

Somerset West and Taunton Council

Licensing Committee – 9 March 2020

Statements of licensing policy for the Licensing Act 2003 and Gambling Act 2005

This matter is the responsibility of Executive Councillor Federica Smith-Roberts

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1 Purpose of the Report

- 1.1 The legislation which regulates gambling and alcohol, entertainment and late night refreshment, requires the council (being the 'licensing authority') to publish two separate policies, related to each of those regimes.
- 1.2 The purpose of this report is to provide the Licensing Committee with the current drafts with a view to finalising them, so that they can be presented to full council for adoption at its next meeting.

2 Recommendations

- 2.1 That members approve the two draft policies (subject to any minor amendments, if appropriate) attached at appendices 4 and 6, in readiness for the full council meeting in March.

3 Risk Assessment (if appropriate)

- 3.1 The Corporate Risk Register makes reference to 'national law and policy'; that 'failing to meet an existing legislative requirement or fail to implement new requirements' puts the council at risk of financial and/or reputational damage.
- 3.2 As this report goes on to explain, revisions of the Licensing Act 2003 and Gambling Act 2005 statements of licensing policy are long overdue and this has the potential to undermine decisions taken by the council when exercising its functions as the 'licensing authority'.

4 Background and Full details of the Report

Licensing Act 2003 statement of licensing policy (SoLP)

- 4.1 The Licensing Act 2003 regulates the supply of alcohol, public entertainment (including live and recorded music, plays, performances of dance, the exhibition of films, boxing, wrestling and indoor sporting events) and the provision of late night refreshment (hot

food and drink served between the hours of 23:00 and 05:00 the following morning).

- 4.2 The council, being the licensing authority, is responsible for processing applications for and issuing a variety of forms of authorisation to permit the above mentioned 'licensable activities', which includes premises licences, club premises certificates, temporary event notices (TENs) and personal alcohol licences.
- 4.3 There are four statutory 'licensing objectives' which underpin this licensing regime. They are:
- Prevention of crime and disorder;
 - Prevention of public nuisance;
 - Public safety;
 - Protection of children from harm.
- 4.4 Section 5 of the Licensing Act 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. Such a policy must be published before the authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act. Its main purpose is to provide clarity to applicants, interested parties and designated responsible authorities (such as the Police, Fire Authority, Environmental Health etc.) on how the licensing authority will determine applications.
- 4.5 Before determining its policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:
- the chief officer of police for the area;
 - the fire and rescue authority for the area;
 - each local authority's Director of Public Health in England (DPH) or Local Health Board in Wales for an area any part of which is in the licensing authority's area,
 - persons/bodies representative of local premises licence holders;
 - persons/bodies representative of local club premises certificate holders;
 - persons/bodies representative of local personal licence holders; and
 - persons/bodies representative of businesses and residents in its area.
- 4.6 As part of its SoLP, the licensing authority may exercise certain powers under the 2003 Act in order to manage the supply of alcohol in its district, in particular. These are:
- Publish a cumulative impact assessment (CIA) – further information can be found between paragraphs 14.24 and 14.48 of the [statutory guidance, published by the Home Office \(web link\)](#);
 - Create an early morning restriction order (EMRO) – paragraphs 17.1 to 17.31 of the aforementioned guidance.
- 4.7 Neither TDBC nor WSC have historically created CIAs or EMROs.
- 4.8 During the five-year period of the SoLP, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met.
- 4.9 Somerset West and Taunton Council (SWT) has yet to publish a SoLP in accordance

with the Licensing Act 2003. Taunton Deane Borough Council (TDBC) and West Somerset Council (WSC) Taunton had each published a SoLP, for the periods 2013 to 2018 and 2014 to 2019 respectively. Efforts to revise and publish a single policy (both prior to and since the formation of SWT) were hampered by changes to personnel within the Licensing Team and a need to strike a balance against other competing work demands.

