



# LICENSING AND GENERAL PURPOSES COMMITTEE

THURSDAY 15 JUNE 2006  
7.30 PM

COMMITTEE AGENDA

COMMITTEE ROOM 1&2  
HARROW CIVIC CENTRE

MEMBERSHIP (Quorum 4)

Chair: Councillor Mrs Champagne

Councillors:

Benson  
Billson  
Chowdhury  
Kulkarni  
Vina Mithani  
John Nickolay  
Weiss  
Zeid

Choudhury  
Dharmarajah  
Idaikkadar  
Ismail  
O'Dell  
Ray

(none)

(none)

Issued by the Democratic Services Section,  
Legal Services Department

Contact: Michelle Fernandes, Committee Administrator  
Tel: 020 8424 1542 E-mail: michelle.fernandes@harrow.gov.uk

***NOTE FOR THOSE ATTENDING THE MEETING:  
IF YOU WISH TO DISPOSE OF THIS AGENDA, PLEASE LEAVE IT BEHIND AFTER THE MEETING.  
IT WILL BE COLLECTED FOR RECYCLING.***

**HARROW COUNCIL**

**LICENSING AND GENERAL PURPOSES COMMITTEE**

**THURSDAY 15 JUNE 2006**

**AGENDA - PART I**

1. **Declarations of Interest:**

To receive declarations of personal or prejudicial interests, arising from business to be transacted at this meeting, from:

- (a) all Members of the Committee, Sub Committee, Panel or Forum;
- (b) all other Members present in any part of the room or chamber.

2. **Arrangement of Agenda:**

To consider whether any of the items listed on the agenda should be considered with the press and public excluded on the grounds that it is thought likely, in view of the nature of the business to be transacted, that there would be disclosure of confidential information in breach of an obligation of confidence or of exempt information as defined in Paragraph 1 of Schedule 12A to the Local Government Act 1972 (as amended).

3. **Minutes:**

That the minutes of the meeting held on 6 March 2006, having been circulated, be taken as read and signed as a correct record and the minutes of the Special Licensing and General Purpose Committee held on 5 June 2006 be deferred until printed in the Council Bound Volume.

4. **Public Questions:**

To receive questions (if any) from local residents or organisations under the provisions of Committee Procedure Rule 19 (Part 4B of the Constitution).

5. **Petitions:**

To receive petitions (if any) submitted by members of the public/Councillors under the provisions of Committee Procedure Rule 16 (Part 4B of the Constitution).

6. **Deputations:**

To receive deputations (if any) under the provisions of Committee Procedure Rule 17 (Part 4B of the Constitution).

- Enc. 7. **Response to the Department for Communities and Local Government (DCLG) consultation draft Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006:** (Pages 1 - 14)

Report of the Director of Financial & Business Services.

- Enc. 8. **Report on the implementation on the proposed Alcohol Exclusion Zone under The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001:** (Pages 15 - 26)

Report of the Chief Environmental Health Officer.

Enc. 9. **Outline Report on Gambling Act 2005:** (Pages 27 - 34)  
Report of the Chief Environmental Health Officer.

Enc. 10. **Summary of Concluded Licensing Appeals:** (Pages 35 - 42)  
Report of the Director of Legal Services.

**AGENDA - PART II - NIL**

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Meeting:	Licensing and General Purposes Committee
Date:	15 <sup>th</sup> June 2006
Subject:	Response to the Department for Communities and Local Government (DCLG) consultation draft Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
Responsible Officer:	Myfanwy Barrett - Director of Financial & Business Services
Contact Officer:	Greg Foley – Group Manager – HR Employee Services
Portfolio Holder:	Portfolio Holder Communications, Partnership and Human Resources
Key Decision:	No
Status:	Part 1 – Public

### **Section 1: Summary**

On 8 May 2006 the Department for Communities and Local Government issued consultation draft regulations to replace the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000.

The new regulations set out to ensure that the discretionary powers to award compensation to local authority staff whose employment is terminated early will meet the requirements of the European Employment Directive. The regulations are intended to come into force on 1 October 2006, corresponding with the Employment Equality (Age) Regulations 2006.

