

<b>TITLE</b>	<b>Licensing Act 2003 – Policy Review</b>
<b>FOR CONSIDERATION BY</b>	Licensing and Appeals Committee on 10 July 2013
<b>WARD</b>	<b>None Specific</b>
<b>STRATEGIC DIRECTOR</b>	<b>Paul Anstey Joint Service Delivery Manager for Environmental and Licensing</b>

**OUTCOME / BENEFITS TO THE COMMUNITY**

To provide Members with a draft of the revised Licensing Act Policy for consideration and to seek approval to undertake a formal consultation exercise, with responses and an amended draft brought to a meeting of this Committee on 17 September for consideration and recommendation to Council on 19 September for adoption.

**RECOMMENDATION**

Members are recommended to agree to the attached draft policy going to consultation with the statutory consultees.

**SUMMARY OF REPORT**

- The current policy expires in September of this year and must be reviewed;
- This report presents the current Licensing Act policy with amendments highlighted as a result of the amended guidance produced in April 2012 for review prior to consultation;
- The consultation responses will be presented to a meeting of this Committee in September for consideration and amendment to the policy, as appropriate, before recommending adoption to Council later in that month.

## Background

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.

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 Wokingham Borough Council's most recent policy was adopted prior to January 2011, it is required to be reviewed at this time.

Wokingham Borough Council adopted its first Licensing Policy Statement in September 2004. This policy was subsequently reviewed in 2007 and 2010, re-adopted without amendment.

The Guidance issued under section 182 of the 2003 Act states that before determining its policy for any five year period, the Local Authority must consult the persons listed in section 5(3) of the 2003 Act. These are:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- each Primary Care Trust or Local Health Board for an area any part of which is in a licensing authority's area;
- persons/bodies representative of local holders of premises licences;
- persons/bodies representative of local holders of club premises certificates;
- persons/bodies representative of local holders of personal licences; and
- persons/bodies representative of businesses and residents in its area.

During the life of the current policy, it has proved satisfactory and has guided applicants, officers, and the Licensing Sub-Committee in the consideration and determination of applications. There have been no challenges made to any parts of the policy during its validity.

The Licensing Service has produced a revised draft Licensing Policy for consideration which contains suggested amendments to the existing Licensing Policy shown in red, a copy of which is attached to this Report marked "Appendix A". It is intended that this draft Licensing Policy, subject to consultation, will replace the current adopted Licensing Policy when finalised.

The amendments proposed to the policy relate largely to changes required as a result of changes in legislation. The Live Music Act 2012 has exempted live music from the requirement to be licensed in certain circumstances and the policy has been amended to reflect this. In addition, the Police Reform and Social Responsibility Act 2011 made various amendments to the 2003 Act, the main amendments are summarised below, and again the policy has been amended to reflect these changes, where needed:

- introduced Licensing Authorities and Primary Care Trusts/Local Health Boards as responsible authorities;
- removed the vicinity test in relation to the submission of relevant representations;
- reduced the evidential burden on licensing authorities by changing the term necessary, used throughout the 2003 Act, to the term appropriate;
- introduced the concept of late temporary event notices, extended those who can object to temporary event notices to include Environmental Health (in addition to the Police) and extended the grounds upon which objections can be made to include all of the licensing objectives;
- introduced powers relating to Early Morning Restriction Orders and the Late Night Levy.

It is proposed that the attached draft Licensing Policy be subject to an eight week consultation period, between July 2013 and September 2013, to enable people to submit comments on the draft policy. Comments received during the consultation process will then be reported back to the Licensing Committee for further consideration on 17 September 2013.

The policy must be approved by full Council prior to it coming into force. It is proposed that the finalised policy be referred to full Council on 19 September 2013.

### **Analysis of Issues**

A review of the existing Licensing policy as required by legislation incorporating amended guidance issued under section 182 of the Licensing Act 2003.

