

Report

Council



Part 1

Date: 26 January 2021

Subject **Licensing Act 2003: Revised Statement of Licensing Policy**

Purpose To seek approval and adoption of the revised Statement of Licensing Act Policy 2021.

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Ward All wards

Summary The 2003 Act required the Council to prepare and publish a Statement of Licensing Policy before carrying out any function in respect of individual licence applications made under the 2003 Act. Additionally, the Act requires the Council to revise and republish the Policy at 5 yearly intervals. The current SLP is effective for the period Jan 2016 - 2021 and the Council is therefore required to revise and republish the Statement of Licensing Policy no later than end of January 2021. Statutory and non-statutory consultation must also take place prior to the Policy being finally determined by the Council, this consultation took place from the 21st September 2020 until 30th October 2020. The current policy has proved to be entirely satisfactory since its adoption any much of the core policy remains though the major change in the policy is the removal of the Cumulative Impact Policy in Newport City Centre.

Proposal **Select this text and type in proposal**

Action by Head of Law and Regulation

Timetable Immediate

Signed

Background

1. Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy every five years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the 2003 Act. During the five year period, the policy must be kept under review and the licensing authority may make such revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objectives are being met.
2. The Guidance issued under the Licensing Act states that before determining its policy for any five-year period, 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 authority for the area;
 - persons/bodies representative of local holders of premises licences;
 - persons/bodies representative of local holders of club premises certificates;
 - persons/bodies representative of local holders of personal licences; and
 - persons/bodies representative of businesses and residents in its area.
3. The policy must be endorsed and approved by full Council prior to its coming into force by end of January 2021.
4. The Current policy has been in operation for just over 4 years and it has proved extremely satisfactory and has guided applicants, officers, and more importantly, the Licensing Committee, in the consideration and determination of applications. Though the policy has changed over the last 15 years the core of the policy still reflects the Council original policy brought into force in 2004.
5. The Authority must have regard to the Home Office Guidance issued under section 182 of the Licensing Act when making and publishing its policy. Departure from this Guidance issued by the Home Office could give rise to an appeal or judicial review.
6. A review of the policy was conducted with members of the Gwent Licensing Forum, which consists of Council Licensing Officers, Police Licensing Officers and a Public Health Officer covering the areas of Monmouthshire, Torfaen, Caerphilly, Blaenau Gwent and Newport. The proposed policy has been endorsed by the Gwent Licensing Forum with the aim of all five Authorities adopting the policy in 2020 or the start 2021, with only minor differences.
7. The revision of the policy highlighted in red (Appendix A), has taken into account any legal changes and integrating strategies that have been amended in last 5 years. The Policy also provides an update of the implications of Alcohol and Drug Harm within Newport provided by Public Health. This in turn will highlight the need for licensee to put measures in place and to work in partnership with Statutory Officers under the Act. Guidance is given within the Policy on best practice for the following:
 - Prevention of Crime and Disorder, which includes CCTV, security, drug and weapon policies, use of toughened glass, underage schemes and prevention of sexual exploitation, modern slavery and human trafficking.
 - Prevention of Public Nuisance, which includes working with partners such as Environmental Health and referral to Welsh Government's Noise and Soundscape Action Plan 2018-2023.
 - Public Safety, which includes advice on risk assessments and control measures
 - Protection of Children from Harm, this includes safeguarding advice and underage sales.

8. Cumulative Impact Assessment – Newport City Centre

One of the major changes to the previous policy adopted in 2015 is the proposal to remove the Cumulative Impact Policy in Newport City Centre. In April 2018, Section 141 of the Policing and Crime Act 2018 made changes to the Licensing Act 2003, which requires all Authorities to carry out a Cumulative Impact Assessment (CIA) to the area they propose to have special measures put in place. The Authority must give reasons why they are considering a CIA, what part(s) they are considering a CIA and whether it considers a CIA applies to all licences or those of a particular kind.

As such, the Authority cannot have a cumulative impact policy, as previously adopted, but must instead conduct a thorough assessment if a CIA is to be introduced. It must be reviewed at least every three years and when being reviewed should not be reintroduced unless justified, currently there is no evidence that CIA is warranted, specifically as a city we wish to see growth in redevelopment within the city centre. However, having regard to the levels of crime and disorder and public nuisance within Newport City Centre there is still evidence that the promotion of the licensing objectives within an identified area of Newport City Centre is being undermined as a consequence of the operation of licensed premises in the area.

The licensing authority considers that although the levels of problems do not currently justify the implementation / renewing of a cumulative impact area, the area is of a concern and will be kept under very close review.

