

COMMITTEE	LICENSING AND SAFETY COMMITTEE
DATE	THURSDAY, 21 OCTOBER 2004
TITLE OF REPORT	LICENSING ACT 2003 - STATEMENT OF COUNCIL POLICY, DELEGATIONS AND DRAFT REGULATIONS
RESPONSIBLE OFFICER	Mark Bowen, Assistant Director, Legal and Contract Services Chris Webb, Licensing Co-ordinator

1. INTRODUCTION

- 1.1 The purpose of this report is to ask the Licensing and Safety Committee to consider the proposed Licensing Policy and make any comments thereon. The policy and comments will then be forwarded to Cabinet and council for approval on 9 November and 9 December 2004 respectively.
- 1.2 The committee is also asked to consider the issues identified at paragraph 5 regarding delegations, amusement with prize machines, draft regulations and the enforcement policy.

2. DECISION ISSUES

- 2.1 The committee is asked to consider the content of the proposed policy and if appropriate, comment thereon. It should be noted that final approval of the document must be made by council as this decision cannot be delegated.

3. RECOMMENDATION

- 3.1 That the committee consider the report and make appropriate comments for onward transmission to Cabinet and council.
- 3.2 That the committee recommend a scheme of delegation as set out in the report.
- 3.3 That the committee express a view on an amendment to the existing council policy on amusement with prize machines.

4. BACKGROUND

- 4.1 The Licensing Act 2003 will come into force on 7 February 2005. The Act requires that the council produces a statement of licensing policy on how it will deal with and regulate licensable activities, taking account

of the four principal concerns which the new legislation is designed to deal with i.e.

- (a) the prevention of crime and disorder
- (b) public safety
- (c) prevention of public nuisance
- (d) the protection of children from harm

- 4.2 The Act requires the licensing policy statement to be approved by the council prior to 7 February 2005 but in practice it must be available by 7 January 2005 in order that it is available for prospective licensees when they submit their applications.
- 4.3 An extensive consultation exercise with other council departments, statutory agencies, the trade, businesses, the public and all other interested parties has been undertaken by officers who have met regularly with the member's Licensing Policy Advisory Group (advisory group) with a view to drawing up a final version of the policy statement. All members of the council have been kept informed of the process. The policy document has also been widely publicised in the press and media and also by way of individual letter drops, a poster campaign and two public open sessions.
- 4.4 The policy has been prepared in accordance with the statutory guidance formally issued on 7 July 2004.
- 4.5 On 6 October 2004, the advisory group met with officers to consider the representations received on the policy document. The document has been amended to take account of the group's views on the representations received and a copy is attached at Appendix A for the committee's consideration.

5. ISSUES FOR CONSIDERATION

5.1 Delegations to officers

- 5.1.1 A list of suggested delegations is attached at appendix B for member's consideration. Once approved, this will be appended to the licensing policy document.
- 5.1.2 It should be noted that the draft regulations require that where no relevant representation is received, a licence must be granted by officers.
- 5.1.3 Members will be aware that the government has laid down strict timescales for the determination of applications. It is officers view that the proposed scheme of delegations is essential in order to facilitate timely determination of applications, thus avoiding unnecessary appeal hearings in the Magistrates Court or licences being granted by default.

5.2 Amusement with prize machines

5.2.1 Upon its formation on 1 April 1998, the council adopted the previous policies of the former Rochester Upon Medway and Gillingham Councils, that no further permits be granted or renewed for amusement with prize machines in respect of:-

- (a) Restaurants, cafes, snack bars, fish and chip shops, hot food takeaways, nor any other premises (other than works canteens, cafeterias on industrial estates, motorway service areas and premises covered by justices Licence) where prepared food and drink is sold for consumption on or off the premises.
- (b) Launderettes
- (c) Ladies and gentlemen's hairdressing establishments
- (d) Pool halls
- (e) Taxi offices
- (f) Retail stores

5.2.2 The advisory group considered that as there appears to be a number of the above types of premises which are currently and have for sometime, been operating amusement with prize (AWP) machines, without the benefit of a permit, it may no longer be appropriate to have this blanket prohibition. Consequently it is proposed that the existing policy be amended in accordance with the suggested wording at paragraph 1.30 of the policy. The proposed wording seeks to allow approval of permits and also preserve the primary use of the premises concerned.

5.3 Draft regulations

5.3.1 The draft regulations to accompany the Licensing Act 2003 have now been publicised and deal with the application process and statutory forms etc. It is anticipated that the government will approve the regulations by the end of the year. Once the regulations have been approved, officers will be in a position to provide detailed guidance packs to applicants, which will be considered by the advisory group before printing and despatch.

5.4 Licensing enforcement policy

5.4.1 A number of issues within the policy document which relate to enforcement will be dealt with in greater detail in the licensing enforcement policy document. In liaison with the advisory group, officers will work to achieve approval of this document by the end of 2004.

6. LEGAL IMPLICATIONS

- 6.1 The 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.

7. FINANCIAL IMPLICATIONS

- 7.1 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.

8. CONCLUSION

- 8.1 Members are requested to consider the report and make appropriate comments for onward transmission to Cabinet and council.

9. BACKGROUND PAPERS

1. Licensing Act 2003
2. Licensing Act guidelines dated 7 July 2004
3. Representations received as a result of consultation on the draft policy document.

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