### **FINANCIAL IMPLICATIONS OF THE RECOMMENDATION**

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	Nil	N/A	N/A
Next Financial Year (Year 2)	Nil	N/A	N/A
Following Financial Year (Year 3)	Nil	N/A	N/A

### **Other financial information relevant to the Recommendation/Decision**

The revision of the 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.

### **Cross-Council Implications**

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

### **List of Background Papers**

Existing Licensing Policy- September 2010  
 Amended Guidance issued under section 182 of the Licensing Act 2003 – April 2013  
 Police Reform and Social Responsibility Act 2011  
 Live Music Act 2012

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<b>Date</b> 26 June 2013	<b>Version No.</b> One



**WOKINGHAM  
BOROUGH COUNCIL**

# Licensing Policy

**September 20130**

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REF

# 1

## **The Four Licensing Objectives**

All the Council's actions under the Licensing Act 2003 will be carried out in order to achieve the licensing objectives. Only these matters may be taken into consideration, and no others, when determining a course of action. Each objective is of equal importance.

The four licensing objectives are:-

- 1 The prevention of crime and disorder**
- 2 Public safety**
- 3 The prevention of public nuisance,  
and**
- 4 The protection of children from harm**



## 2 Terminology

Throughout this Policy the following terms are used which are defined in the Licensing Act 2003. For simplicity, abbreviated meanings are given below; although these meanings should not be used as a replacement for the legal definitions:

**Licensable Activity** – One or more of:-

- 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
- d) The provision of late night refreshment

### Licence

A Premises Licence, Club Premises Certificate or a Personal Licence

### Licensee and Licence Holder

A person or organisation that holds a Premises Licence, Club Premises Certificate or a Personal Licence.

### Regulated Entertainment

Entertainment provided for the public, members of a qualifying club and their guests, or for profit; and being:-

- a) A performance of a play
- b) An exhibition of a film
- c) An indoor sporting event
- d) A boxing or wrestling entertainment
- e) A performance of live music
- f) Any playing of recorded music
- g) A performance of dance
- h) Activities similar to e, f or g above

Live unamplified music taking place between 08.00 hours and 23.00 hours and live amplified music taking place between 08.00 hours and 23.00 hours before audiences of no

more than 200 people on premises authorised to supply alcohol on the premises or in workplaces is not regulated entertainment by virtue of amendments made to the Licensing Act 2003 by the Live Music Act 2012

### **Late Night Refreshment**

The supply to the public of hot food or drink after 23.00 and before 05.00.

REF

### 3 General Considerations

3.1 The Council recognises that licensed activities are an important part of the cultural life in our community and they make an important contribution to the economy of the Borough. By regulating activities under this legislation it acknowledges that a balance must be struck between the legitimate objectives of applicants and the desires of the population as a whole, and in particular those members of the public living, working or engaged in normal activity in the area concerned. A balance must be struck between these, often conflicting, positions and all views will be taken into account when making licensing decisions or determining a course of action.

3.2 This policy relates to the provisions of the Licensing Act 2003 and subordinate legislation made under that Act and nothing in this policy is intended to indicate that the requirement of any other enactment is superseded or duplicated.

3.3 It is the responsibility of the applicant to ensure that they comply with all relevant legislation. Examples of other areas where legislation may apply to licence holders and potential licence holders are:-

- Building Regulations
- Disability Discrimination
- Environmental Protection
- Food Safety
- Health and Safety At Work
- Fire Safety Legislation
- Town and Country Planning
- Working Time Legislation

3.4 It is acknowledged that public concern over disorder in particular may be thought to be a result of licensing legislation only. The council can only have regard to the provisions of the Licensing Act 2003 when determining an application. However the Council also realises that other mechanisms exist to control bad and unlawful behaviour, e.g. planning controls, town centre

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management arrangements, confiscation of alcohol from adults and children in designated areas, and Police enforcement powers.

