

CABINET – 3 NOVEMBER 2010

**LICENSING ACT 2003 – APPROVAL OF AMENDMENTS TO THE
COUNCIL’S STATEMENT OF LICENSING POLICY**

**REPORT OF THE EXECUTIVE DIRECTOR OF CITY SERVICES AND THE
HEAD OF LAW AND GOVERNANCE**

1. Purpose of the Report

- 1.1 To brief Members upon the responsibility of the Council with regard to the adoption of a Licensing Policy Statement under the Licensing Act 2003 (the “Act”).

2. Description of Decision (Recommendations)

- 2.1 To recommend Council to approve the attached revised Licensing Policy Statement.

3. Introduction/Background

- 3.1 By virtue of the Act, the Council is responsible for licensing premises for the provision of licensable activities’ as defined in Section 1 of the Act namely:
- (a) the sale by retail of alcohol;
 - (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
 - (c) the provision of regulated entertainment; and
 - (d) the provision of late night refreshment.
- 3.2 One of the requirements of the Act is that the Council produces a Licensing Policy Statement which specifies how we undertake our functions in that regard. The current Licensing Policy Statement was agreed at a meeting of the Council on 21 November 2007 and was published on 7 January 2008 (this date being specified by legislation).
- 3.3 The Act requires that the Statement is reviewed every three years and that it is re-published on 7 January 2011. Licensing Authorities are obliged to consider guidance upon the Act issued by the Department of Culture Media and Sport in conducting such reviews. Revised Guidance upon the Act was issued by the Department of Culture Media and Sport in March 2010. So, the review process has involved, firstly, amending the existing Licensing Policy Statement in order to comply

with new requirements embodied within this revised Guidance. Secondly, as required by the statute, Licensing Officers have sought views upon the amended statement from persons who it may affect. The period for such consultation is now concluded. The Council is obliged to consider any responses received and determine whether it is necessary to further amend the draft Licensing Policy Statement which is attached to the report at appendix 1.

4. Current Position

- 4.1 One response has been received from an external organisation. This response is from the Association of Convenience Stores (ACS) and is as follows:

‘Submission to Local Authority Consultation on Draft Alcohol Licensing Policy

1. Thank you for offering ACS (Association of Convenience Stores) an opportunity to respond to your draft Licensing Policy Statement. ACS is the voice of the convenience retail sector, representing over 33,500 local shops.

Alcohol is a major product category for convenience stores and ACS is committed to supporting our members to ensure they retail alcohol responsibly. ACS is also closely involved with the creation of central alcohol policy with Government. Therefore ACS has developed significant understanding of the implications of licensing reform for local shops and off licences.

2. Our members deal with a wide variation of different local licensing policies. We have found that the most successful policies invariably involve local authorities and retailers working together in partnership to create a fair and effective licensing policy. We advise all local authorities to maintain a dialogue with their local retailers and see them as part of the solution rather than part of the problem.

3. Our members encounter a wide variety of different approaches between licensing authorities, which can cause problems for businesses. We would encourage wherever possible for local authorities to share best practice and to when appropriate promote consistency between different areas.

4. Below are comments raised on specific licensing policy issues:

Mandatory Code

5. The Policing and Crime Act 2009 created a mandatory code of practice for all alcohol retailers. While four of the mandatory licence conditions relate solely to the on trade, one of the conditions also applies to the off trade. This states that: *all those who sell alcohol must*

have an age verification policy in place requiring them to check the ID of anyone who looks under 18 to prevent underage drinking which can lead to anti-social behaviour and put young people at risk of harm.

6. ACS works closely with other industry stakeholders to ensure that there are strong and consistent proofs of age schemes in place that can be used across the trade. For example, ACS helped create the No ID No Sale scheme. ACS is also a member of the Retail Alcohol Standards Group (RASG). RASG created the Challenge 21 campaign and recently coordinated its launch across the country as Challenge 25. The policy recommends that anyone who appears under 25 is challenged for ID.

7. While the mandatory condition demands a proof of age scheme is in place, the condition does not prescribe which schemes retailers have to adopt. We support this flexibility for retailers and strongly discourage a more restrictive approach. The main responsibility of alcohol retailers is to ensure that they do not sell alcohol to those underage. They should not be dictated to on how to achieve compliance.

