

# Public Document Pack

**Date of meeting** Tuesday, 3rd September, 2013  
**Time** 7.00 pm  
**Venue** Committee Room 1, Civic Offices, Merrial Street,  
Newcastle-under-Lyme, Staffordshire, ST5 2AG  
**Contact** Geoff Durham

## Licensing Committee

### AGENDA

#### PART 1 – OPEN AGENDA

- 1 Apologies
- 2 Declarations of Interest
- 3 **MINUTES OF PREVIOUS MEETING** (Pages 1 - 2)  
To consider the minutes of this Committee held on 3 July, 2013.
- 4 **Deregulation of Entertainment** (Pages 3 - 6)
- 5 **Licensing Fees June 2013** (Pages 7 - 10)
- 6 **Responsible Bodies Group** (Pages 11 - 16)
- 7 **DISCLOSURE OF EXEMPT INFORMATION**  
To resolve that the public be excluded from the meeting during consideration of the attached report, because it is likely that there will be disclosure of exempt information as defined in paragraphs 3 and 7 in Part 1 of Schedule 12A of the Local Government Act 1972.
- 8 **Final Draft Alcohol Licensing Framework Agreement v10** (Pages 17 - 34)
- 9 **Urgent Business**

**Members:** Councillors Bailey, Bannister, Mrs Bates, Eastwood, Hambleton (Chair), Mrs Heames, Miss Mancey, Mrs Simpson, Tagg, Welsh, White, Williams and Mrs Winfield (Vice-Chair)

**Members of the Council:** If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

**Meeting Quorums :-** 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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## LICENSING COMMITTEE

Wednesday, 3rd July, 2013

**Present:-** Councillor Trevor Hambleton – in the Chair

Councillors Bailey, Eastwood, Mrs Heames, Miss Mancey, Mrs Simpson, Tagg, Welsh and Mrs Winfield

### 1. APOLOGIES

Apologies were received from Councillors Mrs Bates, White and Williams

### 2. DECLARATIONS OF INTEREST

There were no Declarations of Interest stated

### 3. MINUTES OF PREVIOUS MEETING

**Resolved:-** That the minutes of the meeting held on 13 February, 2013 be agreed as a correct record.

### 4. DEREGULATION OF ENTERTAINMENT

Consideration was given to a report advising Members about the Draft order on the Deregulation of Entertainment which was laid before Parliament on 22 April, 2013, highlighting three areas concerning plays and dance, Indoor sport and Combined Fighting Sports.

An indication was given of other possible areas for future deregulation.

**Resolved:-** That the report be received

### 5. SATURATION POLICY

Consideration was given to a report relating to the Cumulative Impact Policy contained in the Council's Statement of Licensing Policy. Members were asked to consider whether the Policy was still required.

Chief Inspector Hulme of Staffordshire Police gave a presentation relating to incidents of Crime and Disorder within the Borough and stated that the Police were happy with the positive effect that the special policy was having.

There had been a good reduction in the figures relating to all incidents, including violent crime and anti-social behaviour.

Members were all agreed that the special policy relating to cumulative impact within Newcastle should be retained and reviewed annually.

**Resolved:-** That the Saturation Policy be retained and reviewed on an annual basis

**6. COUNCIL'S SCHEME OF DELEGATION**

Consideration was given to a report informing Members of the need to amend the Council's Scheme of Delegation relating to the determination of applications for Sexual Entertainment Venue Licences.

It was proposed to delete the current all encompassing delegation at item 11 which currently delegated the licensing of sex establishments to the Public Protection Committee and replace it with:

- That applications for the grant of new Sex Establishment Licences be determined by the Licensing Committee.
- That applications for the grant, variation or transfer of Sex Establishment Licences whether or not representations are received be determined by the Licensing Committee.

It was felt that the changes would properly enable the whole process to be within the remit of this Committee.

**Resolved:-** That it be recommended to Full Council that the Council's Scheme of Delegation be amended to provide:

- That applications for the grant of new Sex Establishment Licences be determined by the Licensing Committee.
- That applications for the grant, variation or transfer of Sex Establishment Licences whether or not representations are received be determined by the Licensing Committee.

