

**Meeting: Cabinet**

**Date: 11<sup>th</sup> August 2020**

**Wards Affected: All**

**Report Title: Licensing Act 2003 – Draft Licensing Statement of Principles 2021 to 2026**

**Is the decision a key decision? Yes**

**When does the decision need to be implemented? 7<sup>th</sup> January 2021**

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## **1. Proposal and Introduction**

- 1.1 In accordance with Section 5 of the Licensing Act 2003, the Council is required every 5 years, to review, consult and republish its Licensing Statement of Principles (The Statement). The current Statement was published on 7<sup>th</sup> January 2016 and therefore, it must be reviewed, consulted upon and re-published, on or before 6<sup>th</sup> January 2021.
- 1.2 This report introduces the proposed revision to the Council's draft Statement 2021 to 2026, prior to consultation and ultimate adoption by Full Council on 3rd December of this year.
- 1.3 The Cumulative Impact Policy (CIP), which has always formed part of the Statement, now stands alone from it following a change in legislation. This will now be required to be reviewed every 3 years and therefore, will run from 2021 to 2024. This report therefore, also introduces the revised draft CIP 2021 to 2024, which will be consulted alongside the draft Statement.
- 1.4 The significant changes to the draft Statement are based around the business friendly recommendations from the Evening and Night Time Economy Solutions Ltd review of Torquay Evening and Night Time Economy In May 2019, along with emerging issues and good practice from the past five years.

## **2. Reason for Proposal and associated financial commitments**

- 2.1 To meet a statutory obligation as prescribed under Section 5 (1) Licensing Act 2003, which requires that the Licensing Authority (defined as a District Council of England or Wales) publish a Statement and review and re-publish the same, every 5 years.

- 2.2 The proposals contained in this report will not commit the Council financially in any regard, other than staff and consultations costs which will be drawn from existing budgetary resources.
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### **3. Recommendation(s) / Proposed Decision**

- 3.1 That Cabinet approves the draft Licensing Statement of Principles 2021 to 2026, for public consultation.
- 3.2 That the Council approves the draft Cumulative Impact Policy 2021 to 2024, for public consultation.

### **Appendices**

Appendix 1: Supporting Information and Impact Assessment

Appendix 2: Draft Licensing Statement of Principles 2021 to 2026

Appendix 3: Draft Cumulative Impact Policy 2021 to 2024

### **Background Documents**

Licensing Act 2003

<http://www.legislation.gov.uk/ukpga/2003/17/contents>

Licensing Statement of Principles 2016 to 2021

<https://www.torbay.gov.uk/media/2993/licensing-statement-of-principles-2016-final.pdf>

Statutory Guidance issued under section 182 Licensing Act 2003

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705588/Revised\\_guidance\\_issued\\_under\\_section\\_182\\_of\\_the\\_Licensing\\_Act\\_2003\\_April\\_2018\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf)

## Section 1: Background Information

### 1. What is the proposal / issue?

Torbay Council has a statutory responsibility under Section 5 (1) of the Licensing Act 2003 (the Act) to review, consult and to re-publish its Licensing Statement of Principles (the Statement). In doing so it is following the guidance in what needs to be included within that Statement.

It is also necessary to review the Councils Cumulative Impact Policy (the CIP), which, following a change to the Act (Section 5A) that was introduced by section 141 of the Policing and Crime Act 2017 on 6th April 2018, is now placed on a statutory footing requiring separation from the Licensing Statement of Principles and to be reviewed every 3 years.

In both cases the process of review, consultation and publication must be completed on or before 6th January 2021.

### 2. What is the current situation?

The Statement identifies how the Council will perform its role as Licensing Authority in relation to the licensing process for the sale and supply of alcohol, regulated entertainment and late night refreshments.

The Council is not required to identify a CIP area, however, it may do so in areas where there is increased crime and/or disorder that is caused by the cumulative effect of a number of licensed premises in the one area. The Council has therefore, adopted such a policy for the area around the harbour side in Torquay and through Fleet Street and the Castle Circus areas.

The Act generally carries a rebuttable presumption to grant an application for a new or a variation to a Premises Licence. The effect of a CIP is that any such application received in the area of a CIP, will instead carry a rebuttable presumption to refuse. This places the onus upon the applicant to illustrate how they would adequately promote the licensing objectives as part of their operation were the application to be granted. The draft CIP, has been amended to only apply a rebuttable presumption to refuse for 'vertical drinking establishments', late Night Refreshment and 'Off Licences', in the revised CIP area.

Both the Policy and the CIP must undergo full consultation as prescribed under the Act, unlike other Licensing functions, they must be agreed by Full Council and published by the statutory dates.

### 3. What options have been considered?

No other options have been considered as this is a statutory requirement.