Form of Identification

8. It is important that there is consistency on which proof of age documents retailers are allowed to accept. ACS is a founding member of the PASS and board member of the CitizenCard proof of age scheme. CitizenCard has given out over 1.8 million cards, and offers young people who do not have a passport or drivers licence a valid form of ID. Particularly in society where identity fraud is a growing problem, it is even more important to offer a form of ID that it is not a passport or driving licence since these can facilitate fraud if lost.

9. Government and most local authorities accept passport, driving licence and PASS card as valid proof of age. ACS urges all local authorities to adopt this position.

10. We would also urge Local Authorities to consider how best to tackle fraudulent ID, in consultation with local retailers.

Community Alcohol Partnerships

11. Through our membership of RASG, ACS is also heavily involved in the Community Alcohol Partnerships (CAP) initiative. These innovative projects aim to tackle the local problems with underage drinking and anti social behaviour through partnership working. CAPs brings off-trade retailers together with local authorities, police and schools to tackle underage drinking and proxy purchasing in a holistic way. During the schemes test purchases are not carried out; instead any problems are dealt with using communication and support networks.

12. The project has been independently evaluated, finding a decline in offences of criminal damage some 6% greater than in non pilot areas.

Test Purchasing

13. ACS believes that the Partnership approach, where retailers are not penalised but are educated and supported, is a more effective way to tackle alcohol related problems. However we recognise that test purchasing is a tool at the disposal of local authorities and that some will find it necessary to use test purchasing to tackle the small minority of problem premises that repeatedly sell alcohol to children.

14. However if test purchasing is utilised it must be done in accordance to Government guidelines. It must be led by clear intelligence that there is a problem in with underage purchasing on a premises. It also needs to be ensured that test purchasing will target both on and off trade when required.

15. It is important that test purchasing does not descend into a tool to “catch-out” responsible retailers, who make a genuine mistake. Guidance issued by LACORS on how to conduct a test purchase must be adhered too. Using an individual who looks much older than 18 and allowing them to lie or show fake ID is unacceptable.

16. If a retailer does fail a test purchase, it is important that the first recourse is constructive support, rather than overzealous punishment. Punishments are effective only when they are proportionate. We support tough sanctions against persistent offenders.

17. We also strongly advise local authorities to recommend that retailers are notified of any test purchases they have passed. This helps stores to recognise if their policy to prevent underage sales is working and facilitates a partnership based relationship.

18. ACS supports the Local Better Regulation Office (LBRO) on Trading Places Scheme. The scheme places local authority employees with retailers so that they can see the challenges retailers face regarding underage sales on a daily basis and also understand what the retail trade is doing to tackle them. ACS advises Local Authorities to contact LBRO if they wish to partake in the scheme.

Crime

19. There have been proposals in some draft licensing policy statements that retailers should restrict where they place alcohol to prevent underage theft. Although it may be useful to make retailers aware of best practice, they should not be told where to place the

products they sell. Ultimately the retailer will be aware of where best to place products to ensure security.

20. It is also important that retailers are not penalised for thefts that occur in store. If alcohol is being stolen from a store then it is not the retailers fault and full culpability must fall onto the culprit. In these incidences the retailers are victims and should be supported. Any move to penalise retailers for thefts will be counter productive, as retailers will be discouraged from reporting crime.

Underage Drinking and Proxy Purchasing

21. Retail staff often face abusive or intimidating behaviour when refusing a sale. It is important that they feel sufficiently supported in their role as enforcers and local authorities have a role to play in this. Underage drinkers need to understand that it is against the law and unacceptable for them to attempt to buy alcohol. The wider community need to understand that it is unacceptable and illegal to buy or supply alcohol to a minor.

22. Being given alcohol by a parent or friend, or buying alcohol from someone else is the most common way for underage drinkers to buy alcohol. The proportion of pupils who were given alcohol by a parent or friend has increased from 9% in 1998 to 24% in 2008. 18% of young drinkers buy alcohol from someone else, compared with 6% who buy from the licensed trade. It is clearly a route of supply which needs to be tackled.

