

Cabinet

9 October 2013

**Review of the Council's Statement of
Licensing Policy**



Key Decision: NS/24/13

Report of Corporate Management Team

Terry Collins, Corporate Director , Neighbourhood Services

**Councillor Brian Stephens, Cabinet Portfolio for Neighbourhoods
and Local partnerships**

Purpose of the Report

- 1 The purpose of this report is to seek approval to undertake a public consultation leading to the production of a revised version of the policy statement to be recommended for adoption by Council.

Background

- 2 The Licensing Act 2003 requires that licensing authorities prepare and publish a statement of its licensing policy every five years (as from January 2011). The policy must be kept under review and the licensing authority may make such revisions to it, as it considers appropriate. Durham County Council adopted the current Statement of Licensing Policy on 8 December 2010.
- 3 The Statement of Licensing Policy fulfils two principal purposes; firstly, it provides advice to businesses and the public on the Council's overall position concerning the Licensing Act 2003. Secondly, it provides a decision-making framework for the Council via its Licensing Committee to exercise its quasi-judicial functions under the Act, as such the policy must balance the legitimate needs of businesses and demand for leisure and cultural activities alongside the need to protect those adversely affected by activities.
- 4 Failure to achieve the correct balance could lead to a policy being either, overly prescriptive and open to challenge, or alternatively, ineffective in the protection of local residents or through a failure to promote the licensing objectives effectively.
- 5 The Policy seeks to achieve the Licensing Objectives, namely -
 - the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance; and

- the protection of children from harm.
- 6 The need to revise the current policy stems from recent changes to licensing legislation. Officers have produced an explanatory paper for consultees setting out the changes that we want to incorporate into the revised policy and that are in accordance with the provisions of the Act and the statutory guidance. A copy of this explanatory paper is attached as **Appendix 2**. Consultees will also be asked about future policy matters.
 - 7 The introduction of an Early Morning Restriction Order and or a Cumulative Impact Policy would need to be based on appropriateness and would require the evidence to suggest that there are high levels of alcohol related crime and disorder in a particular area.
 - 8 The introduction of a Late Night Levy is more discretionary and would normally follow a request from the Police and Crime Commissioner to consider its introduction.
 - 9 A Task and Finish group has been set up by the Alcohol Harm Reduction Group to collate the evidence and data which would need to be considered prior to any of these special measures being introduced. The initial findings have been reported to the group and a CMT report will follow shortly. It is accepted that the introduction of any of these measures may be subject to legal challenge and pose wider considerations other than just licensing and crime and disorder
 - 10 The purpose of this initial review and proposed revisions would bring the current policy up to date and would allow special measures to be introduced at a later date if required

Consultation

- 11 It is proposed that between Thursday, 10 October 2013 and Thursday, 2 January 2014 the current Statement of Licensing Policy will be subject to broad consultation. In addition to the statutory consultees, many other individuals, agencies and organisations considered to be affected by the policy have been identified and their comments will be invited. In accordance with the Government's Code of Practice on Consultation, 12 weeks will be allocated for the consultation and for the return of responses. The list of consultees is attached at **Appendix 3**.
- 12 The policy revision will be widely advertised in the local and regional press. It will also appear on the Council's website, where e-mail responses are invited.

Recommendations and Reasons

- 13 It is recommended that the draft-revised Statement of Licensing Policy be consulted upon for a 12-week period and that the Statutory Licensing Committee be asked to consider the results of that consultation and give their comments and recommendations to Full Council for approval.

Background Documents

Draft revised Licensing Policy – Durham County Council
Licensing Act 2003

Revised Guidance issued under Section 182 of the Licensing Act 2003

Contact: Owen Cleugh Tel: 03000 260925

Appendix 1: Implications

Finance - The costs of consultation and publication of the revised policy will be met from existing budgets.

The report has no value for money implications.

Staffing - None

Risk – The existing Licensing Policy does not contain provisions which have been introduced by recent changes in legislation. If the policy is not updated to incorporate these changes then any of the new measures that may be included cannot be introduced until the policy has been amended

Equality and Diversity / Public Sector Equality Duty - An Equality Impact Assessment screening has been carried out and a full assessment will be produced during the policy review and taking into consideration the results of consultation.