<p><b>4.</b></p>	<p><b>What is the relationship with the priorities within the Partnership Memorandum and the Council’s Principles?</b></p> <p>The Statement ensures clarity as to how the Council will fulfil its role as Licensing Authority and provides clarification and guidance to businesses and the public alike.</p> <p>The Statement has been amended to support a thriving evening and night time economy and to stress the importance of all partners working together achieve this. It seeks to support cultural elements within this economy, which represents 24% of the Torbay economy, and COVID 19 aside, is seen as a growing sector. It also assists business to function safely and within the law. It therefore helps to promote three of the priorities, namely thriving people and communities, thriving economy and a council fit for the future.</p> <p>By making clear what is required and expected both from the Council and reciprocally from businesses, this assists in using resources to the best effect and helps to reduce the demand on resources by reducing the levels of intervention through enforcement activity. It is also seeking to support businesses, with the emphasis of the document being changed to work in partnership.</p> <p>Key throughout the Policy, is the partnerships forged through the licensing functions, particularly with Police partners and other Council departments. This therefore promotes the key principle of maintaining an integrated and joined up approach.</p>
<p><b>5.</b></p>	<p><b>How does this proposal/issue contribute towards the Council’s responsibilities as corporate parents?</b></p> <p>One of the four licensing objectives is the Protection of Children from Harm. Licence holders and applicants are expected to promote this (and the other three objectives at all times). The Policy outlines the expectations of applicants and Licence holders in this regard.</p> <p>It is also important to note that the Local Children’s Safeguarding Board are a named responsible authority under the Act, this means that they are advised of every application that is received and have opportunity to make comment or representation.</p> <p>The Local Children’s Safeguarding Board are active throughout the application process and often exercise their right to comment. They will also be consulted as part of this Policy review.</p>
<p><b>6.</b></p>	<p><b>How does this proposal/issue tackle poverty, deprivation and vulnerability?</b></p> <p>The Statement aims to be more business supporting, implementing the report recommendations of the review undertaken by Night Time Economy Solutions Ltd in May 2019. This especially includes alterations to the Cumulative Impact Policy, which focuses on the types of business that may</p>

	<p>lead to nuisance and disorder collectively and not as previously, on all businesses. This should support a stronger economy, which will then have a positive impact on poverty and deprivation.</p>
7.	<p><b>How does the proposal/issue impact on people with learning disabilities?</b></p> <p>No impact either positive or negative - neutral</p>
8.	<p><b>Who will be affected by this proposal and who do you need to consult with? How will the Council engage with the community? How can the Council empower the community?</b></p> <p>The holders of Premises licences and future applicants are those that are more directly affected by this Statement. These are businesses and business operators that provide alcohol, regulated entertainment and/or late night refreshments.</p> <p>The Statement, however looks to protect the public who may be affected by public nuisance or Crime and Disorder</p> <p>In accordance with Section 5 (3) of the Act, the Policy must be consulted widely with key consultees, which is interpreted within the Statement to be the following:</p> <ul style="list-style-type: none"> <li>a) The Chief Officer of Devon and Cornwall Police</li> <li>b) The Chief Officer of Devon and Somerset Fire and Rescue Service</li> <li>c) The Director of Public Health</li> <li>d) Residents and businesses of Torbay</li> <li>e) Bodies representing businesses</li> <li>f) Holders of Premises Licences and Club Premises Certificates</li> <li>g) Bodies representing existing registered clubs</li> <li>h) Bodies representing holders of existing premises licences and personal licences</li> <li>i) Torbay and Southern Devon Health &amp; Care NHS Trust</li> <li>j) Torbay Council: Children's Services</li> <li>k) Torbay Council: Planning, Environmental Health and Highways Authorities</li> <li>l) The Torbay Safer Communities Partnership</li> <li>m) The Maritime and Coastguard Agency</li> <li>n) Faith groups via Torbay Interfaith Forum and the Street Pastors</li> <li>o) Torbay Development Agency</li> <li>p) English Riviera BID Company</li> <li>q) Torbay Harbour Authority</li> </ul>

## Section 2: Implications and Impact Assessment

9.	<p><b>What are the financial and legal implications?</b></p> <p>There are no significant additional resource implications that will derive from the Council discharging its statutory obligations, under the Act, though appeals against Licensing Authority decisions do place some additional burden on resources. This is however the due process of law.</p>
10.	<p><b>What are the risks?</b></p> <p>The risks are more associated with any failure to review and re-publish the Statement in time as the effect would be that the Council would have no Policy in place, which effectively would prevent lawful discharge of functions under the Licensing Act 2003, which may lead to legal challenge against the Council and financial penalties being incurred.</p> <p>The risks associated with agreeing the Statement are minimal as it has been reviewed in line with regulatory requirements, which include full consultation and consideration of any comments that are received.</p>
11.	<p><b>Public Services Value (Social Value) Act 2012</b></p> <p>Does not apply</p>
12.	<p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p>Research and data has been compiled in relation to the CIP. This is a requirement in order to justify the retention of the CIP and to ensure that evidence exists in order to defend the Council's position should this be necessary.</p>
13.	<p><b>What are key findings from the consultation you have carried out?</b></p> <p>Consultation to run between xx August and xx October 2020</p>
14.	<p><b>Amendments to Proposal / Mitigating Actions</b></p> <p>To be completed following consultation</p>

## Equality Impacts

15.	<b>Identify the potential positive and negative impacts on specific groups</b>  The Policy is a review of an existing Policy and therefore there is no change to impact of specific groups. Where there exists any potential for impact, this would generally be through the application process where there is the safeguard that any responsible authority or 'other person' may make representation. The four licensing objectives are also designed to ensure consideration of any impacts.		
	<b>Positive Impact</b>	<b>Negative Impact &amp; Mitigating Actions</b>	<b>Neutral Impact</b>
Older or younger people	X (young people)		
People with caring Responsibilities			X
People with a disability			X
Women or men			X
People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			X
Religion or belief (including lack of belief)			X
People who are lesbian, gay or bisexual			X
People who are transgendered			x

	People who are in a marriage or civil partnership		X
	Women who are pregnant / on maternity leave		X
	Socio-economic impacts (Including impact on child poverty issues and deprivation)	X	
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		X
16.	<b>Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	None	
17.	<b>Cumulative Impacts – Other public services</b> (proposed changes elsewhere which might worsen the impacts identified above)	None	