3.5 It is the responsibility of the licence holder to ensure that staff are sufficiently trained to fulfill their duties and to fully comply with the requirements of the licence.

3.6 Under this policy, each application will be considered on its individual merits.

3.7 In imposing conditions to any licence, the Council recognises that the licensee is only responsible for those matters under the licensee's control and that conditions can only be imposed, as a result of relevant representations.

Any conditions set will be proportionate and necessary appropriate to secure the licensing objectives.

3.8 The Council recognises the need to encourage and promote live music, dancing and theatre and is aware of the need to avoid measures which deter these activities. To this end the Council, as the Licensing Authority, will consider applications for publicly owned land and buildings, to facilitate their use by performers and entertainers, without the need for them to individually apply for a licence or give a temporary event notice.

3.9 The Council is conscious of Race Relations legislation and when considering licensing matters will give due regard to the elimination of unlawful discrimination, the promotion of equality of opportunity and good relations between persons of different racial groups. In all its work the Council has regard to its race equality scheme.

3.10 For advice on the application of the Licensing Act 2003, or for assistance in determining whether or not an activity requires a licence, please contact the Licensing Team within the Place and Neighbourhoods Service.

Contact details:-

By telephone: 0118 974 6358

By e-mail: [Licensing@wokingham.gov.uk](mailto:Licensing@wokingham.gov.uk)

By fax: 0118 974 6401

By letter: Licensing Service

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Wokingham Borough Council  
PO Box 155  
Shute End  
Wokingham  
Berks RG40 1WW

Website: [www.wokingham.gov.uk](http://www.wokingham.gov.uk)

REF

#### **4. Activities Regulated by this Policy**

This Policy sets out the Council's position regarding regulation of activities under the Licensing Act 2003. The following are covered by this Policy:-

##### **Premises Licences**

i.e. A premises where one or more of the following takes place:-

- The sale of alcohol by retail
- The provision of regulated entertainment
- The provision of late night refreshment

##### **Club Premises Certificates**

i.e. A club premises is a premises which is occupied by and habitually used for the purposes of a club, which has met the criteria to become a 'qualifying club'

##### **Permitted Temporary Activities**

i.e. Use of premises for licensable activities for:-

- a period of less than 96168 hours, and for
- no more than 499 ~~fewer than 500~~ persons

##### **Personal Licences**

i.e. A licence which authorises an individual to supply alcohol, or authorise the supply of alcohol

## **5 Licensing Objective 1**

### **The Prevention of Crime and Disorder**

5.1 The Council is committed to work in reducing crime and disorder in the Borough and will consider these matters when fulfilling its functions, as required by the Crime and Disorder Act 1998. When applying conditions, the Council will be mindful of the local Community Safety Strategy.

5.2 The Council acknowledges that its duties, under the Licensing Act 2003, are a key way of reducing crime and disorder in the Borough and through this mechanism, will seek to bring about improvements, with particular emphasis on alcohol-related disorder and anti-social behaviour.

5.3 Licence Holders play a key role in the prevention of crime and disorder and will be expected to address these issues in their Operating Schedule.

5.4 The Council encourages the use of Closed Circuit Television (CCTV) surveillance as a deterrent to crime and disorder. The Council may require the installation of a suitable CCTV system to the specification of the Thames Valley Police if it is believed that this will reduce the incidence of crime and disorder.

5.5 The Council encourages the usage of community watch schemes. The active membership of schemes such as 'Pubwatch' and the like, will be seen as an indicator of attempts to reduce crime and disorder.

5.6 When considering new or proposed premises, the Council will expect the building design to be agreed with the Police Prevention & Design Officer and/or Crime Reduction Advisor with a view to 'designing out' crime.

5.7 The Council supports the establishment and implementation of an enforcement protocol, agreed with the Thames Valley Police, for the reduction of crime and disorder associated with any licensed activities.