### **Decision Required**

**That Elected Members consider the content of the report and form a view as to the most appropriate response. (See Appendix 3).**

**Elected Member response will be forwarded to the Department for Communities and Local Government by 31 July 2006.**

**That Elected Members instruct officers to submit a report on all Discretionary Payments once new legislation is to hand.**

## **Reason for report**

Response to the consultation draft regulations required by 31 July 2006

## **Benefits**

Compliance with Employment Equality (Age) Regulations 2006

## **Cost of Proposals**

Contained within the body of the report.

## **Risks**

None

## **Implications if recommendations rejected**

Non compliance with Employment Equality (Age) Regulations 2006

## **Section 2: Report**

### **2.1 Brief History**

2.2 The Compensation Regulations provide employers with the discretion to award compensation to staff whose employment has been terminated early on grounds of redundancy, in the interests of efficiency or on cessation of a joint appointment.

2.3 Legislation promulgated in April 1998 placed a statutory duty on the employing authority to formulate and publish a policy on application of discretions both in relation to the main scheme regulations (i.e. The Local Government Pension Scheme Regulations 1997) and the associated Compensatory Regulations.

2.4 Following a meeting of the Policy & Resources Committee, 2<sup>nd</sup> April 1998 Harrow Council formulated and issued their mandatory policy statement relating to discretions under the main scheme and also relating to its discretionary powers under the Discretionary Compensation Regulations. (See **Appendix 1**).

### **2.5 Rationale for government intervention**

2.6 The European Employment Directive on Age Discrimination militates against the use of references to age in official regulations – unless it can be objectively justified.

### **2.7 Options considered**

2.8 Initial consultations on proposed changes to the Discretionary Compensation Regulations were carried out as part of the Office of Deputy Prime Minister's (ODPM) stocktake Discussion Paper 'Facing the future – Principles and propositions for an affordable and sustainable Local Government Pension Scheme in England and Wales'.

- 2.9 Following consultation and after a careful assessment two options were identified as possible ways forward;
- 2.10 **Option A:** Introduce new regulations providing local authority employers with broad discretionary powers to make a one-off lump sum payment of up to two years pay.
- 2.11 **Option B:** Introduce new regulations providing local authority employers with broad discretionary powers to make a one-off lump sum payment of up to five years pay.
- 2.12 It is proposed that the discretion to award compensatory added years under the discretionary regulations is removed.
- 2.13 For both options there is no expectation that employers' staff compensation costs would rise (please refer to **Appendix 2** for examples and comparisons). Like the current Regulations, payment is discretionary and there is no reason to suppose that implementation would lead employers to increase their overall compensation budgets. It would give employers more flexibility to set the most appropriate compensation level for each individual case.
- 2.14 However, the potential maximum compensation costs under "Option B" would be two and a half times higher than those generated under "Option A". It may be questionable whether it would be appropriate to increase the flexibility for compensation payments up to a maximum of five years pay.
- 2.15 At this time the authority is not aware of any suggestion to change the discretionary award of Compensatory Added Years under the Teachers' Pension Scheme.
- 2.16 **Draft Regulations**
- 2.17 As with the current regime the draft regulations require each authority to formulate, publish and keep under review their policies on compensation. In formulating and reviewing their policies, authorities must have regard to the extent to which the exercise of their discretionary powers, unless properly limited, could lead to a serious loss of confidence in the public service and ensure that they are workable, affordable and reasonable, having regard to costs.
- 2.18 **Consultation**
- 2.19 A briefing note detailing the draft amendments has been presented to CMT.
- 2.20 **Financial Implications**
- 2.21 Contained within the body of the report
- 2.22 **Legal Implications**
- 2.23 Contained within the body of the report.

## 2.24 Equalities Impact

2.25 Contained within the body of the report

### **Section 3: Supporting Information/Background Documents**

#### Appendices

Appendix 1 – Mandatory policy statement relating to discretions under the main scheme and relating to its discretionary powers under the Discretionary Compensation Regulations

Appendix 2 – Example and comparisons

Appendix 3 – Suggested response

#### Other supporting documents

Background Documents: Consultation draft: The Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 and supporting correspondence to Associated Employers.

