

Report to: **Licensing Committee**

Date: **10 November 2015**

Title: **Review of Statement of Licensing Policy for 2016 - 2021**

Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **Y** Approval and clearance obtained: **Y**

Date next steps can be taken: **Full Council on 15 December 2015 – see below recommendation**

Author: **Naomi Wopling** Role: **Specialist - Licensing**

Contact: **01803 861268 / naomi.wopling@swdevon.gov.uk**

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**Recommendations:**

1. That the Licensing Committee considers the draft Licensing Policy (**Appendix A**) and responses received during the public consultation and makes any changes it deems necessary.
2. That the Licensing Committee recommends to Council that the draft Licensing Policy, as amended, is adopted at the meeting on 15 December 2015 for the period 7 January 2016 to 6 January 2021.
3. That should further responses be received after 28<sup>th</sup> October, responsibility for including any minor changes that may be required are delegated to the Community of Practice Lead for Environmental Health in agreement with the Planning and Licensing Committee Chair.

## 1. Executive summary

1.1 Section 5 of Licensing Act 2003 (the 'Act') requires that Licensing Authorities have in place a Statement of Licensing Policy with respect to the exercise of its licensing functions and that this policy is reviewed at least every five years. West Devon Borough Council's current Licensing Policy was adopted in December 2010 and came into effect on 7 January 2011, it is therefore necessary for an updated Statement of Licensing Policy to be adopted in advance of 7 January 2016.

1.2 Before determining the Licensing Policy, Licensing Authorities must first consult with certain persons or bodies, namely:

- The Chief Officer of Police;
- The Fire and Rescue Authority'
- Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority;
- Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority;
- Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority; and
- Such other persons as the licensing authority considers to be representative of businesses and residents in its area.

A list of the organisations/persons consulted is provided at **Appendix B**. The Statement was subject to a public consultation during the period 14 August to 6 November. During this time the document was available on the Council website and in local libraries, as well as promoted on social media.

1.3 Prior to the consultation period a working group of the Planning and Licensing Committee considered the proposed draft and amended where thought appropriate. A summary of the changes from the current version (2011-2016), is provided at **Appendix C**.

1.4 The current Statement of Licensing Policy for 2011-2016 and the original consultation responses for the draft version are included within the background documents and are available upon request. A summary of the consultation responses, together with suggested amendments can be found at **Appendix D**. The suggested amendments have been provisionally incorporated into the revised draft 2016-2021 Statement, attached at **Appendix A**.

## 2. Background

2.1 In determining its Licensing Policy, the Authority must have regard to Guidance issued by the Secretary of State under Section 182 of the Act, and give appropriate weight to representations made within the consultation period.

- 2.2 The Licensing Authority must carry out its licensing functions with a view to promoting the licensing objectives. These are:-
- a) The prevention of crime and disorder
  - b) Public safety
  - c) The prevention of public nuisance
  - d) The protection of children from harm
- The Licensing Authority must also have regard to its Licensing Statement of Policy and guidance issued by the Secretary of State under section 182 of the Act.
- 2.3 The purpose of the Licensing Policy is to assist the Licensing Authority in determining applications and to provide clarity for applicants, residents and members of the business community. It provides information and guidance on the general approach that the Licensing Authority will take when assessing applications and sets out expected operating standards.
- 2.4 This Licensing Authority covers a wide variety of licensed premises undertaking a range of activities, including pubs, restaurants, private members' clubs, village and community halls, cinemas, off-licences and late night food premises. It is therefore important that the Licensing Policy is sufficiently flexible to reflect their differing needs and characteristics.
- 2.5 This is the fourth version of the Licensing Policy since 2005 and while it may look quite different to the current version due to an updated format, much of the content remains the same. Many of the amendments are due to changes in legislation that have occurred over the last five years (see **Appendix C** for summary of changes).
- 2.6 The draft Licensing Policy was prepared in consultation with other Licensing Authorities in Devon through the Devon Licensing Officers' Group. We have tried to align our policies to promote a consistent approach to regulation. This is particularly helpful for Responsible Authorities, such as the police, which cover the whole Devon area.
- 2.7 At the meeting of the Licensing Committee on 10 November 2015, Members will have a final opportunity to make any further amendments before the Licensing Committee is asked to recommend the approval of the draft to Council.