## **6 Licensing Objective 2**

### **Public Safety**

6.1 The Council is committed to ensuring public safety in licensed premises by working in partnership with the Royal Berkshire Fire and Rescue Service and other responsible authorities.

6.2 Conditions relating to public safety measures may be attached to a licence in order to meet any requirement identified by the Royal Berkshire Fire and Rescue Service or other responsible authority. These conditions may include an occupancy limit which would enable one or more of the licensing objectives to be met.

6.3 The Council encourages measures to promote anti-drink/driving campaigns.

6.4 Special effects, such as smoke, lasers, or foam may be controlled by the use of conditions.

NB There is an overriding legal duty to comply with the provisions of Health and Safety at Work legislation, including risk-assessment and control.

### **7 Licensing Objective 3**

#### **The Prevention of Public Nuisance**

7.1 The Council is committed to minimising the adverse impact of licensable activity, whilst not unduly restricting the reasonable provision of licensed activity. In considering applications the Council will seek to ensure that personal and public amenity are maintained.

7.2 The nuisances which the Council will seek to control are, amongst others:-

- Noise and vibration
- Light
- Odour
- Litter
- Anti-social behaviour
- Unreasonable disturbance from customers arriving and leaving premises
- Impact of customer parking



## **8 Licensing Objective 4**

### **Protection of Children from Harm**

8.1 For the purposes of this Policy, a child is a person who has not yet reached their 18<sup>th</sup> birthday.

8.2 'Harm' is taken to mean activities that may damage the moral, psychological or physical wellbeing of a child. Activities that have the potential to cause harm to children include:-

- Entertainment or services of an adult or sexual nature
- Underage sales or drinking of alcohol
- Drug taking or dealing
- A strong element of gambling
- The consumption of alcohol on a premises where this is the exclusive or primary purpose of the premises
- Tobacco smoking
- Excessive noise
- Particular hazards, such as falls from height

8.3 It is expected that any operating schedule will demonstrate how the licensee will ensure that no harm comes to any child by virtue of the licensable activities. These may include:

- Limiting the hours that children may be present
- Excluding children when particular specified activities are taking place
- Limiting the parts of the premises to which children have access
- Age limitations
- Excluding under 18's from the premises when licensable activities are taking place
- Requiring that an accompanying adult be present

- Arrangements for restricting children from viewing age-restricted films
- Arrangements to ensure that sufficient adult staff are present to ensure that the children are protected from harm

8.4 The Council may impose conditions to ensure that no harm comes to any child by virtue of the licensable activities, although conditions cannot require that children be admitted, this is a matter for the licensee to determine.

8.5 To ensure that a licensee complies with this requirement, the Council encourages the use of 'Proof of Age' schemes.

8.6 The Council commends the work done by the Portman Group and supports the application of their Code of Practice which seeks to control the Naming, Packaging and Promotion of Alcoholic Drinks in a manner which may appeal to or attract minors.

8.7 In respect of Licensing matters the Council, as the Licensing Authority, recognises the Wokingham Safeguarding Children Board as the Responsible Authority in relation to the protection of children.

## 9 Operating Hours

9.1 The Council recognises that one important aspect of the Licensing Act 2003 provisions, is the abolition of national operating times for premises selling alcohol. The Council is mindful of the view that longer licensing hours for the sale of alcohol will help ensure that the problems arising when large numbers of customers leave premises simultaneously are avoided.

9.2 With regard to shops, stores and supermarkets selling alcohol, the norm will be that they may sell alcohol at any time they are open for trading, unless there are good reasons for restricting those hours.

9.3 The Council will only determine the operating hours of any licensable activity, if there is the belief that by limiting the operating hours, one or more of the Licensing Objectives will be met.

9.4 The licensing hours for each case will be considered on the individual merits of the application.

## 10 Cumulative Impact

10.1 The Council recognises that the commercial demand for another premises in an area is not a matter for Licensing considerations. This matter is properly a matter for the planning process and the market.

