



## LICENSING COMMITTEE REPORT

<b>Report Title</b>	<b>Licensing Act 2003 – New Statement of Licensing Policy</b>
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**AGENDA STATUS: PUBLIC**

<b>Committee Meeting Date:</b>	2 <sup>nd</sup> February 2021
<b>Policy Document:</b>	Statement of Licensing Policy 2021-2026
<b>Directorate:</b>	Customers and Communities

### 1. Purpose

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1.1 To allow the Alcohol and Gambling Licensing Committee (“the Committee”) to consider the proposed new Statement of Licensing Policy (“SoLP”) and approve it for adoption by full Council no later than 28<sup>th</sup> February 2021.

### 2. Recommendations

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2.1 That the Committee approve the draft SoLP at Appendix A and recommend to full Council that is adopted no later than 28<sup>th</sup> February 2021.

### 3. Issues and Choices

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#### 3.1 Report Background

3.1.1 In accordance with Section 5 of the Licensing Act 2003 (“the Act”), the Council, as Licensing Authority for the District area of Northampton, is required to make and adopt an SoLP, in accordance with which alcohol/premises licensing applications must be decided. There is also a duty to review the SoLP at least once every five years and adopt a new policy or renew the existing one after undertaking the necessary statutory consultation.

3.1.2 On the 10<sup>th</sup> November 2020 this Committee approved the draft SoLP for consultation in accordance with section 5. The consultation period ended on 4<sup>th</sup> January 2021.

3.1.3 Section 5 of the Act requires the Council to consult with the following organisations and persons as part of a review of its current SoLP;

- a) the Chief Officer of Police for the Licensing Authority's area,
- b) the Fire and Rescue Authority for that area,
- c) each Local Health Board for an area, any part of which is in the Licensing Authority's area,
- d) each Local Authority in England whose public health functions within the meaning of the National Health Service Act 2006 are exercisable in respect of an area any part of which is in the licensing authority's area,
- e) such persons as the Licensing Authority considers to be representative of holders of premises licences issued by that authority,
- f) such persons as the Licensing Authority considers to be representative of holders of club premises certificates issued by that authority,
- g) such persons as the Licensing Authority considers to be representative of holders of personal licences issued by that authority and,
- h) such other persons as the Licensing Authority consider to be representative of businesses and residents in its area.

3.1.4 No comments or responses have been received following the consultation with all the above parties.

3.1.5 The Council's current SoLP was adopted in February 2016 and had to be reviewed with a view to adopting a new policy or renewing the existing one no later than 28<sup>th</sup> February 2021. This Committee cannot by law adopt or renew a SoLP. It can only be adopted by the full Council.

3.1.6 The proposed new SoLP is appended to this report at Appendix A.

## 3.2 Issues

3.2.1 If the Committee wishes to make any amendments to the proposed new SoLP, they will need to be incorporated into the document before submission to the next full Council meeting with a recommendation to adopt no later than 28<sup>th</sup> February 2021.

## 3.3 Choices (Options)

3.3.1 The Committee can choose to approve the proposed new SoLP at Appendix A and recommend that it is adopted full Council before 28<sup>th</sup> February 2021. This option is **recommended** in order to ensure that the SoLP for Northampton matches up to the SoLPs which have been approved by Daventry and South Northamptonshire Licensing Authorities. All three will remain in force as if they had been made by West Northamptonshire Council ("WNC") as part of interim arrangements. Approving the proposed new SoLP at Appendix 1 will reduce the risk of judicial challenge against WNC until such time as it adopts a single policy for the new West Northamptonshire Licensing Authority area.

3.3.2 Committee can choose to request amendments to the proposed SoLP prior to recommending to full Council that it is adopted. This option is **not recommended** because if the policy does not accord with the other SoLPs in

the new West Northamptonshire Licensing Area, the risk of judicial challenge by premises license applicants in Northampton against WNC will remain.

- 3.3.3 The Committee can choose **not** to approve the proposed SoLP and decline to recommend to full Council that is adopted at its next meeting. This option is **not recommended** as the Council has a statutory duty to adopt a SoLP no later than 28<sup>th</sup> February 2021. Having no SoLP policy in place would be unlawful. This could potentially make any premises license application decision made by either the Council or WNC unlawful until such time as a new SoLP is adopted.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

- 4.1.1 The SoLP is a policy document and it must be reviewed as required by Section 5 of the Licensing Act 2003.

### **4.2 Resources and Risk**

- 4.2.1 The failure of the Council to review, consult and publish an SoLP every five years may result in a judicial review being brought against the Council for its failure to do so. It is also likely that any premises licence decision by the Council made whilst there is no SoLP in place would be overturned on appeal in the Magistrates' Court, due to breach of the legal duty to decide all applications in accordance with such a validly adopted policy.

### **4.3 Legal**

- 4.3.1 The Council has a statutory duty to review its existing SoLP by 28<sup>th</sup> February 2021 at the latest. If a new SoLP is not adopted by that time, or as soon as possible thereafter, the Council will be in breach of its legal duty under Section 5 of the Act and any decision it makes with regard to any premises licence application could potentially be ruled unlawful if appealed.
- 4.3.2 On 1<sup>st</sup> April 2021, WNC will become the Licensing Authority for the new licensing area of West Northamptonshire. As a result, the duty to have an SoLP will pass from the three existing Licensing Authorities to it, save for any interim arrangements made by Parliament that will ensure the three separate SoLPs will continue to apply in their respective geographical areas until such time as they are replaced by one policy for the entire new Licensing Authority area.
- 4.3.3 In order to ensure consistency of the approach to deciding premises license applications in the new Licensing Authority area and avoid the risk of successful appeals by premises license applicants aggrieved by decisions of the new Licensing Authority, it is advisable to align the Council's SoLP as much as possible with South Northamptonshire and Daventry District Council's SoLPs before all three are abolished on 31<sup>st</sup> March 2021. The risk arises from one Licensing Authority (WNC) deciding applications within its licensing area in accordance with more than one SoLP, depending upon the location of the premises in that area. This would potentially be unlawful. If all

three existing SoLPs are consistent, then WNC can argue that there is in effect only one policy in place in the new Licensing Authority area, notwithstanding that three separate SoLPs technically exist.

- 4.3.4 SoLPs can only be approved by the full Council of a Licensing Authority. This function cannot be lawfully delegated to a Committee or Sub-Committee of any Licensing Authority. However, the Alcohol and Licensing Committee can consider any proposed new or amended policy following a statutory review and recommend that it is approved at full Council.

#### **4.4 Equality**

- 4.4.1 The purpose of the SoLP is to ensure that the four licensing objectives of;

- The prevention of crime and disorder,
- The prevention of public nuisance,
- Public safety and
- The protection of children from harm

are upheld and promoted through the licensing framework. Each premises license application and decision must be taken on its own merits with promotion of these objectives as its basis. As a result, no potentially detrimental equality issues have been identified or are envisaged as a result of the decision to consult about a proposed new SoLP following a statutory review.

#### **4.5 Consultees (Internal and External)**

- 4.5.1 The Council has consulted all the organisations and persons required by section 5 of the Act.

#### **4.6 Environmental Implications (including climate change issues)**

- 4.6.1 None identified

#### **4.7 Other Implications**

- 4.7.1 None identified

### **5. Background Papers**

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- 5.1 Licensing Act 2003
- 5.2 Section 182 Guidance
- 5.3 Statement of Licensing Policy 2016-2021

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