Accommodation - None

Crime and Disorder - The Council's licensing policy forms a central part of the control and regulation of the evening and night time economies. As such, it can be viewed as having a pivotal role in the prevention of alcohol related crime and disorder.

The effective control of licensed premises via appropriate conditions or restrictions on licences can significantly reduce the potential for alcohol related issues or mitigate their effects. This coupled with monitoring and enforcement and the appropriate use of the review process can significantly contribute towards crime reduction and an increase in public reassurance.

Human Rights - None

Consultation – The consultation will take place over a 12 week period

Procurement -

Disability Issues -

Legal Implications – None. This report and associated appendices have been considered by Legal and Democratic Services

Appendix 2 (a): This section of the explanatory paper outlines the proposed inclusions in the forthcoming revised Statement of Licensing Policy.

Information about Early Morning Restriction Orders

The Police Reform and Social Responsibility Act 2011 (“the PRSR Act”) gives the Licensing Authority the discretion to restrict sales of alcohol by introducing an Early Morning Restriction Order (“EMRO”) to restrict the sale or supply of alcohol between the hours of midnight and 6am to tackle high levels of alcohol-related crime and disorder, nuisance and anti-social behaviour.

Information about the Late Night Levy

The PRSR Act has also introduced the power for the Licensing Authority to charge a late night levy (“the levy”) to all premises within the County. The late night levy is a discretionary power allowing Councils to collect an annual fee from all licensed premises in the County that are authorised to sell alcohol between the hours of midnight and 6am as a means of raising a contribution towards the costs of policing the night time economy.

Information about Fees

The PRSR Act requires the Licensing Authority to suspend a premises licence or club premises certificate if the holder fails to pay the annual licence fee in accordance with the invoice.

A process has been developed for this.

Additional information for all licensed premises including takeaways

We want to make the policy more general so it applies to all licensed premises, not just those licensed to sell alcohol. For example, the Licensing Authority expects takeaways and late night refreshment premises to have a responsibility ‘policy’ to include various matters aimed at addressing the four licensing objectives.

Information about the role of Members

The Licensing Authority recognises that County Councillors play an important role in the local community.

The policy will outline the role Councillors can play in the Licensing process

Information about appeals against Licensing Authority decisions

In hearing an Appeal against the Licensing Authority’s decision, the court will have regard to this Policy and the Guidance issued under Section 182 of the Licensing Act 2003. However, the court would be entitled to depart from both of these documents if it considers it justified so to do.

Information about Complaints

Policy advice is to be included concerning complaints to the Licensing Authority.

Information about licence conditions

Where applicants offer conditions relating to CCTV, Challenge schemes, noise control, refusal and incident registers reference is to be made to “standard” wording for conditions addressing these issues.

Information about ‘framework hours’

A new section will explain the Council’s Policy in respect of the approach that the Council will take in relation to licensing hours.

Appendix 2 (b) - This section of the explanatory paper explains in detail the proposed inclusions in the forthcoming revised Statement of Licensing Policy.

Information about Early Morning Restriction Orders

The Police Reform and Social Responsibility Act 2011 (“the PRSR Act”) gives the Licensing Authority the discretion to restrict sales of alcohol by introducing an Early Morning Restriction Order (“EMRO”) to restrict the sale or supply of alcohol between the hours of midnight and 6am to tackle high levels of alcohol-related crime and disorder, nuisance and anti-social behaviour.

The decision to implement an EMRO must be evidence based and the Licensing Authority must be satisfied that such an Order would be appropriate to promote the licensing objectives. Furthermore, the Licensing Authority shall consider the potential burden that would be imposed on premises licence/certificate holders.

As an EMRO is a powerful tool and a very stringent approach in tackling issues, the Licensing Authority will first consider whether other measures may address the problems and achieve the same goal. These could include:

- A Cumulative Impact Policy
- A robust joint agency approach to tackling problem premises;
- Using other mechanisms to control the cumulative impact, e.g. planning controls;
- Using other mechanisms to control noise and anti-social behaviour;
- Using Closure Notices and Closure Orders;
- Providing powers to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- Provision of CCTV;
- Provision of night marshals and street angels, introduction of a late night levy;
- Reviewing Premises Licences/Certificates

Where adopted, the Licensing Authority shall periodically review the EMRO in order to ensure that it continues to be appropriate for the promotion of the licensing objectives. The applicant may be required to periodically submit evidence as part of this process to demonstrate that the EMRO is appropriate and achieving the goals and confirming that these cannot be achieved by alternative methods.

