

Statement of Licensing Policy

Licensing Committee

Date: 8 January 2015

Author:	Licensing Manager
Wards:	All
Locality Affected:	All
Parishes Affected:	All

1. Purpose and Reasons

- 1.1 Section 5(1) of the Licensing Act 2003 provides that each Licensing Authority must determine its policy with respect to the exercise of its licensing functions and publish a statement of that policy for each 5 year period. The policy must be kept under review and amendments made when considered necessary.
- 1.2 There have been a number of legislative changes since the policy was last determined and it therefore seems appropriate to now review the policy. A draft policy is attached to the report as **Appendix A**, for consideration.
- 1.3 In addition, Wiltshire Police have requested that a Cumulative Impact Zone (CIZ) is created by Swindon Borough Council and included in the Statement of Licensing Policy that covers parts of New Town, Old Town and the Broadgreen area of Swindon. The effect of such a policy will be to create a rebuttable presumption that where relevant representations are received about any application for a premises licence or club premises certificate to be granted in these areas, or any application to vary existing authorisations in these areas, the application will be refused. Information provided by Wiltshire Police to support their request is attached as **Appendix B**.
- 1.4 The revised Statement of Principles will be subject to statutory consultation prior to the final determination of the policy by the full Council.

2. Recommendations

- 2.1 It is recommended that the Committee:
 - 2.1.1 Consider the evidence prepared by Wiltshire Police about the cumulative effect of the concentration of licensed premises in the areas of the Borough of Swindon set out in **Appendix B** and decide if one or more cumulative impact zone should be included in the draft Statement of Licensing Policy.
 - 2.1.2 Approve the draft Statement of Licensing Policy (**Appendix A**) for consultation and commence the statutory consultation process.

Further information on the subject of this report can be obtained from Kathryn Ashton, Licensing Manager, on 01793 466113, email: kashton@swindon.gov.uk.

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3. Detail

- 3.1 Swindon Borough Council determined its first Statement of Licensing Policy (SLP) on 18 November 2004. The current SLP, which was determined in 2011, is attached to the report as **Appendix C**.
- 3.2 Section 5 of the Licensing 2003 Act (as amended by the Police Reform and Social Responsibility Act 2011) requires that the Council determines the policy at intervals of no greater than 5 years.
- 3.3 The Licensing Act 2003 has been amended by the Police Reform and Social Responsibility Act 2011, the Live Music Act 2012 and The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 since the policy was last determined.
- 3.4 The changes introduced are summarised in paragraphs 3.5-3.7 below.
- 3.5 On 25 April 2012, the Police Reform and Social Responsibility Act 2011 amended the Licensing Act 2003 as follows:
 - 3.5.1 The Licensing Authority and Local Authority responsible for public health became responsible authorities;
 - 3.5.2 The vicinity test for those who make a representation was removed and 'interested parties' became 'other persons';
 - 3.5.3 The test which Licensing Authorities must apply when considering the steps taken for the promotion of the licensing objectives has changed so that it is no longer whether the steps are 'necessary' but rather whether they are 'appropriate' to the promotion of the licensing objectives;
 - 3.5.4 A Late Temporary Event Notice may now be accepted up to 5 working days prior to the event instead of 10 working days, and the Environmental Protection Team are now a consultee for all Temporary Event Notices received by Swindon Borough Council. The time limits for temporary event notices have also been relaxed such that an event may last for up to 168 hours instead of 96 hours and events may now take place on no more than 21 days in a calendar year, instead of 15 days;
 - 3.5.5 A Premises Licence or Club Premises Certificate must be suspended for non-payment of the statutory annual fee unless the amount payable is disputed, or non-payment is due to an administrative error in which case, a 21 day grace period is provided; and
 - 3.5.6 The Statement of Licensing Policy must now be reviewed at 5 yearly intervals instead of 3 yearly intervals.
 - 3.5.7 The Licensing Authority can determine a late night levy that applies to all premises or clubs that supply alcohol for consumption on the premises