Therefore, in retracting the historic Cumulative Impact area the Council has determined to adopt a Special Policy for the City Centre which shall be known as the “City Centre Stress Area”; that can found within the draft policy. The City Centre Stress area stipulates:

The licensing authority recognises there are a number of existing measures available that are relevant to tackling unlawful and anti-social behaviour associated with licensed premises, including:

- Planning controls
- Positive measures to create a safe and clean environment in partnership with local businesses, transport operators and other departments of the local authority
- The provision of CCTV surveillance, taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly.
- The confiscation of alcohol from adults and children in designated areas
- Police enforcement of the general law concerning disorder and antisocial behaviour, including the issue of fixed penalty notices
- Prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale) – Police powers to close down instantly for up to 24 hours (extendable to 48 hours) any licensed premises or temporary event on grounds of disorder, the likelihood of disorder, or noise emanating from the premises causing a disturbance.
- Robust conditions on the licence promoting the four licensing objectives.
- The power of the police, or other responsible authorities or any person to seek a review of the licence or certificate.
- Regular monthly Responsible Authority meetings, for interested parties to comment on, and providing an action plan, when dealing with problematic premises and areas.

Newport Stress Area(s)

However, having regard to the levels of crime and disorder and public nuisance within Newport City Centre there is still evidence that the promotion of the licensing objectives within an identified area of Newport City Centre is being undermined as a consequence of the operation of licensed premises in the area.

The licensing authority considers that although the levels of problems do not currently justify the implementation / renewing of a cumulative impact area, the area is of a concern and will be kept under very close review.

Therefore, in retracting the historic **Cumulative** Impact area the Council has determined to adopt a Special Policy for the City Centre which shall be known as the "City Centre Stress Area"; this area is identified on a map in Appendix A of the draft Licensing Policy.

The Licensing authority does not wish to see an increase in antisocial behaviour or for premises to undermined the Licensing Objectives, however the authority does wish to diversify the night-time economy and continue to regenerate the city centre. The Council aim is to promote an 'inclusive' evening and night-time economy throughout the city to ensure people of all ages can participate in and enjoy a range of activities through a diverse array of licensed premises, not simply focused on the consumption of alcohol.

Where an application is located within a Special Policy Stress area, all parties are expected to have due regard to it. The licensing authority's discretion to determine the application shall be engaged upon the receipt of relevant representations and the respective Special Policy shall be the starting point when doing so.

No Special Policy is absolute and the licensing authority will always consider the circumstances of the case and whether there are exceptional circumstances to justify departing from the Special Policy. Where no representations are received for an application within a Special Policy area, the application will be granted as applied for. Applicants are expected to demonstrate a full understanding of the Policy; how the Policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the Policy.

New and variation applications for premises and club premises certificates within the "City Centre Stress" area will not be subject to the presumption of refusal, but operators will be expected to pay very special attention when drawing up their operating schedules and to make positive proposals to ensure that their operation will not add to the problems faced in these areas. It is strongly recommended to discuss the application with the Licensing Authority before submitting an application.

On receipt of any application in the City Centre Stress area, where a relevant representation has been made, the licensing authority will scrutinise the application carefully and will look at the measures proposed in the operating schedules.

The adoption of Stress area(s) policy takes into consideration: paragraph 10.13 of the Government's statutory Guidance, which recognises that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas and that licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities.

With the above in mind, the following approach for new licences and material variations, where relevant representations have been made, shall be taken:

Type of Premises	Alcohol Licensing Hours / Other Licensing Activities
Restaurant	Alcohol Licensing Hours 07:00- 00:30hrs Other Licensing Activities 08:00- 00:30hrs
Café	Alcohol Licensing Hours 07:00- 00:30hrs Other Licensing Activities Midnight 08:00- 00:30hrs
Late Night Takeaways / Fast Food Outlet.	Late Night Refreshment Sunday- Thursday 23:00-2:30am Friday- Saturday 23:00-03:00am
Night Club / Sexual Entertainment Venue	Alcohol Licensing Hours Sunday-Thursday 07:00- 3:00am Friday-Saturday 07:00-3.30am Other Licensing Activities Sunday-Thursday 08:00- 3:30 am Friday-Saturday 08:00- 4:00am (Additional Measures last entry to Night Club / Sexual Entertainment 2:00am)
Pub / Bars	Alcohol Licensing Hours Sunday- Thursday 07:00-2:00 am Friday-Saturday 07:00-2:30am Other Licensing Activities Sunday –Thursday 08:00-2:00am Friday-Saturday 08:00-2:30am
Non-Alcohol lead This may include: <ul style="list-style-type: none"> • Cinemas • Theatres •Bowling alleys, hairdressers, florists • Art galleries. • Workplace Bar solely for use of employees of the premises 	In general, will be granted a licence in line with trading hours.
Hotel	Alcohol Licensing Hours 07:00-02:00am Or 24 hours to residents of hotel Other Licensing Activities 08:00- 02:00am