10.2 The Council also recognises that where there are several premises providing licensable activity in the same vicinity, the cumulative impact may have an adverse effect on the community; in particular from nuisance and disorder. Accordingly, the Council may refuse additional applications if it believes that to grant a licence would undermine one or more of the Licensing Objectives, and/or representations have been received from a responsible authority or other person ~~an interested party~~. In addition, the Council has to be satisfied that the criteria set out in the legislation are met. Reference to the General Considerations section of this Policy will demonstrate that each application will be considered on its own merits.

10.3 If the Council considers that a 'Special Policy' is needed to deal with the cumulative impact of licensed premises, it will only do so following consultation as specified in the Licensing Act 2003 and following the proper process.

10.4 The Council will expect licensees and potential licensees within an

area, to communicate with each other and prepare their Operating Schedules so that they complement each other and collectively meet the Licensing Objectives.

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## 11 Licensing and Appeals Committee

11.1 Arrangements will be made for the Licensing and Appeals Committee to receive information on:-

- Crime Prevention
- Planning Strategies
- Transport Strategies and Plans
- Tourism Strategies
- Race Equality Schemes
- Cultural Strategies
- Employment in the Borough
- Arts Development

11.2 In addition the Licensing and Appeals Committee will provide information to the Planning Committee regarding the situation with licensed premises in the Borough, and in particular alcohol related crime and disorder.

11.3 To avoid duplication and inefficiency, the planning, building control and licensing regimes will be properly separated. It is expected that planning consent for a particular undertaking would normally be received prior to consideration of a licence application.

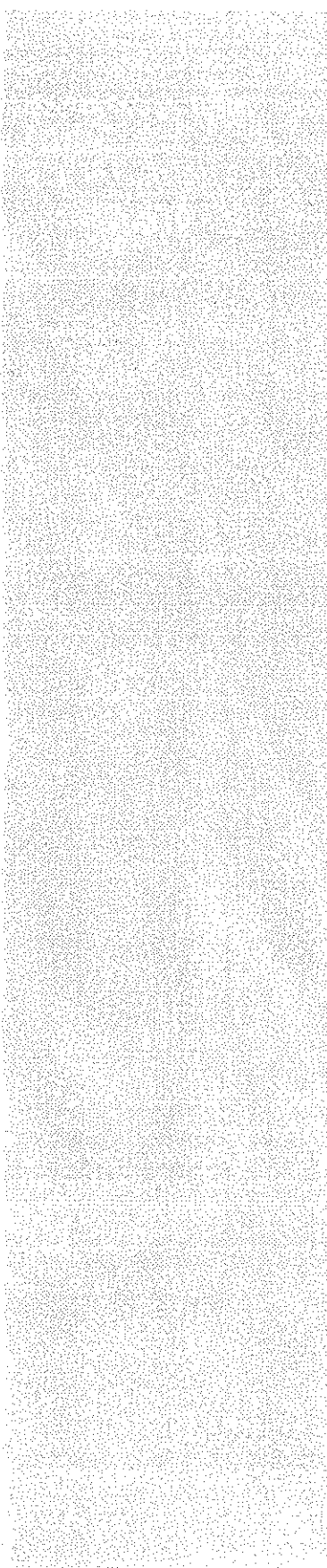
## 12 Licensing Decisions

12.1 The Council will seek to carry out its responsibilities under the Licensing Act 2003 speedily, efficiently and cost-effectively. To do this, functions are delegated from the Licensing and Appeals Committee to either Sub-Committees or officers, as appropriate. Licensing decisions will be delegated in the following manner, however the definitive delegations are included within the Council's Scheme of Delegations which can be found on the Council's website – [www.wokingham.gov.uk](http://www.wokingham.gov.uk):

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Policy Decisions	All cases		
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc			All cases

Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of an <u>an</u> -police objection to a temporary event notice		All cases	
Determination of <u>minor variation application</u>			<u>All cases</u>
<u>Decision whether to consider other responsible authorities on minor variation application</u>			<u>All cases</u>
Determination of application to vary <u>premises licence at community premises to include alternative licence condition</u>		<u>If police objection</u>	<u>All other cases</u>

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## 13 Licensing Conditions

13.1 Many licences are issued subject to conditions. These conditions are applied to a licence to ensure that one or more of the Licensing Objectives are met. The conditions applied to a licence will relate to that particular licence and will not be simply a standard set of conditions.