Information about Late Night Levy

The PRSR Act has also introduced the power for the Licensing Authority to charge a late night levy (“the levy”) to all premises within County Durham. The late night levy is a discretionary power allowing Councils to collect an annual fee from all licensed premises in the County that are authorised to sell alcohol between the hours of midnight and 6am as a means of raising a contribution towards the costs of policing the night time economy. The decision to introduce, vary or cease the levy will be made by full Council in conjunction with the Police and Crime Commissioner and Durham Constabulary. Any decision in relation to the administration and design of the levy will be delegated to the Licensing Committee.

The Licensing Authority recognises that this levy would cover the whole of the County and not just those premises that are causing problems or those premises within any cumulative impact area. Therefore serious consideration will be given to the introduction of the levy in light of this. Furthermore, the Licensing Authority will give serious consideration as to whether or not the levy is a viable proposal.

Additional information for all licensed premises including takeaways

We want to make the policy more general so it applies to all licensed premises, not just those licensed to sell alcohol. For example, the Licensing Authority will expect takeaways and late night refreshment premises to have a responsibility policy to include various matters aimed at addressing the four licensing objectives e.g. for clearing litter from outside their premises and along the pavement in either direction as necessary, whilst the premises are open and at the end of the working day. These premises should maintain a clean, dirt or grease free frontage. Such policy should also include notices displayed advising customers to use the bins provided.

Information about fees

The PRSR Act requires the Licensing Authority to suspend a premises licence or club premises certificate if the holder fails to pay the annual licence fee in accordance with the invoice. Where the licence/certificate holder fails to pay the annual fee when due the Licensing Authority will notify the licence/certificate holder in writing specifying the date on which the suspension takes effect. This date will be 7 days after the day the Licensing Authority has given the licence/certificate holder such notice.

The Licensing Authority will work with Durham Constabulary and appropriate action will be taken where premises continue trading whilst suspended.

Where the licence/certificate holder has paid the annual fee the Licensing Authority will lift the suspension and inform Durham Constabulary accordingly.

Information about Members

The Licensing Authority recognises that County Councillors play an important role in the local community. If specifically asked to do so Councillors may make representations in writing and speak at the hearing on behalf of any other person such as a local resident or business. They can also make representations in their own right if they have concerns about premises. They may also apply for a review of a licence/certificate.

Residents or businesses may wish to contact their local County Councillor in respect of a licence/certificate application.

Details of how to contact County Councillors are published on the Council's website.

Where a resident or business seeks the assistance of a County Councillor it is advantageous if they can provide evidence that a particular premises is causing a problem. It is also helpful for any resident or business making a representation in respect of an application to send a copy of their representation to the relevant County Councillor.

County Councillors may attend hearings of licensing sub committees considering applications and speak on behalf of local residents and businesses, but only if:

They have made a personal representation;

They have made a representation on behalf of local residents or business as 'community advocates'

They have been nominated by (a person making a relevant representation) who cannot attend the hearing or prefers to be represented at the hearing.

Appeals against Licensing Authority decisions

Following a Licensing Committee hearing to determine an application, the applicant or any person making a relevant representation has the right to appeal that decision at Magistrates' Court.

An application to appeal the decision must be made within 21 days of the notice of decision.

In hearing an Appeal against the Licensing Authority's decision, the court will have regard to this Policy and the Guidance issued under Section 182 of the Licensing Act 2003. However, the court would be entitled to depart from both of these documents if it considers it justified so to do.

Where an appeal has been made against a decision of the Licensing Authority, the Licensing Authority will in all cases be the respondent to the appeal and may call as witnesses any other person or Responsible Authorities who made representations against the application if it so chooses. In addition, and provided the court considers it appropriate, the Licensing Authority may also call as witnesses any individual or body it considers may assist in their response to an Appeal.

