being concentrated in one area.”²
- 2.10 It is therefore proposed to develop a Cumulative Impact Assessment alongside the development of the Statement of Licensing Policy, which will, again be influenced by the consultation process.

² Woodhouse J., Alcohol licensing: cumulative impact assessments, House of Commons Library, Briefing Paper, Number 07269, 16 April 2019

3. Options considered and recommended proposal

- 3.1 The Council is statutorily obliged to publish a Statement of Licensing Policy and to consult on that Policy. However, the Council does have a degree of discretion in relation to the contents of the Policy and the way in which a consultation is conducted.
- 3.2 **Option 1:** to develop and seek views on a detailed and complete draft policy, including proposals relating to locations where the further grant of licenses might affect Licensing Objectives; training of license holders; criminal checks and; expectations of security staff arrangements. This approach might aid a consultation, providing consultees with a defined set of criteria upon which to provide views. However it might equally narrow considerations by restricting views on the number of locations where Licensing Objectives might be affected, simply to those prescribed by the Council. This approach might also lead to challenge on the basis that the Policy is fully developed, rather than being at a development stage during consultation (see paragraph 7.3 below). Similarly, such an approach would limit responses in relation to training of license holders, criminal checks and expectations of security staff arrangements only to the proposals put forward by the Council.
- 3.3 **Option 2:** to publish a draft policy, leaving some sections of the policy relating to consideration of locations, training, criminal checks and security arrangements, blank, to encourage an open consultation, and to seek a broad range of views, to fully inform the future policy. Whilst this option would not give consultees a specific proposal to respond to, it would enable the Council to elicit a wider range of responses based on a Policy that is clearly in the formative stages of its development.
- 3.4 In addition, to underpin and support the consultation, a Cumulative Impact Assessment would be undertaken to assess the levels of alcohol related harms across the Borough. This assessment would provide tangible analysis of areas of the Borough where further licenses and variations might be likely to be inconsistent with the Council's duty to promote the licensing objectives.
- 3.5 **Option 3:** to undertake a two-stage consultation process. The first stage would seek to consult widely on the issues associated with the impact of licensed premises on the Borough and in localities, and inform the development of both a draft Policy and a Cumulative Impact Assessment. This draft Policy would then be subject to further formal public consultation, prior to adoption. This option would enable the development of a draft Policy on the basis of public consultation, and enable a Cumulative Impact Assessment to be undertaken, to support the draft Policy during a formal consultation.
- 3.6 The preferred option would be option 3, whereby a two-stage public consultation would be undertaken, combined with a Cumulative Impact Assessment. This would provide for a more open consultation with a better informed, and more robust, future Statement of Licensing Policy.

4. Consultation on proposal

4.1 Whilst there is no legal requirement for the Council to undertake formal consultation at this first, developmental stage of the Policy, the Council will seek the views of all stakeholders that are identified under Section 5(3) of the 2003 Act. These are:

- The chief officer of police for the area
- The fire and rescue authority for the area
- The local authority's Director of Public Health
- Persons / bodies representative of local premises licence holders
- Persons / bodies representative of local club premises certificate holders
- Persons / bodies representative of local personal licence holders
- Persons / bodies representative of businesses and residents in its area

4.2 The views of all these persons or bodies will be given appropriate weight when the policy is determined. It is recognised that in some areas it may be difficult to identify persons or bodies that represent all parts of industry affected by the provisions of the 2003 Act, but licensing authorities must make reasonable efforts to do so. Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons.

4.3 In addition responses to the consultation will be sought from the wider public to ensure that the Council's approach is fully informed at a local level.

4.4 The Council's Licensing Committee, who are responsible for considering and determining applications under the Licensing Act 2003, will be fully consulted as part of this approach.

4.5 The consultation is anticipated to be open for a period of twelve weeks and will take the form of an online consultation, with written requests for responses directed to those stakeholders that the Council is ultimately statutorily required to consult with.

4.6 The consultation will be complimented through communication and marketing methods including website, intranet, social media and ward member briefings.

4.7 The responses received will be fully considered and will be used to inform the development of a draft Statement of Licensing Policy and a Cumulative Impact Assessment, which will be subject to further consultation before formal adoption.

5. Timetable and Accountability for Implementing this Decision

5.1 It is expected that the consultation will begin within one month of the decision to conduct the consultation.

- 5.2 The work to complete the Cumulative Impact Assessment will commence immediately after the decision to consult, and will be informed by the findings of the consultation together with joint working with colleagues in Public Health.
- 5.3 It is expected that a draft Policy, and the supporting Cumulative Impact Assessment, will be presented to Cabinet in October 2019 for consideration, prior to formal consultation taking place.
- 5.4 If, following that formal consultation, the Statement of Licensing Policy is recommended by Cabinet for adoption, Council must then pass a resolution stating this decision.

6. Financial and Procurement Advice and Implications

- 6.1 The costs of undertaking its statutory duties as a licensing authority, of which this consultation process forms part, are met within the Licensing revenue account, the costs of which are met by fees.
- 6.2 Fee levels are set at a level to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements.
- 6.3 There are no procurement implications introduced as a result of this report.