13.2 The Council will apply conditions following the guidance issued by the Secretary of State in addition to the mandatory conditions as laid down in the legislation and associated guidance. Notwithstanding this, other conditions may also be applied to specific licences.

13.3 It must however be noted that the attachment of conditions, or the compliance with them, will not relieve anyone of their statutory duties under other legislation, see section 3 – General Considerations.

## 14 Enforcement

14.1 Enforcement by the Council will be in accordance with the West Berkshire Corporate Services Enforcement Policy and in compliance with the National West Berkshire Enforcement Concordat.

14.2 The West Berkshire Corporate Services Enforcement Policy is available at the Council offices and can be found on the Council's website at [www.westberks.gov.uk](http://www.westberks.gov.uk) [www.wokingham.gov.uk](http://www.wokingham.gov.uk)

14.3 The Enforcement Concordat is based on the principles that businesses should:

- Receive clear explanations from enforcers on what they need to do and by when;
- Have opportunities to resolve differences before enforcement action is taken – unless immediate action is needed;
- Receive an explanation of their rights of appeal.

## 15 Policy Review

15.1 The Council's Statement of Licensing Policy will be published every

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fivethree years.

15.2 During this period, the Policy will be kept under review and the Council may make such revisions as it considers appropriate. The Policy, complete with revisions, may be viewed on the Council's website [www.wokingham.gov.uk](http://www.wokingham.gov.uk), and is available at the Council's offices.

#### 16.0 Early Morning Restriction Orders (EMROs)

16.1 The Licensing Act sets out powers conferred on licensing authorities to make early morning alcohol restriction orders. These powers are designed to help licensing authorities address specific problems caused by late night supply of alcohol in their areas allowing licensing authorities to restrict the sale of alcohol in the whole or a part of their areas between 12 midnight and 6am. Licensing Authorities may make an EMRO in relation to problem areas if they have evidence that the order is appropriate for the promotion of the licensing objectives. At the time of writing this policy the Licensing Authority has no plans to make an EMRO in any part of the Wokingham Borough Council area, however, the situation will be kept under review and should evidence emerge that suggests that the sale of alcohol between 12 midnight and 6am is creating specific problems the Council will consider whether the introduction of an EMRO is appropriate. In considering the appropriateness of an EMRO the licensing authority will consider evidence from partners, including responsible authorities and local Community Safety Partnerships or other sources. If a proposal to implement an EMRO arises in the future the Licensing Authority will advertise and consult about its proposal in accordance with legislation and national guidance.

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#### 17.0. The Late Night Levy (LNL)

17.1 Late night levy powers will allow licensing authorities to raise a contribution from late opening alcohol retailers (12 midnight to 6am) towards policing the late night economy. This is a power that licensing authorities can choose whether to adopt for their areas. If adopted the powers must apply to the whole of the licensing authority's area. Income from the net levy is to be split between the Police and the Licensing Authority on the basis of a minimum 70% allocated to the Police and a maximum 30% allocated to the licensing authority. At the time of writing this policy the Licensing Authority has no plans to collect a LNL, however the situation will be kept under review and prior to making a decision to implement a LNL, the licensing authority would have discussions with the Police and Crime Commissioner (PCC) and local police to decide whether it is appropriate to introduce a LNL. If a proposal to implement a LNL arises in the future, the licensing authority will consult the PCC, the police, licence holders and others about its proposal.