

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of Corporate Director of Place

to

Cabinet

on

1<sup>st</sup> July 2014

Report prepared by: Adam Penn

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## Licensing Act 2003 – Review of Statement of Licensing Policy

Place Scrutiny Committee - Executive Councillor – Councillor M. Assenheim

### *A Part I Public Agenda Item*

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#### **1 Purpose of Report**

- 1.1 To set out the legal obligations on the Council, acting as Licensing Authority, and the timetable for the review of the Licensing Policy.
- 1.2 To examine factors affecting present Licensing Policy.
- 1.3 To set out a draft revised Policy Statement, as the basis for formal consultation. (This is contained in Appendix 1).

#### **2 Recommendation**

- 2.1 That Cabinet endorses the draft revised Policy document, enabling consultation to commence.**

#### **3 Background**

- 3.1 Each Licensing Authority must, in respect of each five year period:
  - a) Determine its policy with respect to the exercise of its licensing functions; and
  - b) Publish a statement of that Policy (A "Licensing Statement") before the beginning of the period.
- 3.2 The Council's Statement of Policy under the Act was approved on 16<sup>th</sup> December 2010, and came into force on 7<sup>th</sup> January 2011. It is thus imperative that the Council undertakes the review process and publishes its Statement of Policy before the beginning of 2016.

- 3.3 The Act requires that the policy is kept under constant review and amended before the statutory period ends where significant change is identified. As the Act has been changed a number of times during the life of the current policy it has been decided that a review after 4 years is necessary.
- 3.4 In the event a new policy is adopted 'mid-term' a new 5 year period commences.
- 3.5 Before determining the Policy for each five year period, the Licensing Authority must consult:
- a) The Chief Officer of Police for the Licensing Authority's area;
  - b) The Fire Authority for that area;
  - c) Such persons as the Licensing Authority considers to be representative of the holders of Premises Licences, Club Premises Certificates and Personal Licences issued by the Authority, and
  - d) Such other persons as the Licensing Authority considers to be representative of businesses and residents in its area.
- 3.6 The existing Policy Document utilises a format developed by Essex Licensing Officers, in an effort to promote consistency across the county.

#### **4 Statutory Guidance**

- 4.1 Licensing authorities are required to have regard to the statutory guidance produced by The Home Office under Section 182 of the Act, and this forms the foundation of each Local Authority Licensing Policy Document. The statutory guidance is itself under constant review, and the past year has seen another new edition issued. The contents of the guidance have been taken into account in preparing this report, and in setting out the proposed amendments to the Council's Policy Document.

#### **5 Proposed changes**

- 5.1 The majority of amendments are due to changes to the Act. For example; the removal of the 'vicinity test', the broader nature of who can make representations on an application and The Licensing Authority's new role as a Responsible Authority.
- 5.2 Proposed additions to the policy include clearer guidance on the following matters
- The links between the planning and licensing regimes
  - Enforcement procedures & premises inspection
  - Applications from garage forecourt shops

- The handling of personal details of those making representation
- The suspension of licences for non payment

## **6 Timetable for Action**

- 6.1 Following consideration by Cabinet, it will be necessary to commence full public consultation on the draft. The consultation period will be 12 weeks, followed by assessment of responses and formulation of a final report and final policy document revision. These documents would need to progress through Cabinet in November and to Council in December 2014.
- 6.2 The final document would need to take into account any relevant revisions to the statutory guidance which may have taken place in the meantime.

## **7 Corporate Implications**

### Contribution to Council's Vision and Critical Priorities

- 7.1 A Statement of Licensing Policy is instrumental in the effective assessment of applications, and in setting a framework for the proper conduct of approved premises. It is thus supportive of the Council's vision. Further, the licensing objective of preventing crime and disorder is central to the Council's critical priority of improving community safety and reducing anti-social behaviour.

### Financial Implications

- 7.2 The annual licence fees, set by Central Government, form part of the overall budget for the Council; there is currently a move by The Home Office to allow locally set fees on a cost recovery only basis.

### Legal implications

- 7.3 The revision of the Statement of Policy is a requirement of the Licensing Act 2003. As such the Statement of Policy is open to challenge by Judicial Review in the High Court and unless the licensing authority can produce satisfactory evidence to support the contents of the Statement of Policy the court may make an order resulting in its amendment. The costs of a contested application could be payable by the Council.

### People Implications

- 7.4 No people implications

### Property Implications

7.5 No property implications

#### Consultation

7.6 The consultation arrangements are set out in the Act itself, and are covered in the statutory guidance to licensing authorities. Consultation procedures will be undertaken in accordance with these requirements.

#### Equalities and Diversities Implications

7.7 The Policy document has been drawn up in accordance with the requirements of the legislation and the detailed measures contained in the statutory guidance to licensing authorities. There is limited scope for significant change, and the document is felt to be broadly neutral in its equalities impact. The effective control of licensed premises is supportive of concerns in respect of vulnerable groups.

#### Risk Assessment

7.8 There are two main risks identified:-

- 1) Failure to fully consult on the draft policy, or publish the final policy by 7th January 2016, would put the Council in breach of its statutory duty under the Act.
- 2) The current policy has been dated by changes to the Licensing Act 2003. Failing to review and update it would potentially be a breach of Section 5(4) of the Act and may leave the Council open to legal challenge.

#### Value for Money

7.9 The annual licence fees, set by Central Government, form part of the overall budget for the Council; there is currently a move by The Home Office to allow locally set fees on a cost recovery only basis.

#### Community Safety Implications

7.10 The control of crime and disorder and the prevention of public nuisance are key elements in the effective administration of the legislation.

#### Environmental Impact

7.11 None

## **8 Background Papers**

8.1 None

## **9 Appendices**

Appendix 1 - Statement of Licensing Policy – Draft Revision.