

<b>SUBJECT:</b>	<b>LICENSING ACT 2003 POLICY THIRD REVIEW 2013</b>	
<b>REPORT OF:</b>	<b>Officer Management Team -</b>	<b>Director of Services</b>
	<b>Prepared by</b>	<b>Head of Health and Housing</b>

## 1. Purpose of Report

- 1.1 To inform members of the outcome of the consultation process carried out in respect of the revised Licensing Act 2003 Policy Statement and to recommend the draft policy for adoption by full Council.

## 2. Links to Council Policy Objectives

- 2.1 There is a link between providing an efficient and effective licensing service, reducing the level and fear of crime and making our community a safer place to live, work and visit.

## 3. Background

- 3.1 Section 5 of the Licensing Act 2003, as amended (“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.

- 3.2 Previously, Licensing Authorities were required to publish and review licensing policy statements every three years. This requirement was changed from three years to five years by amendments to the 2003 Act brought about by the Police Reform and Social Responsibility Act 2011 for any policies adopted after January 2011. As South Bucks District Council most recent policy was adopted prior to January 2011, it is required to be reviewed at this time.

- 3.3 South Bucks District Council adopted its first Licensing Policy Statement on 7 December 2004. This policy was subsequently reviewed on 11 December 2007 and then again on 14 December 2010.

- 3.4 On 10 July 2013 members of the Licensing Committee approved a draft updated version of the Licensing Policy Statement for consultation. A consultation exercise was undertaken for 8 weeks, between Wednesday 17 July 2013 and Wednesday 11 September 2013.

## 4. Discussion

- 4.1 During the consultation period only two responses were received. A copy of both responses are attached at Appendix 1.

- 4.2 One response was received from Mr Robert Botkai of Winckworth Sherwood Solicitors. This response refers to the issue of excluded premises/primary use and the sale of alcohol from garages. The other response was received from April Brett, Public Health Principal, Bucks County Council.

- 4.3 The response received from Ms Brett notes the Councils recognition within the statement that Health Bodies are now responsible authorities and confirms that Buckinghamshire County Council will perform this function. The response from Mr Botkai advises that he considers the requirement for providing information on primary use of premises in the operating schedule of

an application in danger of superceding the Act. Mr Botkai believes that paragraph 12.5 of the policy is unlawful and has suggested amendments to paragraph 12.6.

4.4 Regarding the lawfulness of paragraph 12.5 of the draft Policy, Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises which are primarily used as a garage, or are part of premises used primarily as a garage. Premises are used as a garage if they are used for one or more of the following:

- the retailing of petrol;
- the retailing of derv;
- the sale of motor vehicles; and
- the maintenance of motor vehicles

4.5 Section 18(2) of the 2003 Act states that a Premises Licence must be granted if no relevant representations are received. If relevant representations are received then the Council has discretion whether to issue a licence or not. However, section 4(3) of the 2003 Act is clear that when carrying out its licensing functions, the Council must also have regard to its published Policy and also to the Section 182 Guidance. It is therefore necessary to take a practical approach when applying the Act.

4.6 The Section 182 Guidance at paragraph 5.22 gives firm advice on garages - “the Licensing Authority must decide whether or not premises are used primarily as a garage”. The guidance makes no reference to having received relevant representations in order to do this. Para 5.23 continues to state that where there is insufficient evidence, it is for the Council to decide whether to grant the licence and deal with any issues through enforcement action or it may be able to use its case management powers to enable further evidence to be obtained.

4.7 Officers are of the view, having regard to the Section 182 Guidance as required by the 2003 Act, that it is intended for a Council to decide whether a garage is an “excluded” premises or not at application stage. If there is insufficient evidence then the Council can grant the licence and deal with any issues arising via enforcement. A practical approach to this issue is to require information regarding excluded premises to be submitted with the application as stated in paragraph 12.5.

4.8 In light of the comments received Officers recommend that paragraph 12.5 and 12.6 of the draft Policy be amended, as shown in bold blue typeface on page 23 of Appendix 2.

4.9 The draft policy must be approved by full Council prior to its coming into force. It is therefore recommended that the finalised draft policy be referred to full Council on 10 December 2013.

## **5. Resources, Risk and Other Implications**

5.1 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 existing Policy.

5.2 An Equalities Impact Assessment (EIA), in accordance with the requirements of the Equality Act 2010, has been undertaken in connection with the review of the Licensing Policy Statement. The EIA undertaken, a copy of which can be viewed by contacting the Licensing Team, did not identify any adverse equality issues and as a result no further action or mitigation is considered appropriate.

**6. Recommendation**

6.1 It is recommended that:

6.1.1 The draft Statement of Licensing Policy attached at Appendix 2 is approved for submission to full Council 10 December 2013.

6.1.2 The Committee recommends to full Council that the updated Statement of Licensing Policy be adopted.

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<b>Background Papers:</b>	<b>South Bucks District Council Licensing Policy (14 December 2010)</b> <b>Licensing Act 2003, as amended.</b> <b>Police Reform and Social Responsibility Act 2011.</b> <b>Live Music Act 2012.</b> <b>Guidance issued under section 182 of the Licensing Act 2003.</b>