23. While it is currently offence to proxy purchase or attempt to buy alcohol while underage, there is little enforcement of these laws. Local licensing policies should address these issues and explore the most effective way to combat these crimes in community, rather than just targeting all their enforcement on licensees.'

- 4.2 As Members may conclude, the letter from the ACS appears to constitute a set of generic views on licensing policies rather than relate to this Council's specifically. However, it appears appropriate to comment upon certain points raised by ACS.
- 4.3 At paragraph 7 of their letter, the ACS advises that they do not want Councils to set policies as to how retailers verify the age of potential purchasers of alcohol. Given that this matter is dealt with by recent legislation the Council's draft policy does not pursue this issue and so the ACS need have no concern about our policy in this regard.
- 4.4 At paragraph 9 of their letter, the ACS urge local authorities to accept a National Proof of Age Standards Scheme (PASS card) as proof of age alongside government-issued documents such as passports or driving licences. Given that the view of the ACS in this regard is in line with new legislation which allows retailers, where a potential purchaser

appears to be under 18 years of age, to accept any identification document bearing a photograph, date of birth and holographic mark, it is proposed to accept the suggestion of ACS as the PASS scheme is government approved. To that end a new Model Condition 27 is proposed to be added to the pool of Model Conditions in our policy.

- 4.5 Finally, with regard to the letter from the ACS, they suggest, at their paragraph 15, that local authorities adhere to the guidance issued by the Local Authorities Co-ordinators of Regulatory Services (LACORS) (now Local Government Regulation) in conducting test purchase exercises. Although not addressed in the Licensing Policy as such issues are beyond its remit, Members may wish to know that the Council does adhere to this guidance when conducting such exercises.
- 4.6 The only other response to the consultation exercise came from the Community and Safer City Scrutiny Committee at its meeting on 6 July 2010. Some of the members of that Committee commented upon Section 6 of the draft policy which deals with the potential cumulative impact of a concentration of licensed premises in a particular location. They were concerned that the draft policy indicates that evidence of existing crime and disorder is necessary in order to justify the adoption of a special policy of refusing new licences in a specified area. They suggested a more anticipatory approach to creating such policies would be appropriate. However, as mentioned at paragraph 3.3 of this report above, the Council is obliged by the Licensing Act to have regard to Government guidance upon such matters, with new amended guidance being issued on 13 October 2010, and that guidance is explicit in that an evidential as opposed to anticipatory basis is necessary to justify a policy restricting the numbers of licensed premises in a locality. The leading case of *Thwaites and Wirral MBC* [2008] EWHC 838 (Admin) confirms the need for proper evidence upon which to base a decision. In addition, the guidance goes on to say that it would not normally be justifiable to adopt a cumulative impact policy on the basis of a concentration of premises selling alcohol for consumption off the premises. Consequently, it is not legally appropriate to alter our present draft policy. However, the Coalition Government have recently undertaken a consultation exercise entitled "Rebalancing the Licensing Act" in which they have proposed removing the evidential requirement on licensing authorities wishing to make a cumulative impact policy. The consultation period has now concluded. It is therefore possible that legal changes will be made which would allow the introduction of a policy in line with the concerns of Members. In the meantime, Licensing Officers will regularly liaise with the Police and other partners in order to review whether sufficient evidence has come to light which would justify a change to our policy in the context of the current guidance.

5. Reasons for the Decision

- 5.1 To comply with legislation.

6. Alternative Options

- 6.1 None submitted.

7. Relevant Considerations / Consultations

- 7.1 The Director of Financial Resources has been consulted. There are no financial implications arising from this report.

8. Glossary

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| ACS | – Association of Convenience Stores |
| CAP | – Community Alcohol Standards Group |
| LACORS | – Local Authorities Co-ordinators of Regulatory Services |
| LBRO | – Local Better Regulation Office |
| PASS | – Proof of Age Standards Scheme |
| RASG | – Retail Alcohol Standards Group |

9. List of Appendices

Appendix 1 - Licensing Act 2003 - Revised Licensing Policy Statement

10. Background Papers

1. Licensing Act 2003
2. Guidance issued by the Department of Culture Media and Sport under Section 182 of the Act