

BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE

16 OCTOBER 2007

LICENSING ACT 2003 - REVIEW OF COUNCIL STATEMENT OF LICENSING POLICY

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1 Purpose of item

- 1.1 Following agreement by Medway Council's Licensing and Safety Committee the purpose of this report is to bring to the attention of this committee the Council's Statement of Licensing Policy which is in need of its triennial review. This is a policy framework document. This committee's comments and the subsequently amended policy will then be forwarded to Cabinet on 6 November and finally to Council for approval on 22 November 2007.

2 Recommendations

- 2.1 Members are asked to consider the suggested minor "housekeeping" amendments to the policy and indicate if they have any comments or recommendations for Cabinet.

3 Background

- 3.1 Under the Licensing Act 2003, the Council's current statement of licensing policy was approved by full council on 9 December 2004, took effect on 7 February 2005 and remains in force for a period of three years. Therefore a triennial review is required prior to February 2008.

A copy of the existing statement of licensing policy is attached at Appendix A.

- 3.2 Officers are of the view that the existing statement of licensing policy is working well in achieving the promotion of the four licensing objectives:-

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

It has formed the background to all Licensing Act 2003 application decisions by both Members and officers. A key factor is that each application is considered on its merits. This has proved successful as the numbers of appeals lodged has been extremely low (see paragraph 4.2) and to date the content of the policy has not been challenged in the courts. Some Councils have adopted statements including special policies on “cumulative effect” which refers to the potential impact on the promotion of the licensing objectives of a significant number of licensed premises in one area. These policies have been successfully challenged by applicants in the courts.

3.3 However, the following minor amendments to the policy were approved by the Licensing and Safety Committee, by way of “housekeeping”:-

- Front cover – delete “as approved by the full council on 9 December 2004”. Reason – The policy will remain a current document unless and until it is revised.
- Paragraph 1.24 – amend the reference to paragraphs 3.13 – 3.28 of the Guidance to read paragraphs 13.24 – 13.39 of the guidance. Reason – to reflect the renumbered paragraphs of the revised Government guidance.
- Paragraph 1.29 – amend sentences 1 to 3 to read. “This policy statement will remain in force until revised by the Council. It will be subject to regular review by the Council’s Licensing Committee. This may lead to interim provisions”. Reason: The policy will now remain a current document unless it is revised.
- Paragraph 1.30 Amusement with Prize machines – delete this paragraph as now replaced by the Gambling Act 2005 provisions and the Council’s Statement of Gambling Policy.
- Paragraph 1.32 Transition period and “grandfather rights” - delete this paragraph as the Licensing Act 2003 came fully into force on 24 November 2005.
- Paragraph 2.1 replace reference to “Appendix D-H of the guidance” with “Annex D, of the guidance”. Reason – to reflect renumbered annex of the revised Government guidance.
- Paragraph 4.2 - delete paragraph commencing “In accordance with the Secretary of State’s guidance” and replace with new paragraph as follows:- “The Secretary of State’s revised guidance refers to the Regulatory Reform (Fire Safety) Order 2005 whereby any fire certificate previously issued by the Fire Authority under the Fire Precautions Act 1971 will have ceased to have effect. “Safe capacities” should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the premises. For example, if a capacity has been imposed through other legislation, it would be unnecessary to reproduce it in a premises licence. Responsibility for complying with the Order rests with the “responsible person” at the premises and includes undertaking fire risk assessments with the necessary fire precautions including where relevant, capacity limits”. Reason: To reflect the

Regulatory Reform (Fire Safety) Order 2005 which replaced previous legislation.

3.4 The Licensing and Safety Committee made the following comments:

- In relation to paragraph 1.29 of the policy Members queried why they had not received the annual report on licensing matters from the Chief Officer of Police referred to in that paragraph. A suggestion was made that an invitation could be extended to the Chief Officer of Police (or a representative) to attend this Business Support Overview and Scrutiny Committee when it considers the policy.
- Members further sought clarification on a number of formatting and grammatical points within the policy, which it was agreed would be amended.
- The Committee agreed, subject to the minor 'housekeeping' amendments set out in paragraph 5.2 of the report, that the licensing policy is not revised at this time;
- It was agreed that appropriate publicity be given to the decision of the Committee; and
- Following consideration by Business Support Overview and Scrutiny Committee, it was agreed that the matter be referred to Cabinet and Council for approval on 6 and 22 November 2007 respectively.
- Members paid tribute to the Licensing Manager, his team and the legal staff for the successful implementation of the licensing policy, which had not generated any legal challenge, they felt this in itself was a credit to the work of the staff involved.

4 Financial implications

4.1 There are no direct financial implications for Medway Council concerning this matter at present. However, if at any time in the future the policy was subject to legal challenge, there could be costs associated with this process.

5 Legal implications

5.1 Section 5 of the Licensing Act 2003 requires a licensing authority to prepare and publish a statement of its policy every three years. During the three year period, the policy must be kept under review. The remaining legal implications are dealt with within the body of the report. It should be noted that an inappropriately worded policy could result in a legal challenge by way of judicial review.

5.2 In accordance with the statutory provisions, the Council is required to advertise any revisions to its licensing policy statement it is proposed to give suitable publicity to this decision.

6 Background papers

- Licensing Act 2003
- Statement of licensing policy (Appendix A)
- Revised Government Guidance on the Licensing Act 2003 – issued 28 June 2007.

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