**COUNCILLOR TREVOR HAMBLETON**  
**Chair**

## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### LICENCING COMMITTEE

Date: Tuesday 3<sup>rd</sup> September 2013

#### 1. DEREGULATION OF ENTERTAINMENT

**Submitted by:** Head of Business Improvement & Partnerships

**Portfolio:** Safer and Stronger Communities

**Ward(s) affected:** All Wards

#### **Purpose of the Report**

At the behest of the Chair, to provide the Committee with a note of the deregulation measures that have been recently implemented by the Government.

#### **Recommendations**

That the report be received.

#### **Reasons**

The Government has amended the Licensing Act 2003 to take account of the provisions contained in this report.

#### 1. **Background**

Regulated entertainment is defined in Schedule 1 of the Licensing Act 2003 and includes both entertainment and entertainment facilities.

The categories of entertainment and entertainment facilities are capable of being amended and, as Members will be aware, the Act provides that the Secretary of State can modify the descriptions by adding, varying or removing any of them.

#### 2. **Issues**

The Live Music Act passed in to law on 8<sup>th</sup> March 2012 and took effect from 1<sup>st</sup> October 2012.

The act disapplies live music related conditions if the following criteria are satisfied:

- (a) There is a premises licence or club premises certificate in place permitting 'on sales'.
- (b) The premises are open for the sale or supply of alcohol for consumption on the premises.
- (c) Live music is taking place between 8.00 am and 11.00 pm.
- (d) If the live music is amplified, the audience consists of no more than 200 people.

Live music also ceases to be classed as regulated entertainment if the above criteria are satisfied.

The Act also creates a general exemption that live unamplified music provided anywhere shall not be regarded as the provision of regulated entertainment if it takes place between 8.00 am and 11.00 pm, regardless of the number of people in the audience.

The Act removes the need to licence entertainment facilities completely – regardless of time or audience size. This means that dance floors, microphone stands, pianos made available for use by the public etc. will not now be licensable. Health and safety law will of course continue to apply.

2. The Licensing Act 2003 (Description of Entertainment) (Amendment) Order 2013 which de-regulates certain other aspects of Regulated Entertainment came into effect on 27 June 2013. The Order:

- removed the need for entertainment licenses between 8am and 11pm for the performances of plays and exhibitions of dance for audiences of upto 500 people (except for dancing for which a Sexual Entertainment Venue Licence is required)
- removed the need for indoor sport Licences for audiences of upto 1000 people between the hours of 8am and 11pm.
- clarified the position on combined fighting sports such as mixed martial arts are a form of Boxing and Wrestling and will continue to be regulated.

3. Later in the year it is expected that firm proposals will be announced and draft legislation produced for the deregulation of Films for community screenings.

4. There are further proposals for the deregulation of regulated entertainment and it is proposed to keep members abreast of the changes as further information is released.

3. **Options**

Not applicable

4. **Proposal**

That the Committee receive the report.

5. **Reasons for Preferred Solution**

Likely legislative changes to the Licensing Act 2003

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- Creating a cleaner, safer and sustainable Borough
- Creating a healthy and active community.

7. **Legal and Statutory Implications**

Implementation of changes to Licensing Act 2003.

8. **Equality Impact Assessment**

The Act and Order revise legislation already in force.

9. **Financial and Resource Implications**

There will be a slight reduction in income as a result of the deregulation measures.

10. **Key Decision Information**

This is not a Key Decision.

11. **Earlier Committee Resolutions**

A number of items relating to the Licensing Act 2003 have been published to Committee since the Act came into force.

12. **Background Papers**

Legislative documents of record.

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## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### REPORT TO LICENSING COMMITTEE

Date: 3<sup>rd</sup> JULY 2013

#### 1. LICENSING FEES

**Submitted by:** Paul Washington, Principal Solicitor

**Portfolio:** Safer Communities, Culture and Leisure

**Wards affected:** All

#### **Purpose of the Report**

To update the Committee upon the recent decision concerning fees levied for sex establishment licences.