In respect of Personal Licences, appeals must be made to the Magistrates' Court in the area where the licence was issued. Appeals in relation to all other licences must be made to the Magistrates' Court where the premises or event is situated.

Information about complaints

Where the Licensing Authority receives complaints regarding licensed premises, complainants are advised in the first instance, whenever possible, to raise their complaint directly with the licensee in order to resolve the matter. The Licensing Authority, however, recognises that it is not always possible or practical for the public to raise complaints directly with the licensed premises. In such circumstances, complaints in the first instance should be addressed to:

The Licensing Enforcement Team Leader,
Durham County Council,
PO Box 617,
DH1 9HZ

or e-mailed to

licensing@durham.gov.uk

Complaints will be dealt with in a timely and efficient manner. However, it is expected that all noise-related complaints are initially raised with the Council's Environmental Services Noise Pollution team and complaints regarding unlicensed activities and operating outside the permitted hours are raised with the Licensing Authority or Police Licensing Officer.

On receipt of a licensing complaint, a Licensing Enforcement Officer will investigate the circumstances, discussing the complaint with the Certificate/Licence Holder/DPS of the premises, any relevant Responsible Authority and the complainant. Where it is a valid complaint, the Licensing Authority shall endeavour to seek a resolution through informal means prior to taking any formal sanction.

Where there is a serious complaint, the Licensing Manager and Licensing Enforcement Officers shall ensure that it is investigated and where appropriate, enforcement action taken.

The Licensing Authority will act in accordance with the Enforcement Policy and in accordance with the Regulators' Compliance Code and the Enforcement Concordat. The Enforcement Policy can be viewed on the Council's web site.

Appendix 2 (c) - This section of the paper explains in detail the Council's proposed policy in respect of licensing hours

General

The policy set out here will apply to all applications for:

- a new Premises Licence
- a new Club Premises Certificate
- variations of a Premises Licence/Club Premises Certificate
- reviews of Premises Licences/Club Premises Certificates
- Provisional Statements

The hours granted to a premises refer to the hours during which licensable activities may take place pursuant to the Premises Licence or Club Premises Certificate. The Licensing Authority would expect the premises to close within a reasonable time after the terminal hour for licensable activities.

Framework Hours are intended to guide applicants, when preparing their Operating Schedules, on the Licensing Authority's expectations. It must be pointed out however, that where no relevant representations are received, the application must be granted by the Licensing Authority under delegated powers.

Reasons for the Policy Approach

County Durham has a large number of licensed premises many of which are licensed to sell alcohol late at night and into the early hours of the morning. County Durham borders other local authorities that also have high concentrations of licensed premises with late night/early morning hours.

Evidence suggests that late night alcohol related crime and anti-social behaviour remains a problem in large parts of the County. Against this background, the Licensing Authority considers that the possibility of disturbance to businesses and residents late at night and in the early hours of the morning, and the effect that any such disturbance may have, is a genuine matter to be considered when addressing the hours during which licensable activities may be undertaken.

The Licensing Authority has had regard to the Secretary of States Guidance in determining this policy. The end time for the framework hours on any given day is not (and should not be regarded as) the 'usual' or 'normal' terminal hour for licensable activities in the County. Instead, the 'framework hours' serve to identify those cases where the Licensing Authority will pay particular regard to the likely effect on the local neighbourhood of carrying out the proposed licensable activities.

In considering appropriate times for Framework Hours, the Licensing Authority has had regard to concerns expressed by residents, the licensed trade and Durham Constabulary. The Licensing Authority acknowledges that risks differ depending on

whether premises are licensed to sell alcohol for consumption on or off the premises, and where premises are licensed only for regulated entertainment or late night refreshment.

The proposed framework for licensing hours (framework hours will be developed from information provided by consultees) :

For licences authorising the sale or supply of alcohol for consumption

On or off the premises:

Monday to Thursday -
Friday and Saturday -
Sunday -

For licences authorising the sale of alcohol for consumption off the premises only:

Monday to Saturday -
Sunday -

For licences not including the sale or supply of alcohol:

Monday to Thursday -
Friday and Saturday -
Sunday -

For licences authorising late night refreshment as the primary licensable activity

Monday to Thursday -
Friday and Saturday -
Sunday -

Additionally, the Licensing Authority expects applicants to provide particularly robust conditions in their Operating Schedule to promote the prevention of public nuisance in cases where outside areas such as beer gardens and patios will be used by customers after 2200 hours any night of the week.