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- between a period that begins no earlier than midnight and ends no later than 6 am, as set by the Licensing Authority
- 3.5.8 The Licensing Authority can determine that an early morning restriction order will apply to one or more areas of the Borough that requires premises to close no later than midnight and not reopen until no earlier than 6 am, with the time set by the Licensing Authority.
- 3.6 On 01 October 2012, the Live Music Act 2012 also amended the Licensing Act 2003 by changing the definition of regulated entertainment:
- 3.6.1 Entertainment consisting of a performance of live music is no longer considered regulated entertainment if it is performed between 8:00am and 11:00pm and:
- 3.6.1.1 The live music is unamplified;
- 3.6.1.2 The live music is amplified but the audience is no greater than 200 people and it is performed in a work place (as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992) other than a premises that is licensed for the supply of alcohol or regulated entertainment;
- 3.6.1.3 The live music is amplified but the audience is no greater than 200 people and it is performed in a premises or club premises that is authorised by a premises licence or club premises certificate to supply alcohol for consumption on the premises and the premises or club is open for purposes of being used for the supply of alcohol for consumption on the premises at the time that the entertainment is provided.
- 3.6.2 Any condition attached to a premises licence that relates live music ceases to have effect until such time as the premises licence is reviewed and the condition varied to include a statement that section 177A of the Licensing Act 2003, which relates to the suspension of conditions relating to live music, does not apply.
- 3.7 The Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 also changed the definition of regulated entertainment such that the following activities provided between 8:00am and 11:00pm are not considered regulated entertainment:
- 3.7.1 Performance of a play or performance of a dance where the maximum number of people who are in the audience does not exceed 500 people
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- 3.7.2 Indoor sporting events (excluding boxing/wrestling or boxing/wrestling with one or more martial arts) where the audience consists of no more than 1000 people.
- 3.8 The draft policy (**Appendix A**) has been formulated in view of the statutory changes summarised to avoid inconsistencies.
- 3.9 Wiltshire Police have requested that a Cumulative Impact Policy is included within the Statement of Licensing Policy that applies to parts of New Town, Old Town and the Broadgreen area of the Borough. The inclusion of such a policy will result in the creation of a rebuttable presumption that if relevant representations are received about any application for the grant of a premises licence or club premises certificate, or any application to vary existing authorisations in these areas, the application will be refused. Information to support this request is shown in **Appendix B**.
- 3.10 The introduction of a cumulative impact policy must be sufficiently evidenced and the Licensing Authority must be able to justify that its introduction is appropriate due to the effect of the number of licensed premises in a particular area.
- 3.11 Any revision to the Statement of Licensing Policy must undergo statutory consultation and it is proposed to undertake 12 weeks consultation in accordance with the Government's Code of Practice on Consultation. This period seems appropriate in view of the content of the policy and the potential impact on residents and business in the Borough of Swindon and also the length of time that the policy may be effective.
- 3.9 The results of the consultation exercise will be presented to Members at a future Licensing Committee meeting for consideration prior to referral to full Council for final determination of the Statement of Licensing Policy.

4 Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 4.1 There is a cost associated with any consultation. However, it is proposed to minimise expenditure by consulting via electronic means where possible.
- 3.2 As the consultation is a statutory requirement, it must be undertaken by Swindon Borough Council and will be done using existing resources.

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Legal and Human Rights Implications

- 4.3 The Secretary of State has certified that the Act is compatible with the European Convention on Human Rights.
- 4.4 Determining the Statement of Policy is a statutory function that must be carried by Swindon Borough Council and consultation must be undertaken prior to determining the final policy. Failure to determine the policy may lead to judicial challenges.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 3.5 The consultation will be undertaken using existing staffing resources.
- 4.6 There are no other implications associated with this report.

Diversity Impact Assessment

- 4.7 No diversity impact assessment has been undertaken at this stage.

Risk Management

- 4.8 Failure to determine the policy or adequately consult may lead to judicial review proceedings. Commencing the consultation will avoid this.

5 Consultees

- 5.6 The Board Director Resources (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

6 Background Papers

- 6.6 [Licensing Act 2003](#)
- 6.7 [Police Reform and Social Responsibility Act 2011](#)
- 6.8 [Live Music Act 2012](#)
- 6.9 [The Licensing Act 2003 \(Descriptions of Entertainment\) \(Amendment\) Order 2013](#)
- 6.4 [Revised Guidance issued under section 182 of the Licensing Act 2003 \(published October 2014\)](#)

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7 Appendices

- Appendix A - Draft Statement of Licensing Policy
- Appendix B - Evidence from Wiltshire Police about the Cumulative Effect of Licensed Premises in the Borough of Swindon
- Appendix C - Swindon Borough Council's Existing Statement of Licensing Policy