#### **Recommendation:**

**That the report be received.**

#### **Reasons**

The outcome of the case will impact upon decisions made and income received.

#### 1. **Background**

1.1 On 24<sup>th</sup> May 2013 the Court of Appeal handed down its long awaited decision in the case of R. & Others v. The Lord Mayor and Citizens of Westminster and for most material purposes of every licensee and local authority apart from Westminster City Council upheld the High Court judgment.

1.2 The case concerned fees levied by Westminster City Council ('the City Council') for sex establishment licences under the provisions of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act'). Sex establishment licensing is governed by Schedule 3 to the Act which is adoptive and, once adopted, the local authority may grant a sex establishment licence to premises for one of three types of activity: a sex cinema, a sex shop or a sexual entertainment venue.

1.3 Under paragraph 19:

"An applicant for the grant, variation, renewal or transfer of a licence under this Schedule shall pay a reasonable fee determined by the appropriate authority."

For many years the City Council had levied high licence fees for sex establishment licensing on the basis that in addition to their administration costs, they also had significant enforcement costs against not only licensed sex establishments, but also unlicensed sex establishments. This principle was upheld by the courts in R. v. Westminster City Council, ex parte Hutton.

- 1.4 The legality of the means by which those fees were set, the level of the fees and the impact of the European Union Services Directive were challenged by a group of sex establishment licensees by means of judicial review. In the High Court, the Judge (Keith J.) found in favour of the applicants. He determined that the City Council had not set a lawful fee since 2006, although it had been levying one. In addition, he concluded that the effect of the introduction of the European Union Services Directive ('the Services Directive') from 28<sup>th</sup> December 2009 by the Provision of Services Regulations 2009 ('the 2009 Regulations') meant that from 2010, the Council could not assimilate (and thereby recover) enforcement costs with the licence fee.

The City Council accepted that no lawful fee had been set since 2006, but appealed the other findings to the Court of Appeal.

## 2. Issues

- 2.1 It was well established by the courts and accepted by all parties that prior to the Services Directive it was lawful to levy licence fees for sex establishments which were intended to recover all the costs of the licensing regime including enforcement against licensees and unlicensed traders.
- 2.2 The High Court had found that the provisions of the Services Directive introduced into English law by the 2009 Regulations prohibited the recovery of enforcement costs as part of the licence fee.
- 2.3 This formed a significant part of the High Court decision and was a fundamental element of the appeal. Between 2004 and 2012, £26,435 (or 91%) of the total fee of £29,102 charged by the City Council was described as being for 'the management of the licensing regime', with only £2667 (or 9%) being for 'the administration of the application'. It can be seen that with the potential to lose over 90% of its sex establishment licensing revenue, the High Court ruling had a huge impact on the City Council's licensing and enforcement budget.
- 2.4 The Court of Appeal confirmed the decision of the High Court. The City Council tried to argue that the smaller fee was the application fee (because it was not refundable even if the application failed) and that the higher fee, which was only payable by successful applicants, was therefore outside the scope of the Services Directive and 2009 Regulations and could still be lawfully administered. This was rejected on the grounds that it was within the scope, and even if it had not been, there was no power within the 1982 Act to levy any fee other than an application fee and the cost of monitoring the compliance of **licensed** sex establishments.
- 2.5 In terms of the split of the licence fee between application and enforcement, the Court of appeal concluded that the two way split (91%:9%) was incorrect and that licence fee in its entirety was "made up of three elements:

Category (a): the administrative cost of investigating the background and suitability of applicants for licences;

Category (b): the cost of monitoring the compliance of those with licences with their terms; and

Category (c): the cost of enforcing the licensing regime against unlicensed operators"

and accordingly, after the introduction of the Services Directive and the 2009 Regulations, the Council could continue to recover the costs in categories (a) and (b), but could no longer recover the costs in category (c).