Licensing and General Purposes Committee (papers copied to Pensions Investment Fund Panel): 7 March 2005.

Elected Member response: 7 March 2005



## APPENDIX 1

### All Members of the Local Government Pension Scheme

In my letter dated March 1998, I advised all members that the Council would need to consider discretion's under the new regulations and publish a policy ad publish a policy on the same.

Following a meeting of the Policy & Resources Committee, 2<sup>nd</sup> April 1998 and in accordance with Regulation 106 of the Local Government Pension Scheme (LGPS) Regulations 1997, I have outlined below the Council's Mandatory Policy Statement relating to discretion's under the LGPS 1997 and LGPS (Transitional Provisions) Regulations 1997.

### London Borough of Harrow's Policy Statement

#### Regulation 9 (3) & (6) LGPS (Transitional Provision) Regulations 1997

**Explanation**- The Council must resolve that all female members with a contract to purchase additional widowers' cover (in respect of all or part of their membership before 6 April 1988) will be treated as if their contract has been completed in full on 31 March 1998 and without any further cost.

**Policy** - The Council has resolved that from 1 April 1998, female members with a contract to purchase additional widowers' cover will have that part of the contract which related to any period of LGPS membership from 1 April 1972 to 5 April 1988 treated as completed in full.

However, any part of the contract which relates to membership before 31 March 1972 will remain in force and contributions are payable.

#### Regulation 9 (4) & (6) LGPS (Transitional Provision) Regulations 1997

**Explanation** - The Council may resolve that all female members without a contract to purchase additional widowers' cover (in respect of all or part of their membership before 6 April 1988) may be treated as if they has a contract and had completed it in full on 31 March 1998.

**Policy** - The Council has resolved that for the purpose of calculating widowers' pensions, all married female members on 1 April 1998, with membership between 1 April 1972 and 5 April 1988, will be deemed to have made an election and will therefore receive free widowers' cover for that period.

The Council has also resolved that for purposes of calculating widowers' pensions all unmarried female members on 1 April 1998 and still in membership on the date of any subsequent marriage will be treated in the same way as those who were married on 1 April 1998.

**Regulation 31 LGPS Regulation 1997 (Voluntary Early Retirement)**

**Explanation-** Members (including those who became deferred members from 1 April 1998) aged 50 and over, but before normal retirement age who are entitled to retirement benefits, have the right to apply for early payment of those benefits subject to the consent of their employer. Members aged 60 and over who were members on 31 March 1998 and have been in continuous membership since 1 April 1998 do not need their employer's consent. (If a member's age and membership in whole years equal less than 85, reduced benefits would be payable)

**Policy-** For active members, the Council has resolved to excise this discretion in principle. For deferred members, the Council has resolved to exercise its discretion in cases where there is no financial disadvantage to the council.

The Council has requested that a report be submitted to the next meeting of the personnel sub-Committee with guidelines to assist the Council in achieving fairness and consistency, in applying this regulation.

**Regulation 52 LGPS Regulation 1997 (Power of Employing Authority to Increase Total Membership of Members Leaving Employment at or after age 50).**

**Explanation-** The Council has the discretion to resolve to increase scheme membership on termination of employment for members' aged 50 and over.

**Policy -** The Council has resolved that it should not, at the present time, award extra periods of membership in accordance with this regulation.

**Note:** This regulation **does not** affect the Council's current policy relating to early retirement grounds of ill- health, Redundancy or Efficiency.

**Regulation 53 LGPS regulations 1997 (Power of Employing Authority to Increase Total Membership of New Members).**

**Explanation-** The Council has the discretion to resolve to increase a members' period of membership before the expiry of 6 months from when membership commenced.

**Policy-** The Council is not currently having difficulty in recruiting and retaining employees and therefore, will not apply this discretion, at this time.

**Regulation 67 LGPS Regulation 1997 (Establishment of shared Cost Additional Voluntary Contribution Scheme (SCAVC)).**

**Explanation-** The Council may resolve to establish and maintain a Shared-Cost Additional Voluntary Contribution Scheme (SCAVC).

