

Cheltenham Borough Council
Cabinet – 1 December 2020
Licensing Act 2003 Licensing Policy Statement

Accountable member	Councillor Andrew McKinlay, Cabinet Member Cyber and Safety
Accountable officer	Mike Redman, Director of Environment
Ward(s) affected	All
Key/Significant Decision	Yes
Executive summary	<p>Section 5 of the Licensing Act 2003 requires the Council to review, determine and publish its Licensing Act 2003 Policy Statement every five years.</p> <p>The current policy statement was adopted by Council in December 2015. A review of the current policy statement has been undertaken as outlined in this report.</p> <p>Consultation has been undertaken and this report provides Cabinet with opportunity to consider the feedback, approve the revised policy, subject to any changes made, and recommend to Council adoption of the revised licensing statement.</p>
Recommendations	<p>Cabinet is recommended to:</p> <ol style="list-style-type: none"> 1. Note the consultation feedback and officer comments; and 2. Approved the revised licensing policy statement at Appendix 2; and 3. Recommend to Council adoption of the revised licensing policy statement.
Financial implications	<p>No financial implications arising from this report.</p> <p>Contact officer: Jon Whitlock, Jon.Whitlock@publicagroup.uk</p>

Legal implications	<p>Cheltenham Borough Council is a Licensing Authority and section 5(1) of the 2003 Act requires the Council in respect of each 5 year period to determine its policy with respect to the exercise of its licensing functions, and to publish a statement of that policy before the beginning of the period. The Council's current Statement of Licensing Policy is effective from December 2015 and therefore the fresh Policy needs to have been determined and published by December 2020.</p> <p>When preparing its licensing policy, the Council is required to have regard to the following:</p> <ul style="list-style-type: none"> • Promoting the 4 licensing objectives, namely: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm; • Statutory guidance issued by the Secretary of State; and • The 2003 Act. <p>In its consideration of this Report and its recommendations, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty).</p> <p>Contact officer: Vikki Fennell, Vikki.fennell@tewkesbury.gov.uk, 01684 272015</p>
HR implications (including learning and organisational development)	<p>While there are no direct HR implications as a result of the report, there may be additional monitoring work required or other work resulting from some of the changes. Workloads and working hours of officers should be reviewed regularly to ensure any additional demands are able to be met with the available capacity.</p> <p>Contact officer: Clare Jones, clare.jones@publicagroup.uk</p>
Key risks	As identified in Appendix 1
Corporate and community plan Implications	<p>Cheltenham has a strong and sustainable economy</p> <p>Communities feel safe and are safe.</p> <p>Our residents enjoy a strong sense of community and involved in resolving local issues.</p>
Environmental and climate change implications	None
Property/Asset Implications	None Contact officer: Dominic.steed@cheltenham.gov.uk

1. Background

- 1.1 Section 5 of the Licensing Act 2003 (“2003 Act”) requires the Council to review, determine and publish its Licensing Act 2003 Policy Statement (“policy statement”) every five years.

2. The Licensing Act 2003

- 2.1 The 2003 Act is the primary legislation that deals with the licensing requirements relating to:
- a) the sale by retail of alcohol,
 - b) the supply of alcohol by or on behalf of a club to, or to the order of a member of the club,
 - c) the provision of regulated entertainment, and
 - d) the provision of late night refreshment.
- 2.2 The licensable activities listed above are authorised through the issue of:
- a) a premises licence; or
 - b) a club premises certificate; or
 - c) a temporary event notice.
- 2.3 The council is obligated to promote the four licensing objectives when discharging its functions under the 2003 Act including setting policy. The licensing objectives are:
- a) the prevention of crime and disorder;
 - b) public safety;
 - c) the prevention of public nuisance; and
 - d) the protection of children from harm.

3. The Policy Statement

- 3.1 The draft proposed policy statement is attached at **Appendix 2** of this report.
- 3.2 The policy statement sets out the principles the council will apply when determining applications under the 2003 Act for up to the next five years. It also provides guidance to licence holders and applicants on how to make an application and advises them how the council will determine applications.
- 3.3 The draft amended policy reflects changes in primary legislation, case law and national guidance. Changes to the policy also draw from the council’s experience since the 2003 Act came in to force.
- 3.4 The profile of alcohol in particular has become a popular issue locally. Its availability has caused, and continues to cause, problems for the council and other regulatory partners in, for example, the prevalence of pre-loading, crime, disorder, street drinking, underage sales and public nuisance.
- 3.5 Equally however, there is recognition that the trade in alcohol has benefits for the town particularly in relation to the economic contribution made through, for example, a vibrant and popular night-time economy that draws thousands of people on most nights and investment in the town by

businesses selling alcohol.