## 2.6 Repayment

Having established that no lawful fee had been set since 2006 and since 2009 enforcement costs had been unlawfully levied, the question of repayment had to be addressed. The Court made it clear that the enforcement costs unlawfully levied after 31<sup>st</sup> January 2010 must be repaid forthwith, but in relation to the allowable costs (elements (a) and (b) identified above, the continued rolling forwards (from year to year) of deficits and surpluses would be lawful.

## 2.7 Power and mechanism to set a fee

In respect of the mechanism to set a fee, the City Council maintained that the fee was reviewed annually by an officer, but maintained that this did not amount to setting a fee. An assertion that a licence fee for a sex establishment licence cannot be set by an officer, but has to be set by the council was dealt with by the Court of Appeal where it was said that “by regulation 2(6)(e) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 SI 2000 No. 2853 the fee for the types of licence which cannot be granted by an officer of a local authority must be determined by the local authority itself and cannot be determined by one of its officers.”

## 2.8 The immediate impact of this decision

Clearly, this judgment will have a significant impact in relation to sex establishment licensing. Every local authority that has adopted the provisions of Schedule 3 to the 1982 Act will have to reassess its licence fees in the light of this judgment. Those that do not will be susceptible to challenge either by means of judicial review (which although expensive, does have the advantage of addressing the issue before the fee is levied), or by means of a challenge via the District Auditor (which is relatively cheap but, of necessity, retrospective.

However, the impact is far wider than that. The Services Directive applies to all local authority licensing regimes except taxi licensing (hackney carriage and private hire), gambling and cinema licensing. This means that for every licensing regime covered by the Services Directive, a similar reassessment of licensing fees must be undertaken.

In addition, local authorities must make arrangements to repay enforcement costs that were unlawfully levied from December 2009. This is clearly a significant exercise which will take a lot of time and effort, but it is difficult to see how this approach can be avoided.

## 2.9 The future impact of this decision

The question now arises as to how local authorities will fund enforcement against non-licensed traders. The simple answer is that such funding should be found from general Council funds, but practically, that will prove difficult.

Council budgets are continually being reduced, with cuts on top of cuts the norm, so there is unlikely to be any slack to pay for enforcement. However, it is essential that councils do enforce against the unlicensed traders, because otherwise there will be no reason to obtain a licence. Licensees will be controlled but rogue operators will not which cannot be an acceptable approach.

It remains to be seen whether the Government will address this issue. Whilst the Services Directive and 2009 Regulations must remain, it would be open to the Government to allow local taxation to fund enforcement. This could be a national scheme, or adoptive, and a precedent already exists with the Late Night Levy under the Police Reform and Social Responsibility Act 2011, which the Court of Appeal accepted is a tax, and therefore not caught by the Services Directive.

Whether any Government would consider such an approach, and whether local authorities would be prepared to tax their local traders are two big questions that remain to be answered.

3. **Options Considered**

No options need to be considered at this time.

4. **Proposal**

That the report be received.

5. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

Creating a Cleaner, Safer and Sustainable Borough  
Creating a Borough of Opportunity

6. **Major Risks**

None

7. **Financial Implications**

Potential for loss of income

8. **Crime and Disorder**

There are no Crime and Disorder Issues

9. **Human Rights, Legal and Statutory Implications**

There are no human rights issues. The Services Directive and Regulations referred to in the report need to be applied as appropriate.

9. **Background Papers**

The case of R & Others –v- The Lord Mayor and Citizens of Westminster  
The local Government (Miscellaneous Provisions) Act 1982  
The European Services Directive 2006  
The Provision of Services Regulations 2009

# Agenda Item 6

<b><u>REPORT TITLE</u></b>	<b>Licensing Responsible Bodies Group &amp; Alcohol Licensing and Enforcement Framework Agreement.</b>
<b><u>Submitted by:</u></b>	<b>Head of Environmental Health</b>
<b><u>Portfolio:</u></b>	<b>Safer and Stronger Communities</b>
<b><u>Ward(s) affected:</u></b>	<b>ALL</b>

## **Purpose of the Report**

To advise Committee of the establishment of a County based Responsible Bodies Group in respect of licensing and seek members opinion on the adoption of the Alcohol licensing and Enforcement Framework Agreement.