**Policy**- The Council resolved not to apply this discretion, as there was already provision within the regulations for scheme members to increase their benefits.

**Regulation 15 LGPS 1997 (Reduction/Waiver of an employee's contribution).**

**Explanation**- The London Borough of Harrow have the discretion to resolve to reduce or waive an employee's standard contribution once the employee has completed 40 years' scheme membership in Local Government employment.

**Policy**- The London Borough of Harrow resolved to apply this discretion in principle, subject to a specific resolution being made in each case and that the scheme actuary determines the appropriate contribution rate to apply.

## **FOR INFORMATION**

### **Members of the Local Government Pension Scheme**

Following Executive Action, I have outlined below the Council's Mandatory Policy Statement relating to discretion's under The Local Government (Discretionary Payments) (Amendment) Regulations 1999.

### **London Borough of Harrow's Policy Statement**

#### **Part II- Increase of 1978 Act Redundancy Payments**

**Background** – The Council, empowered by The Local Government (Compensation for Premature Retirement) Regulation 1984, has, for the past 15 years, based redundancy payment on an employee's actual weekly pay as opposed to applying the statutory limit.

**Policy** – The Council resolved to continue to base redundancy payments on employee's actual pay, as defined in Chapter II of part XIV of the Employment Rights Act 1996.

#### **Part III- Compensation for Premature retirement**

**Background**- The Personnel Sub- Committee (July 1998 & 9 December 1998) and the Education, Arts and Leisure Committee (12 January 1999) considered detailed reports on the Early Retirement Scheme. The Council agreed to restrict the maximum award to 6 years 243 days, payable under the Local Government (Discretionary Payments) regulations 1996.

**Policy** – The Council has resolved to continue to apply its discretion in line with the recommendations made by both the personnel Sub and Education, Arts and Leisure Committees.

#### **Part IV – Compensation for Redundancy where Part III does not apply**

**Background** – The Council at its meeting of the Policy and Resources Committee 11 April 1995, adopted Part II of the Local Government (Compensation for redundancy) Regulations 1994. The purpose of the Regulations was to afford the Council an additional discretion when calculating redundancy payments for non-teaching employees under the age of 50 years. Application was restricted to employees in post, with ongoing continuous service, as at 31 March 1995.

**Policy** - The Council has resolved to continue to apply its discretion in line with the recommendation made by the Personal and Resources Committee.

### **Regulation 5**

**Background** – The Council currently applies a policy of awarding a credited period (i.e. compensatory added years) to employees retired on grounds of redundancy. (Award is subject to employee meeting qualifying conditions).

The 1999 Regulation introduce a new discretion, allowing the Council to award a single compensatory lump sum, in place of a credited period, to an eligible employee over 50 years old.

**Policy** - The Council has resolved that it should not, at the present time, adopt this discretion.

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## APPENDIX 2

Examples and comparisons.

Illustrative examples of potential **maximum compensation** costs under option A and option B detailed in the report. The salaries are based on current Harrow Council pay scales as follows:

<u>Post</u> (Salaries based on top spinal points)	<u>Salary</u> £	Option A £	Option B £
H2	16,170	32,340	80,850
H3	17,475	34,950	87,375
H4	19,632	39,264	98,160
H5	21,885	43,770	109,425
H6	23,937	47,874	119,685
H7	26,358	52,716	131,790
H8	28,578	57,156	142,890
H9	31,509	63,018	157,545
H10	35,799	71,598	178,995
H11	39,126	78,252	195,630
Service Mgr (lower)	45,189	90,378	225,945
Service Mgr (higher)	53,001	106,002	265,005
Group Mgr (lower)	56,469	112,938	282,345
Group Mgr (higher)	65,718	131,436	328,590

These figures show the maximum compensation that the proposed new regulations would permit. It is at the discretion of employers whether to make such awards and at what level to do so, subject to the maximum permitted.

### Comparison

Detailed below are costs associated with Harrow Council's current policy, Option A and Option B.

#### **Scenario 1.**

Mr Patel is an Officer earning £26,358 per annum with 20 years continuous service. He is aged 58 at termination of employment on grounds of redundancy.

