



North Devon Council

Report Date: 12 September 2023

Topic: Review of Licensing Act 2003 Policy

Report by: Katy Nicholls, Public Protection Manager

1. INTRODUCTION

1.1. North Devon Council is under a legal obligation to review its Licensing Act 2003 Statement of Licensing Policy on a five yearly basis.

1.2. This report seeks to report on the results of a consultation on a proposed draft revision to the Council's Licensing Act 2003 Statement of Licensing Policy. Moreover, it recommends that consideration is made to the consultation responses received, and whether any further amendments be proposed to the policy prior to the document being recommended for onward approval.

2. RECOMMENDATIONS

That Licensing and Community Safety Committee:

- 2.1 Consider the responses received to the consultation on the draft revised Licensing Act 2003 Statement of Licensing Policy found within **Appendix B**.
- 2.2 Consider the new amendments made by the Home Office to the [Section 182](#) guidance issued pursuant to the Licensing Act 2003 in August 2023.
- 2.3 Consider whether to make any further draft policy amends as a result of the responses to the Licensing Act 2003 Statement of Licensing Policy and the amended Section 182 guidance.
- 2.4 A tracked change document highlighting proposed amendments made to the current policy is found at **Appendix A**.
- 2.5 Make recommendation to Strategy and Resources Committee for the approval of a revised Licensing Act 2003 Statement of Licensing Policy, to be in turn approved by Full Council on 22.11.23.

3. REASONS FOR RECOMMENDATIONS

3.1. In order to discharge its statutory duties under the Licensing Act 2003, North Devon Council is required to produce a Licensing Act 2003 Statement of Licensing Policy and review it at least every five years.

- 3.2. The Section 182 Home Office Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality. As such, any revisions to this document should be considered in the review of the Councils Licensing Act 2003 Policy.
- 3.3. The current Licensing Act 2003 Statement of Licensing Policy was adopted by the Council on the 21.11.18 and became effective on 07.01.19. In order to keep within the statutory time-scale and adhere to the Council's Constitution, and committee time-tables, Licensing and Community Safety Committee will today consider the responses made to the consultation and make recommendation on a proposed draft to Strategy and Resources. Strategy and Resources will then consider the document during their meeting of the 06.11.23; so that any recommended final draft can be approved by Full Council on the 22.11.23; and be published and become effective prior to the 07.01.24.

4. REPORT

- 4.1. The Licensing Act 2003 ("the Act") received royal assent in July 2003. The Act created a single integrated scheme for licensed premises which are used for the supply of alcohol, provision of regulated entertainment and late night refreshment.
- 4.2. North Devon Council has responsibilities under the Act to issue premises licences and temporary event notices in respect of premises where it is proposed that licensable activities and qualifying club activities should take place. Additionally the Council is responsible for issuing personal licences.
- 4.3. Section 5 of the Act (as amended) requires all licensing authorities to prepare and publish a Licensing Act 2003 Statement of Licensing Policy that they intend to apply in exercising their functions under the Act. This Licensing Act 2003 Statement of Licensing Policy will last for a maximum of five years, but it can be reviewed and revised by the authority at any time during that five year period.
- 4.4. The revised draft Licensing Act 2003 Statement of Licensing Policy (**Appendix A**) has been written pursuant to the provisions of the Licensing Act 2003, and the Guidance issued under Section 182 of the Act.

4.5. A consultation on the Council's draft revised Statement of Licensing Policy ran for a six week period, closing on the 22 August 2023.

4.6 The main proposed amendments to the Licensing Act 2003 Statement of Licensing Policy which were consulted upon follow (original paragraphs where the proposed changes are made are included):

- 1.1 Reflect latest revision to Section 182 Guidance being made in December 2022.
- 1.4 Update Licensing Authority Area section with latest statistics pertaining to population, numbers of licensed premises etc.
- 4.1 Addition of available closure powers afforded by way of Section 76 of the Anti-Social Behaviour Crime and Policing Act 2014.
- 4.1.3 Reflect new Corporate Enforcement Policy approved by the Council.
- 4.1.5 Reflect latest title of Licensing and Community Safety Committee.
- 4.4.1 Cite that preference is for a Premises Licence rather than multiple TENs for larger events, and direct users to the Safety Advisory Group pages on the Council's website.
- 4.5.2 Reflect new Public Space Protection Orders which have replaced Designated Public Place Orders, for a more limited number of localities.
- 4.5.5 Provide clear advice about the de-regulation of live and recorded music and entertainment facilities.
- 4.5.6 Update section in respect of duties on local authorities and applicants pertaining to the Immigration Act. Provide link to the Home Office's Employer right to work checks and supporting guidance.
- 5.1.6 Reflect learned experience of issues with licensed premises enforcement, and concerns with licensed premises being run behind the scenes by persons who may not otherwise be able to possess a licence themselves.
- 5.2 Reflect a new form for representations for those that wish to utilise it available on the Council's website.
- 5.4 Update section on Mobile, Remote, Internet and Other Delivery Sales to provide example conditions.
- 9.4 Set out the stance taken by Licensing Authority in respect of the protection of children. For example where its discretion is engaged this Licensing Authority will consider refusal/revocation in the first instance where test purchases have found venues selling age restricted products to children.
- 11.0 Addition of new information regarding psychoactive substances and the stance taken by the Licensing Authority whereby persons are seen using or selling these.

