

Agenda Item No:

Report To: **CABINET**

Date of Meeting: 28 November 2019

Report Title: **Statement of Licensing Policy 2019-2024**

Report Author & Job Title: Trevor Ford
Environmental Protection & Licensing Team Leader

Portfolio Holder Cllr. Jo Gideon
Portfolio Holder for: Community Safety and Wellbeing



Summary:	The purpose of this report is to report on the statutory consultation for the draft Statement of Licensing Policy 2019-2024 originally presented to cabinet on 11 July 2019
-----------------	---

Key Decision: NO

Significantly Affected Wards: All

Recommendations: **The Cabinet is recommended to note the results of the consultation and recommend the adoption of the Statement of Licensing Policy 2019-2024 to council.**

Policy Overview: The determination of Licensing Act applications and notices is a statutory duty and covers regulated activities such as the sale of alcohol, provision of live/recorded music, late night refreshment and film.

Effective regulation, including the provision of a Statement of Licensing Policy, helps to promote; the prevention of crime and disorder, the protection of public safety, the prevention of nuisance, and, the protection of children from harm.

Our Statement of Licensing Policy guides members of the public, applicants, elected members, and officers on such matters.

Financial Implications: None

Legal Implications: The revised provides greater clarity on the expectations of the Licensing Authority and reduces potential inconsistency that could lead to legal challenge. No specific new negative implications are expected.

Equalities Impact Assessment: See attached

Other Material Implications: None

Exempt from Publication: **NO**

Background Papers: 11 July 2019
Cabinet Paper, including draft Statement of Licensing Policy 2019-2024

Contact: trevor.ford@ashford.gov.uk – Tel: (01233) 330 397

Report Title: Statement of Licensing Policy 2019-2024

Introduction and Background

1. The purpose of this report is to report on the statutory consultation for the draft Statement of Licensing Policy 2019-2024 presented to cabinet on 11 July 2019 (minute reference CA 110719/70).
2. The determination of Licensing Act applications and notices is a statutory duty and covers regulated activities such as the sale of alcohol, provision of live/recorded music, late night refreshment and film.
3. Effective regulation, including the provision of a statement of licensing policy, helps to promote; the prevention of crime and disorder, the protection of public safety, the prevention of nuisance, and, the protection of children from harm.
4. Our statement of policy with respects to this subject area guides members of the public, applicants, elected members, and officers on such matters.
5. The current policy statement expires on the 11 December 2019, and the planned revision acts to update the document and provide greater clarity on the expectations of the Licensing Authority.
6. The statement of policy sets out how the council will approach the making of decisions, indicating what the council considers to be important, what control measures it will be looking for, and so forth.
7. It is vital that the policy does not turn into a rule that is applied inflexibly and fetters discretion. There must be a willingness to consider individual applications on their particular merits.
8. A policy relating to the determination of applications not only guides the decision-maker but also services to inform an applicant about what they should consider in preparing their application.

Current Position

9. Having undertaken the necessary consultation, the proposal is the adoption of the draft Statement of Licensing Policy as previously presented to cabinet.
10. No amendments to that document are proposed following the statutory consultation.
11. A summary of the key changes can be found within the earlier report.

Implications and Risk Assessment

12. The update to this policy is not anticipated to have any significant implications.

13. Judicial review is a risk if the policy strays beyond the requirements of the act, or restricts legal activities without due and appropriate cause

Equalities Impact Assessment

14. The policy will affect all persons involved in or affected by a relevant licensable activity in the Borough, irrespective of gender, race, disability, sexuality or age. Recipients of the policy include holders of licences, members of licensing sub-committee, authorities e.g. Kent Police, Kent Fire & Rescue Service, etc. and all of the Borough's businesses, residents of the borough and those who visit and use premises offering licensable activities.
15. An equalities impact assessment is attached as *Appendix A*

Consultation Undertaken

16. The statutory consultation period commenced for a period of 3 months on the 1 August 2019.
17. Consultation letters were sent to the following consultees, including those who form a statutory consultee:
 - Chief Officer of Police
 - Kent Fire Rescue Service
 - Public Health
 - Ashford Health and Wellbeing Board
 - British Beer and Pub Association
 - The Association for Convenience Stores
 - UK Hospitality
 - Tenterden Chamber of Commerce
 - Kent Invicta Chamber of Commerce
18. Additionally the consultation was published on the council's webpages.
19. In total, one consultation response was received from the Ashford-based Police Licensing Officer for Kent Police, which supported the policy update. The response was as follows;

Licensing Act Statement of Policy 2019 – 2024 consultation.