- 4.10 The TDBC and WSC SoLPs were/are identical, except where there are references to the authority name and in some other cases where there are local nuances; for example, West Somerset having two planning authorities as responsible authorities. Therefore, the SWT SoLP was drafted following that same format. Of the amendments made in the first draft, most represented minor updates; be that contact details for certain bodies or additional words of clarification/advice. Attached at **Appendix 1**, is the summary of changes which was circulated to consultees and made available on the SWT website. The consultation began on the 16th of July 2019 and lasted eight weeks. As well as being advertised on the SWT website and social media, the draft policy was sent to the consultees mentioned at paragraph 4.4, along with/including:
- Town and parish councils;
 - All responsible authorities, including the police;
 - The Taunton and Wellington Pubwatch schemes and National Pubwatch;
 - Minehead Business Improvement District (BID);
 - High profile licensing legal firms, such as Poppleston Allen and John Gaunt;
 - Large retailers and pub chains who have a number of licensed premises in the SWT district, such as Tesco, JD Wetherspoon and Punch Taverns;
 - Bourne Leisure (t/a Butlins);
 - The British Board of Film Classification (BBFC);
 - The Institute of Licensing;
 - The British Beer & Pub Association.
- 4.11 There were four responses (excluding simple acknowledgements) to the consultation, being from Carhampton Parish Council, Minehead BID, the Police and the British Beer & Pub Association. These are shown at **Appendix 2**.
- 4.12 The response from the clerk of Carhampton Parish Council resulted a number of grammatical changes, numbered 10 to 15, 22 and 23. in **Appendix 1**.
- 4.13 The response from Manager of Minehead BID resulted in a minor amendment, numbered 16 in **Appendix 1**.
- 4.14 The Police response to the consultation has resulted in the most significant amendments, which include new sections concerning CCTV and the supply of alcohol specifically at garages and motorway service areas. All changes made as a result of this response are numbered 17 to 19 in **Appendix 1**.
- 4.15 The changes numbered 20 and 23 in **Appendix 1** are as a result of the response from the British Beer and Pub Association.
- 4.16 Certain points and suggestions raised by the Police and British Beer & Pub Association did not result in amendments to the second draft of the SoLP. The opinions of the Specialist and reasons for not making further changes in the second draft are contained within **Appendix 3**. For added context, the Police CCTV operational guidance document referred to is attached at **Appendix 4**.

- 4.17 The second draft of the Licensing Act 2003 SoLP is attached at **Appendix 5**, with its various amendments highlighted in yellow.

Gambling Act 2005 statement of principles (SoP)

- 4.18 The Gambling Act 2005 regulates a number of types of gambling activity. Unlike the Licensing Act 2003, responsibility for licensing is shared between district councils and the Gambling Commission, who are also responsible for issuing statutory guidance.
- 4.19 The Gambling Commission is largely responsible for the licensing of operators, the national lottery and online gambling (remote gambling). District councils then issue premises licences and permits for betting shops, course betting e.g. racecourses, bingo, casinos, small society lotteries (more commonly referred to as raffles), gaming machines e.g. amusement arcades and so on.
- 4.20 Like the Licensing Act 2003, there are statutory licensing objectives. These are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - ensuring that gambling is conducted in a fair and open way;
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 4.21 Section 349 of Gambling Act 2005 requires all licensing authorities to prepare and publish a 'statement of licensing principles' (referred to here on in as SoP) that they propose to apply in exercising their functions under the Act, commonly known as a policy statement. The SoP forms the licensing authority's mandate for managing local gambling provision and sets out how the licensing authority views the local risk environment and therefore its expectations in relation to operators with premises in the locality. The SoP should be reviewed every three years.
- 4.22 As with the Licensing Act 2003 SoLP, SWT has yet to replace the TDBC and WSC SoPs, which were last reviewed in 2013. In the time since then, the Gambling Commission published a code of practice within which there is a social responsibility code, requiring gambling operators to assess the local risks to the gambling licensing objectives posed by facilities they provide at their premises. In the drafting of the revised SoP, several paragraphs were dedicated to setting out this authorities expectations in terms of local area risk assessments. This aside and other than minor amendments to ensure information with the SoP was up to date, the only other addition of significance was added clarification around clearly defining areas for unlicensed family entertainment centres (UFECs and a type of gaming machine arcade).
- 4.23 The consultation on the draft SoP took place between the 16th of July 2019 and 23rd of September 2019. Section 349(3) of the 2005 Act requires licensing authorities in England to consult with the following on their policy statement or any subsequent revision:
- the chief officer of police for the authority's area;
 - one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area;
 - one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under the Act.