The Licensing Authority expects that, where applications to provide licensable activities outside these framework hours are made, the applicant will volunteer particularly robust conditions in their Operating Schedule in respect of all the licensing objectives.

Where an operating schedule is left blank or lacks sufficient detail the application, although correctly made, will not be considered acceptable and the Licensing Authority, in their role as a responsible authority will make representation. Operating Schedules will be deemed insufficient where they do not directly address the likely or potential effect on the licensing objectives or propose robust and appropriate measures to deal with them.

Where relevant representations are received, such applications are more likely to be refused, result in limitations in hours, or have additional appropriate conditions imposed on them by the Licensing Authority.

In preparing the Operating Schedule, applicants who wish to provide licensable activities outside the Framework Hours should have particular regard to:

- the location of the premises and the character of the area in which they are situated
- the proposed hours during which licensable activities will take place and the proposed hours during which customers will be permitted to remain on the premises
- the adequacy of their proposed measures to promote the licensing objectives
- in the case of a premises having been previously licensed, any relevant issues relating to the previous licence.
- whether customers have access to public transport when leaving the premises at night-time and in the early hours of the morning
- the proximity of the premises to other licensed premises in the Immediate and local area and the hours of operation of those other premises
- policies and proposals for the timely and orderly dispersal of customers.

The following should be noted:

- there must be no presumption that an application made for timings within the Framework Hours will automatically be granted.
- where relevant representations are made, each case will be
- considered on its merits

The following should be considered when deciding on the hours applied for:

- applicants should limit their applications to the hours they genuinely intend and reasonably expect to operate
- when completing the Operating Schedule, applicants should give careful consideration to all of the Licensing Objectives. (Representations are more likely to result from inadequately considered Operating Schedules)
- where relevant representations are made, the Licensing Committee shall determine whether the proposed measures in the Operating Schedule address the issues underpinning the Framework Hours Policy. (As each application will be determined on its own merits, the individual circumstances will vary between each application)
- although this policy applies to all licensable activities, the Licensing Authority will have regard to the proposed use of the premises when considering whether and how this policy should apply in any given case

The following types of premises where licensable activities are authorised are not considered to make a significant contribution to the problems of late night crime and disorder and anti-social behaviour and, as such, these premises will generally have greater freedom to operate outside framework hours:

- theatres
- cinemas
- hotels
- large supermarkets (Premises that are subject to Sunday trading hours)
- village/parish halls

Appendix 3 The List of Consultees

- All responsible authorities
- All persons / bodies throughout the County holding Premises Licences or Club Premises Certificates including pubs, clubs, off licences, supermarkets, takeaways, restaurants and mobile food vendors
- Persons / bodies representative of local holders of Personal Licences
- Persons / bodies representative of businesses and residents in the County
- Safeguarding Children Board
- All Elected Members of Durham County Council
- Clerks of Town and Parish Councils throughout Durham County
- Crime and Disorder Reduction Partnership
- Durham CIU
- The British Beer and Pub Association
- The Federation of Licensed Victuallers
- British Institute of Inn Keeping (BIIAB)
- Alcoholics Anonymous
- The Association of Licensed Multiple Retailers
- Equity
- County Durham Primary Care Trust
- North East Musicians Union
- Global Online Assessment for Learning (GOAL)
- NOCTIS
- Security Industry Authority
- Local MP's and MEP's
- Area Action Partnerships
- Citizens Panels
- County Durham Area Taxi Working Groups
- Safety Advisory Groups
- Business Support Managers
- Town Centre Managers
- Disability Groups
- North East Chamber Of Commerce
- Night Time Economy Managers
- Local Multi-Agency Problem Solving Groups
- Streetscene
- The Community Safety Team
- The Community Action Team
- Anti-Social Behaviour Team
- BALANCE North East
- Business Improvement Districts (BID)