Thank you for allowing us the opportunity to view and comment on the above updated policy document. Kent Police support the changes and updates to the policy document, which we feel will add clarity to the expectations of the authority.

We look forward to continuing, the already established, partnership working with the licensing authority.

Other Options Considered

20. As a statutory requirement under the Licensing Act, the Licensing Authority must publish a Statement of Licensing Policy for the period of December 2019 to December 2024.
21. Whilst the Statement of Licensing Policy must contain certain information as defined, the expectations of the council are to an extent open to allow local considerations to be taken into account.

Reasons for Supporting Option Recommended

22. During the development of the 'Statement of Licensing Policy' legislation and guidance has been considered, and the principles selected are considered appropriate to the aims of the licensing objectives taking into account local circumstances.
23. This approach is recommended to ensure that the policy remains up to date, and effectively can be usefully applied by the council, officers, applicants, and the general public without detriment to residents, businesses, or visitors to the town.

Next Steps in Process

24. Upon adoption of the Statement of Licensing Policy by council it will be published on our website.
25. The final statement of licensing policy will be subject to statutory review after five years, along with any periodic review brought about by changes in the council's approach, or change to relevant legislation

Conclusion

26. In summary, the statement of licensing policy aims to provide interested persons with details of the councils approach whilst promoting the Licensing Act's objectives.

Portfolio Holder's Views

27. "I welcome the revision of this statutory policy document, which ensures that it remains fit for purpose and enables the council to continue to promote the licensing objectives of, namely the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm"

Councillor Jo Gideon

Contact and Email

28. Trevor Ford
Environmental Protection and Licensing Team Leader
trevor.ford@ashford.gov.uk

Appendix A: Equalities Impact Assessment

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
 - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
 - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Equality Impact Assessment

Lead officer:	Trevor Ford
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	To recommend to council the adoption of the Statement of Licensing Policy 2019-2024
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	28 November 2019
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	The report seeks to enable the adoption a Statement of Licensing Policy 2019-2024. The changes in the policy include the update of out of date legal requirements, removal of duplicated guidance, and, layout/format changes It is not expected that there will be any impacts associated with the revised policy document.
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	Research conducted as part of the revision of the policy includes; <ul style="list-style-type: none"> • Updated case law • Best practice guidance • General Licensing Act 2003 research
Consultation: <ul style="list-style-type: none"> • What specific consultation has occurred on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	Statutory public consultation occurred over a three-month period, with a single supportive response received. That response indicated no negative impacts.

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	Medium	Positive - minor
Middle age	Medium	Positive – minor
Young adult	Medium	Positive – minor
Children	High	Positive - minor
<u>DISABILITY</u> Physical	Low	Neutral
Mental	Low	Neutral
Sensory	Low	Neutral
<u>GENDER RE- ASSIGNMENT</u>	Low	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	Low	Neutral
<u>PREGNANCY/MATERNITY</u>	Low	Neutral
<u>RACE</u>	Low	Neutral
<u>RELIGION OR BELIEF</u>	Low	Neutral
<u>SEX</u> Men	Low	Neutral
Women	Low	Neutral
<u>SEXUAL ORIENTATION</u>	Low	Neutral

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
---	-----

Is the decision relevant to the aims of the equality duty?

Guidance on the aims can be found in the EHRC's [Essential Guide](#), alongside fuller [PSED Technical Guidance](#).

Aim	Yes/No
1) Eliminate discrimination, harassment and victimisation	Yes
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	Yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	Yes

Conclusion:

- Consider how due regard has been had to the equality duty, from start to finish.
- There should be no unlawful discrimination arising from the decision (see guidance above).
- Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.
- How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?

The results of the statutory consultation has been considered.
No further action required.

EIA completion date:

3 October 2019