	Late Night Refreshment for residents of hotel 23:00hrs till 05:00hrs
Off Licence	Alcohol Licensing Hours 07:00-23:00pm
Members Clubs	Alcohol Licensing Hours 07:00-2:30am Other Licensing Activities 08:00-2:30am
Outdoor Events	Alcohol Licensing Hours 07:00-10:30pm Other Licensing Activities 08:00-23:00pm

It is imperative to stipulate No Special Policy is absolute and the licensing authority will always consider the circumstances of the case and whether there are exceptional circumstances to justify departing from the Special Policy in light of the individual circumstances of the case. Though exceptions will only be made where the **applicant** proves that the grant would not harm the Licensing objectives.

Matters such as;

- longer hours will create slower dispersal;
- history of good management;
- Character of the applicant
- premises are well run;
- size of the proposal;
- alcohol is not sold;
- clientele are a cut above the usual;
- A neighbouring premises has longer hours;

Will not be considered exceptional circumstances and the policy is intended to be strictly applied.

Where no representations are received for an application within a Special Policy area, the application will be granted as applied for. Applicants are expected to demonstrate an understanding of the Policy; how the Policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the Policy.

Existing licensees who wish to materially alter and/or extend the premises to which the authorisation relates are required to seek a new authorisation. This is because the Act prohibits the use of a variation application to substantially alter the premises to which the authorisation relates.

Where the only change is to the physical extent or material layout of the premises themselves (i.e. in the absence of additional features such as change in style of operation, capacity etc) it is highly unlikely this would trigger the special policy, but of course this policy cannot restrict the right of any responsible authority or interested party to make relevant representations in that regard and if such are forthcoming they will be diligently considered. Where other change is envisaged then the presumption may arise. Applicants in such circumstances are entitled to seek a Provisional Statement.

9. Consultation

The consultation ran from the 21st September 2020 until the 30th October 2020, the authority received no comments regarding the revised policy.

Following this period of public consultation, the revised Statement was presented to the Licensing Committee on 15th December 2020, where upon it was agreed to recommend that Full Council adopt the draft policy but with the following amendments and recommendations.

The Licensing Committee recommended that a minor amendment be made to Section 11.2 & 11.7 of the draft policy; these amendments are highlighted in **Purple** in the policy.

The amendments expand on the importance for applicants to meet the public nuisance objectives specifically regarding litter, but also further expand on the recommendation for applicants to engage with local residents and communities when considering submitting an application.

The Committee also considered the significant impact that Covid 19 has had on both Licensing Trade and Night Time Economy and felt that the Policy should be monitored and the Licensing Manager should report back to the Committee in the first 3 to 6 months of the introduction of the Policy to ensure the Policy is having positive impact in light of current outbreak.

10. Financial Summary

The revision of the Statement of Licensing Policy is a statutory function. The costs in carrying out the revision, including the consultation process, will be covered by the Licensing Act 2003 fees. There will be no income generated by the revision of the policy.

	Year 1 (Current) £	Year 2 £	Year 3 £	Ongoing £	Notes including budgets heads affected
Costs (Income)					
Net Costs (Savings)					
Net Impact on Budget					

11. Risks

- (a) The Council in carrying out its function as Licensing Authority has a statutory duty to revise its Statement of Licensing Policy every 5 years. The next revision must be published and effective no later than January 2021. Prior to adoption of the policy by Council, statutory and non-statutory consultation is required and has highlight has taken place. If the Committee does not make a recommendation, the consultation cannot commence

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Policy will not be adopted by end of January 2021	H	L	The Licensing Committee will make a recommendation for policy to go out for consultation and make any recommendation after consultation prior to the revised policy being referred to full Council for adoption.	Licensing Manager
Due to current Covid 19 restrictions, the policy may be required to be revised in the future.	M	L	It is recognised that Covid 19, has a detrimental impact on the Licensing Industry. Thus meaning post Covid the policy may be required to be further revised. Despite the Policy required to be reviewed every 5 years it does not prevent the Licensing Authority reviewing its policy at any time within this 5 year period. In light of Covid 19 the Policy will be monitored to see if a further revision are required.	Licensing Manager

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities 10 Ensuring that this work is completed as required by statute will support the following Council Policies and Strategies:

12. Ensuring that the Council follows best practice will support the following Council Policies & Strategies:

- Newport City Council's Corporate Plan 2017-2022 (Building on Success, Building a Better Newport)

Options Available

13. Having regard to the Council's statutory obligation to revise the Statement of Licensing Policy, the Council may decide:

(a) That the revised 2021 Statement of Licensing Policy under the Licensing Act 2003 (Appendix A) be adopted.