7. Legal Advice and Implications

- 7.1 Section 5(1) of the Licensing Act 2003 requires a licensing authority to determine its Licensing Policy with respect to the exercise of its licensing functions and to publish this before the beginning of each five year period.
- 7.2 Section 5(3) of the Act lists those persons that must be consulted by a licensing authority in relation to a proposed statement of licensing principles.
- 7.3 The Council should also have regard to the statutory guidance issued under Section 182 of the Act and in particular, Part 14, relating to Statement of Licensing Policy. Subject to statutory requirements, the extent of the consultation process is a matter for each local authority. All local authorities should however always give consideration to a full consultation, as a limited consultation may open the authority up to challenge. The extent of the consultation process will require consideration of a previous consultation and the length of time since that consultation.
- 7.4 Section 5(4) of the Act requires an authority to keep the statement under review and to make such revisions to it, at such times, as it considers appropriate, again subject to the same consultation requirements. The authority must publish a statement of the revisions (to the policy) or the revised statement if revisions are made and approved.

- 7.5 In determining or revising its policy, a licensing authority must have regard to any cumulative impact assessments published by it under Section 5A of the Act. The licensing statement must summarise the cumulative impact assessment and set out how the authority has had regard to in determining or revising its policy.
- 7.6 Section 5A of the Act sets out the requirements relating to any cumulative impact assessment, which must be adhered to. In particular, before publishing any cumulative impact assessment, the licensing authority must consult with those set out under Section 5(3) of the Act and for the purposes of such consultation, the licensing authority must provide those persons with the following information:
- The reasons why it is considering publishing a cumulative impact assessment;
 - A general indication of the part or parts of its area which it is considering describing in the assessment;
 - Whether it considers that the assessment will relate to all relevant authorisations or only to relevant authorisations of a particular kind.
- 7.7 Where the licensing authority publishes a cumulative impact assessment, it must be kept under review.
- 7.8 The Council should also have regard to the statutory guidance issued under Section 182 of the Act and in particular, Part 14, relating to Statement of Licensing Policy, which sets out the relevant requirements of any cumulative impact assessment in more detail
- 7.9 The authority must have regard to all relevant legislation and ensure that consultation process is followed correctly, in order to minimise the risk of any legal challenge.

8. Human Resources Advice and Implications

- 8.1 There are no direct HR implications arising from this report

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 The protection of children from harm is one of the Licensing Objectives; however a statement of licensing policy should not seek to limit the access of children to any premises unless it is appropriate for the prevention of physical, moral or psychological harm to them.
- 9.2 It may not be possible for licensing policy statements to anticipate every issue of concern that could arise in respect of children in relation to individual premises and therefore the individual merits of each application should be considered in each case.
- 9.3 A statement of licensing policy should make clear the range of alternatives which may be considered for limiting the access of children where that is appropriate for the prevention of harm to children.

- 9.4 Statements of policy should also make clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is appropriate, this should remain a matter for the discretion of the individual licence holder, club or premises user.
- 9.5 The statement may include reference to model conditions that maybe used to promote the protection of children from harm.

10. Equalities and Human Rights Advice and Implications

- 10.1 Section 149 of the Equality Act 2010 imposes a public sector equality duty (PSED). This duty requires the authority to eliminate discrimination, advance equality of opportunity and foster good relations when exercising any of its functions.
- 10.2 In order to promote inclusion and to prevent exclusion, the Policy reminds applicants of their responsibilities under the Equality Act 2010 to ensure that everyone is treated fairly, with dignity and with respect. The Equality Act 2010 specifically covers nine protected characteristics:
- Age;
 - Disability;
 - Gender Reassignment;
 - Marriage and Civil Partnership;
 - Pregnancy and Maternity;
 - Race (ethnic origin, nationality, skin colour);
 - Religion and Belief;
 - Sex/gender;
 - Sexual orientation; as well as
 - any other status as identified within the European Convention of Human rights and any other domestic or relevant UK or EU law
- 10.3 An Equality Analysis screening assessment has been undertaken in accordance with the Council's Policy. Given that this report recommends undertaking consultation to inform the development of a Policy, it is assessed that an Equality Analysis is not required at this stage as any changes to Policy are not as yet identified. However, once the consultation and Cumulative Impact Assessments are completed, the need for Equality Analysis will be revisited. A copy of the initial screening assessment is contained at Appendix B.
- 10.4 The Human Rights Act 1998 requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in any way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality: the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

11. Implications for Partners

- 11.1 Consultation responses will be sought from a number of partners and stakeholders.
- 11.2 Analysis and contribution to the development of the Statement of Licensing Policy and the Cumulative Impact Assessment will be required from colleagues in Public Health.

12. Risks and Mitigation

- 12.1 Failure to publish a Licensing Act Statement of Licensing Policy exposes the Council to legal challenge as a result of failing to comply with statutory requirements.
- 12.2 Failure to carry out the required consultation in accordance with the legislation and guidance is also likely to open the Council up to legal challenge.
- 12.3 In addition, the absence of an up to date policy may lead to inappropriate decisions being made in relation to licence applications.
- 12.4 In order to mitigate this risk, it is proposed that the Statement of Licensing Policy be introduced as soon as possible (ensuring that all statutory processes are observed).

13. Accountable Officer(s)

Paul Woodcock, Strategic Director Regeneration and Environment
Tom Smith, Assistant Director Community Safety and Streetscene

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive	Sharon Kemp	23/05/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	24/05/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	24/05/19
Assistant Director of Human Resources (if appropriate)	John Crutchley	18/04/19
Head of Procurement (if appropriate)	Karen Middlebrook	23/04/19

*Report Authors: Lewis Coates, Head of Regulation and Enforcement
01709 823117 or lewis.coates@rotherham.gov.uk*

*Alan Pogorzelec, Licensing Manager,
01709 254955 or alan.pogorzelec@rotherham.gov.uk*

This report is published on the Council's [website](#).