- 3.6 This policy statement is a key document for the council in terms of how it seeks to address the challenges brought by the licensable activities whilst at the same time promoting the town as a safe place to visit and invest.
- 3.7 This policy statement also forms part of a wider night-time economy strategy to promote a greater diversity in the night time economy that is less focused on alcohol, supporting better management of licensed premises and public spaces, working to reduce alcohol related health harms by preventing vulnerability, promoting safe drinking limits and reducing pre-loading and working to promote a clean environment.
- 3.8 In the context of the wider night-time economy strategy, this policy statement sits alongside initiatives such the implementation of the Reducing Alcohol Related Violence (RARV) project, the alcohol coordination group and the REST outcomes and priorities.
- 3.9 Taking into account all of the measures above, the policy statement proposes a more proactive policy approach to the regulation of the licensable activities whereby the council is more proactive and prescriptive in shaping the licensing landscape in the town. For example, the proposed amended policy sets out measures to identify certain areas where more intensive intervention may be appropriate, proposes recommended core trading hours & admission times, better management of outside areas and seeks to introduce a best practice guide for drinks promotions.
- 3.10 This is a change from the current policy that is much more reactive in that it deals with matters on a case to case basis without being particularly prescriptive.
- 3.11 The amended new policy statement sets out a proposed policy vision to make Cheltenham a safe and clean town that offers a greater diversity in the night time economy that is not solely focused on alcohol and that protects the quality of life for residents. In order for the council to achieve this vision, it must become more proactive in shaping the licensing landscape in the town.

4. Policy Amendments

- 4.1 Since the last statement of policy review, there have been no significant changes to the national statutory guidance, primary legislation or case law that would substantially affect the policy. Consequently, there are no significant changes proposed as part of this policy review.
- 4.2 The draft revised statement of policy document at **Appendix 2** shows tracked changes for the purpose of clarity. The tracked changes will be removed for the consultation version.
- 4.3 Aside from general tidying up and general updates, the following changes are highlighted for reference:
 - 4.3.1 Inclusion of a new paragraph on “Promotion of equality (1.12)”;
 - 4.3.2 Removal of reference to Late Night Levy that no longer applies to Cheltenham;
 - 4.3.3 Inclusion of an additional section (6.13) to reflect the statutory guidance stating that the planning and licensing regimes are to be treated as separate regimes to avoid duplication and inefficiency;
 - 4.3.4 Replacing section on “Designated Public Places Orders” with “Public Spaces Protection Orders”; and
 - 4.3.5 Inclusion of a new section (6.66) to confirm the authority has not passed a resolution to exempt late night refreshment licensing based on designated locations, premises types and times.

5. Statutory Guidance

- 5.1 Section 4 of the 2003 Act states that, in carrying out its functions, the Council must 'have regard to' guidance issued by the Secretary of State under section 182.
- 5.2 Attached at **Appendix 3** is a copy of the relevant part of the statutory guidance for Members' information.

6. Reasons for recommendations

- 6.1 To ensure that the Council complies with its duties under section 5 of the 2003 Act.
- 6.2 To ensure that the Council can effectively discharge its licensing function under the 2003 Act.

7. Alternative options considered

- 7.1 The Council can resolve not to adopt the revised policy statement. However this option would result in the Council failing to comply with its duty and function under the 2003 Act.
- 7.2 Alternatively, the Council can resolve to readopt its current policy without change but this is likely to result in the Council being unable to effectively discharge its licensing function under the 2003 Act.

8. Consultation and feedback

- 8.1 Section 5(3) of the 2003 Act stipulates a number of statutory consultees the Council must consult with when determining its policy statement. These are the chief officer of police, the fire authority, the representatives of premises and personal licence holders and club registration certificates as it sees fit, and other persons that are seen to represent businesses and residents in the area.
- 8.2 A list of consultees is outlined in Appendix A of the revised policy.
- 8.3 During the consultation period, the Licensing Committee was the only respondent. Their response is outlined in **Appendix 4** including officer response. The relevant policy changes have been incorporated in the revised policy document for approval and recommendation for adoption.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Draft proposed policy statement3. Chapter 14 of the Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)4. Consultation feedback and officer response
Background information	<ol style="list-style-type: none">1. Licensing Act 20032. Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)3. Cheltenham Borough Council's Licensing Act 2003 Licensing Policy Statement Approved by Council, 14 Dec 2015

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	There is a risk that the council may not be able to properly regulate activities under the Act if it fails to adopt the revised policy.	Director of Environmental	November 20	3	2	6	Accept	Approve revised policy for adoption.		Licensing Team Leader	
	The review and adoption of this policy is a statutory requirement, if the authority does not adopt a revised policy statement it will be failing in this duty and might face legal challenge from licence holders, responsible authorities and/or the wider public.	Director of Environmental	November 20	3	3	9	Accept	Approve revised policy for adoption.		Licensing Team Leader	

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6
 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close