### **3. Outcomes/outputs**

#### **3.1 Adoption Procedure**

- 3.2 Legislation prescribes that Council is empowered to adopt the Draft Statement of Licensing Policy. Adoption cannot be delegated to the Licensing Committee.

3.3 The following timetable is proposed in respect of the consultation and adoption of the Statement of Principles:

<b>Action</b>	<b>Date</b>
Draft Statement of Licensing Policy published and distributed for consultation following meeting of Licensing Committee working group.	14 August 2015
Consultation concludes	6 November 2015
Licensing Committee approval of revised Statement of Licensing Policy and agrees to recommend to Council for adoption	10 November 2015
Revised Licensing Policy approved by Council	15 December 2015
Licensing Policy comes into effect	7 January 2016

#### **4. Options available and consideration of risk**

- 4.1 Failure to produce a licensing policy statement in accordance with the Act and accompanying Regulations is a breach of statutory duty and will render the Authority susceptible to criticism and legal challenge. Without adoption of the Statement of Licensing Policy the Licensing Authority is powerless to make decisions or exercise the licensing objectives in its locality.
- 4.2 The correct consultation process was undertaken following consideration of the draft policy by the working group of the Licensing Committee. See **Appendix B** for full list of those consulted. Following meeting of Licensing Committee on 10 November 2015, on track for adoption of Statement of Principles at Council meeting on 15 December 2015.
- 4.3 Members will need to consider the consultation responses and give proper weight to comments, amending the draft policy as considered appropriate. The consultation responses and provisional suggested amendments can be found in **Appendix D**.

#### **5. Proposed Way Forward**

- 5.1 The Licensing Committee recommends to Council that the draft Statement of Licensing Policy, as amended, is adopted at the meeting on 15 December 2015 for the period 7 January 2016 to 6 January 2021.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/ Governance	Y	<p>Section 5 of Licensing Act 2003 requires that Licensing Authorities have in place a Statement of Licensing Policy with respect to the exercise of its licensing functions and that this policy is reviewed at least every five years.</p> <p>Before determining the Licensing Policy, Licensing Authorities must first consult with certain persons or bodies, namely:</p> <ul style="list-style-type: none"> <li>• The Chief Officer of Police;</li> <li>• The Fire and Rescue Authority'</li> <li>• Such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority;</li> <li>• Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority;</li> <li>• Such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority; and</li> <li>• Such other persons as the licensing authority considers to be representative of businesses and residents in its area.</li> </ul> <p>Legislation requires the Statement to take effect from 7 January 2016.</p>
Financial		<p>The associated preparation and publication costs will be met in full from Licensing Act 2003 applications and annual fees income. Therefore, there are no financial implications to the Council from this report.</p>
Risk		<p>Failure to produce a Statement of Licensing Policy in accordance with the Licensing Act 2003 and its accompanying Regulations is a breach of statutory duty and will render Council powerless to make decisions or exercise the licensing objectives in its locality.</p> <p>Not adopting a Licensing Policy could leave Council open to criticism and legal challenge.</p>

Comprehensive Impact Assessment Implications		
Equality and Diversity		There is the duty on Council when considering applications or enforcement action to comply with Human Rights Act 1998. Equality Impact Assessment carried out prior to publication.
Safeguarding		The protection children from harm is one the licensing objectives underpinning the Licensing Act 2003.
Community Safety, Crime and Disorder		The prevention of crime and disorder is one of the licensing objectives underpinning the Licensing Act 2003.
Health, Safety and Wellbeing		Since 2011 health bodies (directors of public health) have been included as responsible authorities under Licensing Act 2003. They are able to make representations in relation to applications or apply to review licences should they have reason to do so in relation to the licensing objectives.
Other implications		

### **Supporting Information**

#### **Appendices:**

Appendix A – Draft Statement of Licensing Policy

Appendix B – List of organisations/persons consulted

Appendix C – Summary of changes

Appendix D – Summary of consultation responses and suggested amendments

#### **Background Papers:**

- Licensing Act 2003 and associated relevant Regulations
- Guidance issued under section 182 Licensing Act 2003
- West Devon Borough Council's Statement of Licensing Policy, which expires January 2016
- Consultation responses

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes/No</b>
SLT Rep briefed	<b>Yes/No</b>
Relevant Exec Director sign off (draft)	<b>Yes/No</b>
Data protection issues considered	<b>Yes/No</b>
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	<b>Yes/No</b>