## **Recommendations**

1. That the report be received.
2. That members decide whether to adopt the Alcohol Licensing and Enforcement Framework Agreement and if so, request authority for the Chair of Licensing to sign.

## **1. Background**

A County wide Officer Licensing Enforcement Group has been set up, comprising of all the statutory bodies plus other relevant agencies, to share intelligence and co-ordinate action against non-compliant licensed premises.

A conference was organised on the 8th October 2012 by the Licensing Officer at Stafford BC which brought together all Staffordshire District and City Council Licensing Authorities together with Staffordshire Police, Staffordshire County Council and Staffordshire Fire and Rescue Service with the aim to develop a quality, consistent and robust approach to enforcement of the Licensing Act 2003.

Following this Conference a Staffordshire and Stoke-on-Trent Responsible Bodies Group (SSRBG) has been set up to ensure an ongoing programme of work around licensing administration and enforcement. A number of Task and Finish Groups have been formed in order to develop a Countywide Alcohol Licensing and Enforcement Framework Agreement and administrative procedures.

## **2. Issues**

The SSRBG group has developed a 'Statement of Intent' for the group, this document is attached at appendix A.

Alcohol licensing is considered to be a focus area across the County for many regulatory services taking into account the four licensing objectives. The SSRBG proposes to consider matters of licensing administration and enforcement in order to achieve a consistent approach and process to the Licensing Act 2003 regime. This is aimed at creating a best practice and a consistent approach across Staffordshire for businesses.

Members are requested to review the Alcohol Licensing and Enforcement Framework Agreement, attached at appendix B and decide whether Newcastle-under-Lyme wishes to endorse this document.

3. **Options Considered**

Members can decide whether Officers should participate and implement the work of the SSRBG and whether they wish to sign up to the Alcohol Licensing and Enforcement Framework Agreement.

4. **Proposal**

That the report be received.

That members decide whether to participate and endorse the work of the group and adopt the work programme and procedures created by the group.

That members decide whether to adopt the Alcohol Licensing and Enforcement Framework Agreement and if so, request authority for the Chair of Licensing to sign.

5. **Reasons for Preferred Solution**

Through supporting the SSRBG there will be benefits through consistency of approach and best practice, this will therefore strengthen the policies and procedures and in turn will enable customers/business to have a consistent approach wherever in the County that they are undertaking licensing act business.

6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- Creating a cleaner, safer and sustainable Borough.
- Creating a borough of opportunity.
- Creating a healthy and active community.
- Being a co-operative Council, delivering high-value, community-driven services

7. **Legal and Statutory Implications**

This proposal will not alter the Councils responsibility to implement the requirements of the Licensing Act 2003.

8. **Equality Impact Assessment**

There will be no impacts.

9. **Financial and Resource Implications**

There will be no alterations to income relating to this report, however there will be Officer resource incurred in both the Licensing Administration and Enforcement team in participating and implementing the work of the SSRBG.

10. **Key Decision Information**

This is not a Key Decision.

11. **Earlier Committee Resolutions**

None

12. **Background Papers**

None.

## DRAFT LICENSING STATEMENT OF INTENT

### STAFFORDSHIRE AND STOKE-ON-TRENT RESPONSIBLE BODIES GROUP

This statement of intent signals a radical change in the approach and actions by partners and seeks to turn the tide against irresponsible drinking, and behaviour.

Our ambition is clear – we want to change the approach towards alcohol related violent crime, challenge unacceptable behaviour, and reduce the numbers of people who drink to excess.