- 4.24 The consultation was again advertised via the SWT website, social media sites and sent via email to, amongst others:
- The Gambling Commission;
 - Town and parish councils;
 - All responsible authorities, including the Police;
 - The British Amusement Catering Trade Association (BACTA);
 - Minehead Business Improvement District (BID);
 - GamCare;
 - NSPCC
 - Gamblers Anonymous;
 - Large operators such as Rank (t/a Mecca Bingo), Paddy Power and Betfred.
- 4.25 There were four responses (excluding simple acknowledgements) to the consultation, being from GamCare, HMRC, Carhampton Parish Council and Minehead BID. These are shown at **Appendix 6**.
- 4.26 As a result of these responses, further amendments were made to the draft policy, the second draft of which is attached at **Appendix 7**. All amendments (including those made to the original policy) are in red text.
- 4.27 Perhaps the most significant amendment following the consultation is the addition of a further the paragraph at the end of section 1.6; 'general principles'. This paragraph relates to the GamCare 'Safer Gambling Standard' scheme, as was suggested by GamCare themselves. This really is an addition that did not require much thought, as it stands to reason that the licensing authority would want to encourage licensees/operators to take part in a scheme which helps to promote the licensing objectives and therefore where there are applications from operators who are part of the scheme, that their applications would be generally, be looked on more favourably.
- 4.28 Due to the urgent need for SWT to review and publish a SoP, it is not the intention of Officers to develop a risk map for the district at this point in time, as GamCare suggest in their response to the consultation. This is something that Officers would look to develop when the SoP is due a revision in 2023.

5 Links to Corporate Strategy

- 5.1 The council has a statutory duty to promote a number of statutory 'licensing objectives' in accordance with the Licensing Act 2003 and Gambling Act 2005, but by providing advice to the public, helping them to understand and meet regulatory requirements and responding proportionately where breaches of legislation occur, the service can support the following corporate aims:
- Support the town centres throughout the district to meet the challenge of changing shopping habits.
 - Support the enhancement of arts and culture provision within the district.

6 Finance / Resource Implications

- 6.1 The revising of the two policies has no financial implications.

7 Legal Implications

- 7.1 It is important that the licensing authority publishes and reviews, at the necessary points in time, the two licensing policies mentioned in this report, in order to fully meet its statutory responsibilities. Failure to do so can undermine the authority when exercising its decision making and enforcement functions.

8 Climate and Sustainability Implications (if any)

- 8.1 There are no direct carbon/environmental impacts arising from this piece of work.

9 Safeguarding and/or Community Safety Implications (if any)

- 9.1 As described at paragraphs 4.3 and 4.20, there are statutory licensing objectives which underpin the gambling and alcohol, entertainment and late refreshment licensing regimes. The continued work of the service to achieve and promote these aims, further supports the role of the Council in maintaining community safety and safeguarding vulnerable members of society.

10 Equality and Diversity Implications (if any)

- 10.1 There are a number of protected characteristics identified in the Equality Act 2010, which are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process. The three aims the authority must have due regard for are:

- Eliminate discrimination, harassment, victimisation;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 10.2 No equality and diversity implications were identified.

11 Social Value Implications

- 11.1 As this report does not relate to the procurement of any services or products, no social value implications were identified.

12 Partnership Implications

- 12.1 No partnership implications were identified.

13 Health and Wellbeing Implications

- 13.1 Through effective regulation, confidence in licensed premises and activities can be maintained, helping communities to thrive.

14 Asset Management Implications

- 14.1 No asset management implications were identified.

15 Data Protection Implications

- 15.1 No data protection implications were identified.

16 Consultation Implications

- 16.1 Both consultations on the revisions to the policies were carried out in accordance with the requirements of the Licensing Act 2003 and Gambling Act 2005 and associated guidance.

17 Scrutiny Comments / Recommendation(s)

- 17.1 None as this report is for the Licensing Committee and will lead to a report to full council.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – Yes**

Reporting Frequency: ☒ Once only ☐ Ad-hoc ☐ Quarterly
☐ Twice-yearly ☐ Annually

List of Appendices (delete if not applicable)

Appendix 1	Summary of changes (made in draft Licensing Act 2003 SOLP)
Appendix 2	Responses to consultation on draft of Licensing Act 2003 statement of licensing policy
Appendix 3	Professional Opinion of the Specialist in respect of points raised by the Police and British Beer & Pub Association
Appendix 4	Somerset Policing District: Surveillance Camera Systems Within Licensed Premises Operational Requirement Guidance
Appendix 5	Draft Licensing Act 2003 SoLP
Appendix 6	Responses to consultation on draft of Gambling Act 2005 statement of principals
Appendix 7	Draft Gambling Act 2005 SoP

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