(b) To propose significant amendments to the revised Statement of Licensing Policy and then undertake a further 2 months' consultation. Whilst adopting the 2016-2021 policy whilst consultation takes place and report is brought back to full council.

Preferred Option and Why

14. The preferred option is 13(a): the revised policy builds on the previous Statement of Licensing Policy, but reflects the changes in legislation and guidance.

Comments of Chief Financial Officer

15. There will be no adverse financial impact in the adoption of the revised Statement of Licensing Act Policy 2021. Any costs associated with the consultation and implementation of the policy will be met from existing budgets.

Comments of Monitoring Officer

16. The Council has a statutory duty under Section 5 of the Licensing Act 2003 to review and republish its Statement of Licensing Policy every 5 years. Therefore, the current policy needs to be formally reviewed and republished by end January 2021. In accordance with the Act, the Council is required to consult with the Police and key stakeholders before revising the policy. The draft revision of the Policy has been the subject of extensive consultation with responsible authorities, licence holders and the general public and no adverse comments or objections have been received. Licensing Committee have also been consulted and they have suggested minor amendments, which have been incorporated within the revised Policy, to strengthen the provisions relating to public nuisance and engagement with local communities.
17. When formulating its Statement of Licensing Policy, the Council is also required to have due regard to statutory guidance issued by the Secretary of State under Section 182 of the 2003 Act. The draft revision reflects changes in legislation and statutory guidance since the last statement was published, with increased guidance on best practice for the prevention of crime and nuisance and protecting children from harm. However, for the most part the substantive policy remains broadly the same, as the current policy has provided an effective and satisfactory policy framework for the determination of licensing applications. The one significant change to the previous policy is in relation to cumulative impact assessments ("CIA"), in accordance with the requirements of section 141 of the Policing and Crime Act 2017. Section 141 provides that a licensing authority can only publish a CIA if it considers that the number of licensed premises in an area is such that the granting further licences would be inconsistent with its duty to promote the licensing objectives – because of the cumulative impact of the number of licensed premises in that designated area. Without this evidence, the Licensing Policy cannot automatically include a CIA, although the impact of numbers of licensed premises in the City Centre can be kept under review. The licensing authority must publish the evidence for its opinion before publishing any CIA. However, to reflect specific issues within the City Centre, the revised Statement of Licensing Policy will include different strategies for dealing with applications within the designated "City Centre Stress Area". These strategies are intended to provide a fair and consistent approach for determining licensing applications within this sensitive area of the City and reflect current issues regarding numbers of premises and public order. However, this strategy cannot be applied as a blanket policy, so as to fetter the discretion of the Council in determining applications where there are exceptional circumstances.
18. The Cabinet Member for Licensing and Regulation has agreed the revised policy and is recommending the policy to full Council for approval and adoption. Because the revised Statement of Licensing Policy is part of the Council's policy framework under the Constitution, it will need to be formally approved and adopted by full Council at its next meeting on 26th January 2021.

Comments of Head of People and Business Change

19. The report relates to the draft Statement of Licensing Policy and there are therefore no staffing implications. The draft Statement has been developed following consultation and in line with the 2003 Act and takes account of current policy and strategy

Comments of the Cabinet Member for Regulatory Functions

20. I am satisfied that the 2015 Statement of Licensing Policy has been revised appropriately and support the recommendation that Council adopts it.

Wellbeing of Future Generations (Wales) Act 2015

A prosperous Wales: Alcohol and entertainment along with late night refreshment can add a vibrancy and wealth to the County. However, we also need to consider the negative impact of alcohol related anti-social behavior. The policy concentrates on measures that are available through legislation, partnership working to deal with crime and disorder, prevention of public nuisance, public safety and protection of children from harm. These are the licensing objectives under the Licensing Act 2003.

A healthier Wales: The policy recognises the benefits of licensed venues for job opportunities and progression. But also looks at the problematic impacts of alcohol related illness, crime and fear of crime and also the health implications of nuisance, pollution and harm to children.

A Wales of cohesive communities: The policy addresses measures that can be taken by licensees and statutory partners to work towards a cohesive and attractive community and promoting the ethos of the Act to have a café culture.

A Wales of vibrant culture and thriving Welsh language: The policy provides guidance and advice, in order to achieve a positive contribution to the culture of our town centres and surrounding areas.

Background Papers

Licensing Act 2003

Guidance issued under section 182 of the Licensing Act 2003 – Home Office, dated April 2018

Newport City Council Well-being Plan <http://www.newport.gov.uk/oneNewport/Well-being-Plan/Well-being-Plan.aspx>

Appendix A

'Licensing Act 2003 Policy Statement 2021.'