The Four licensing Objectives are focused on achieving the following key objectives:

- Prevention of crime and disorder
- Protection of children from harm
- Public safety
- Prevention of public nuisance

In addition to the legislative objectives, the partnership intends to support the achievement of measureable outcomes which recognise the over-arching priorities of the Staffordshire and Stoke-on-Trent Strategic Partnerships in that:-

**‘Staffordshire will be a safe, healthy and aspirational place to live, work, visit and to do business’.**

People of all generations within Staffordshire are drinking alcohol too heavily and too frequently in risky or harmful ways, affecting their own, their families and their communities’ well-being. Current estimates show that within the adult population in Staffordshire:-

- 18.4% are believed to be at increasing risk due to drinking alcohol;
- 5.8% at higher risk;
- 4.1% are assessed as dependent drinkers
- 30.9% engage in chronic binge drinking

Tackling alcohol misuse has been an identified priority for strategic partners for some time. This is not only because its effects are so damaging and far reaching, it is also because treating and reacting to them is hugely costly to the public purse.

The factors supporting the continued growth of this problem are multi-faceted and complex in nature and partners have recognised that to reverse this situation, their response must be equally comprehensive. The enforcement of licensing legislation has been identified as an area of significant importance within this broader partnership approach.

There is a lot of discussion at a national level as to how the law can be changed to tackle some of these problems. However changes to the law will take time, there is a lot we can do now.

The public bodies with responsibility for licensing and dealing with alcohol related issues have come together and formed a licensing partnership to take immediate steps to tackle the issues relating to misuse of alcohol across Staffordshire and Stoke on Trent.

The following authorities have formed a licensing partnership.

Newcastle Under Lyme Borough Council  
Stafford Borough Council  
South Staffordshire District Council  
Lichfield District Council,  
East Staffordshire Borough Council,  
Tamworth Borough Council,  
Cannock Chase District Council,  
Staffordshire Moorlands District Council  
Stoke-on-Trent City Council;  
The Trading Standards Authority and Child Protection Authority Staffordshire County Council and Stoke-on-Trent City Council;  
The Fire Authority (Staffordshire Fire and Rescue Service)  
Staffordshire Police  
Public Health teams at Staffordshire County Council and Stoke-on-Trent City Council.

The licensing partnership is committed to using its powers in the most appropriate way to tackle the problems caused by irresponsible use of alcohol.

The partnership recognizes that most businesses want to comply with the law and are committed to acting responsibly, however there are a small minority who do not. The partnership is clear that each of the authorities will use their powers to tackle these minority businesses as a priority.

### **Partnership Principles and Practice**

- To encourage individual and collective responsibility amongst licensees, partners, and the public – recognise, support and actively promote the behaviour of compliant licence holders and responsible drinkers, while focusing enforcement to bring to account those who cause harm.
- To be focused on measurable outcomes – clear in what is to be achieved, targeted to specific individuals or businesses
- To be purposeful and action oriented – swift to identify emerging problems and quick to seek improvement, busy, watchful, engaged, clear about consequences and robust in the enforcement of law where improvement does not result;
- To apply fairness and proportionality – focus on tackling harm, evidence base, reasonable, working within the boundaries of the law at all times
- To be open and transparent – tell licensees, businesses, the public and each other what we are doing, seek cooperation, and publicise impact as a means to inform, educate and deter

In order to address these issues the partnership will focus its efforts on:

**Co-operation within the partnership to share information, ways of working and to tackle issues at an early stage**

**Engaging with and educating businesses and the public**  
**Enforcement**

These will be developed as part of guidance which is being produced to support and inform the Local Responsible Bodies Groups, and by Task and Finish Groups.

The clear message the partnership wants to give is that the authorities will use their individual powers, cooperate and coordinate activities with each other in order to tackle breaches of licensing law.

### **Priorities for 2013**

During the next 12 months the priorities for the partnership will be to focus on breaches of licensing legislation that result in alcohol related violence and the underage sale and consumption of alcohol.

In tackling such breaches partners will apply the full range of powers available to them dependent upon the circumstances of each case ensuring that irresponsible traders who do not comply with the law are called to account.

The partnership will also seek to work with the licensed trade to tackle the misuse of alcohol, and develop stronger relationships, to provide sustainable outcomes.

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By virtue of paragraph(s) 3, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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