- 15.0 Set out examples of mitigating measures to reduce any disturbance to neighbouring residents by way of utilisation of beer gardens and outdoor spaces.
 - 16.0 Amend Temporary Activities section to reflect updates to limits brought in via The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021. Provide clarity surrounding notice periods, and make a suggestion for inclusion of risk assessments and event management plans where appropriate.
 - 17.0 Reflect newly formed Barnstaple Pubwatch scheme.
 - 18.0 Insert new sections to cover initiatives supported by the Council including Project Nighteye, Ask For Angela, and Anti-Drink Spiking Initiatives.
 - 23.0 Enhance information available to licence holders in respect of their duties to equality.
 - 24.0 Suggestions made with regard contact details, and relevant updates to these.
- 4.7. Since undertaking consultation on the proposed draft, it should be noted that the Section 182 guidance has been updated with an August 2023 edition (paragraph 1.1 amended accordingly with this new date). The Home Office has amended the guidance in line with recommendations made in relation to the Manchester Arena Inquiry, largely to support licensing authorities and applicants when considering the provision of health care and counter terrorism measures at venues. As a result of the revision a new section 4.5 has been inserted into the draft Licensing Act Policy which reads:

Counter Terrorism and Public Safety

North Devon Council will give due consideration to appropriate counterterrorism measures and advice when considering licence applications, for example at high profile or large premises or events, or where there are factors which may increase attractiveness to attacks, and in particular when in receipt of relevant advice from police counter terrorist staff.

It will be particularly relevant to consider conditions around health care provision in this regard. Any additional licensing conditions must be appropriate and proportionate to the venue. The Licensing Authority will pay particular attention to terrorist threats when making specific licence conditions in relation to security or health care provision at appropriate premises and events applying for a licence.

When appropriate to do so, the Licensing Authority may recommend conditions such as ensuring appropriate access for emergency services and vehicles; good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts; and

ensuring the presence of sufficiently trained first aiders on the premises and appropriate first aid kits.

In some instances, the authority may wish to tailor its approach, depending on the particular nature of the application, and go further when addressing concerns around possible terrorist or other such risks. In making their consideration the Licensing Authority will be mindful of the Annex in the Section 182 guidance. This Annex will help to inform and support its decision making with regards to additional licence conditions for premises and events, that may benefit from further security planning and health care provision in the aftermath of a particular type of incident.

- 4.8. There were 22 responses received in respect of the consultation, 17 of which were received via the web-form and 5 by way of direct communication. Of the 17 using the web-form 5 were made by individuals representing an organisation, including shops and hotels. One was received from Croyde Area Residents Association. Of those 5 by way of direct communication, one was received from Georgeham Parish Council and another from Witheridge Parish Council. Additionally one further response was submitted by the manager of North Devon Coast Areas of Outstanding Natural Beauty, whilst this was received after the consultation period had closed, it was received in time for the publication of this report, so has been included for consideration. Responses are outlined at **Appendix B**.
- 4.9. Responses received have been examined and comments have been made in italic where there there queries have been raised, or where a response is considered relevant.
- 4.10. It should be noted that some of those matters raised by the respondents, whilst relevant, may not be able to actioned in the manner desired, for various reasons including the fact that the legislation may not support the desired outcome.
- 4.11. Further to the comments received, amendments have been made to the draft policy. Amendments include the addition of a new comments box in the Licensing Act 2003 representation form and the addition of the following paragraphs:
 - 3.4.1 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the

adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

3.4.4 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

5. RESOURCE IMPLICATIONS

5.7. There are no expected financial costs likely to be incurred through the review of this policy.

6. EQUALITIES ASSESSMENT

6.7. An Equality Impact Assessment has been undertaken. The impact of the proposals are neutral. The improved section in the policy pertaining to equality will have a positive impact.

7. ENVIRONMENTAL ASSESSMENT

7.1. An environmental assessment has been undertaken and revealed a neutral impact.

8. CONSTITUTIONAL CONTEXT

- 8.1. Article of Part 3 Annexe 1 paragraph:4b
- 8.2. Referred or delegated power?: delegated

9. STATEMENT OF CONFIDENTIALITY

9.1. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

10. BACKGROUND PAPERS

10.1. The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

- Home Office Guidance issued under s.182 of the Licensing Act 2003, August 2023.
- LGA Guidance Note on Drink Spiking Prevention 7 September 2022.

11. STATEMENT OF INTERNAL ADVICE

11.1 The author (below) confirms that advice has been taken from all appropriate Councillors and Officers.

Author: Katy Nicholls, Public Protection Manager

Date: 03.09.23