**Current regulations**  
£64,609

**Option A**  
£52,716

**Option B**  
£131,790

**Scenario 2.**

Mrs Kalsi is a Group Manager earning £65,718 per annum. She is aged 59 at termination of employment on grounds of efficiency. Under the current policy, Harrow Council could award her with a credited period (Compensatory Added Years (CAY)) of 5 years.

**Current regulations**  
£89,951

**Option A**  
£131,436

**Option B**  
£328,590

**Scenario 3.**

Mr Harris is an officer earning £19,632 per annum. He is aged 49 at termination of employment on grounds of Redundancy. He has 25 years continuous service with Harrow Council.

**Current regulations**  
£24,917

**Option A**  
£39,264

**Option B**  
£98,160



### APPENDIX 3

<p><b>Regulation 6: Discretionary compensation for redundancy (Please select option)</b></p> <p><b>Option A:</b> Introduce new regulations providing local authority employers with broad discretionary powers to make a one-off lump sum payment of up to two years pay.</p> <p><b>Option B:</b> Introduce new regulations providing local authority employers with broad discretionary powers to make a one-off lump sum payment of up to five years pay.</p>	<p>No age banding constraints therefore provides employer with more flexibility to set the most appropriate compensation level for each individual case</p>
	<p>Implementing a discretion that is significantly greater than current arrangements may not be viewed as a sensible use of public funds</p>

**Note:** Based on affordability it is suggested that Option A would provide the authority with maximum flexibility whilst containing cost at an acceptable level.

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Meeting:	Licensing and General Purposes Committee
Date:	15 <sup>th</sup> June 2006
Subject:	Report on the implementation on the proposed Alcohol Exclusion Zone under The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001
Responsible Officer:	Gareth Llywelyn-Roberts, Group Manager Community Safety Services
Contact Officer:	P Sivashankar, Licensing Service Manager, ext 6237
Portfolio Holder:	Councillor Eileen Kinnear
Key Decision:	Yes
Status:	Public

### **Section 1: Summary**

#### **Decision Required**

Controlled Drinking and the Procedure for Implementation To approve the proposed Zone in accordance with the Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001.

#### **Reason for report**

To inform members of the procedure to be followed by the Council to designate an Alcohol Exclusion Zone and to approve the proposed zone.

#### **Benefits**

The Council is obliged to take steps to ensure that the consumption of alcohol in public places is managed sensibly. One of the tools, which can be used, is the implementation of an Alcohol Exclusion Zone. This allows the consumption of

alcohol in a public place to be prohibited if the Council is satisfied that nuisance; disturbance or disorder affecting members of the public has been associated with the consumption of alcohol.

Implementation of such a zone will create a safer environment for the public to go about their business without being subject to anti-social behaviour, nuisance or disturbance, as well as improving perception to provide a direct and tangible reduction in Fear of Crime through enabling activities to be controlled to reduce the visible presence of public consumption of alcohol in public.

### **Cost of Proposals**

It is estimated consultation, preparation and signage will cost in the region of which can be managed through existing budget provision within Urban Living22k. This will be met from the existing Traffic Management Budget.

### **Risks**

The formation of a Designated Alcohol Exclusion Zone may displace street drinking and other problems associated with the consumption of alcohol in public areas, requiring the Council to undertake new or further extension of such Zones, where evidence is presented to support this process.

The potential lack of Police resources to enforce the Exclusion Zone against competing priorities may render the order void.

The Zoning applied must be based on evidence provided by the Police and Crime Reduction Partnership. Selecting areas outside the evidentially supported area will render the procedure invalid and subject to challenge.

### **Implications if recommendations rejected**

The provision of a Controlled Drinking Zone is a key priority for the Council and if the recommendation is rejected this will not be delivered. also  
The Metropolitan Police have requested that the Council should adopt this part of the Regulations to assist in reducing alcohol consumption in public places.

If the Alcohol Exclusion Zone is not implemented the ability to address street drinking and other disturbing behaviours associated with the consumption of alcohol in public places will not be available to enforcement agencies.

## **Section 2: Report**

### 2.1 Brief History

- 2.1.1 The Council is committed to making Harrow a safe, attractive place for everyone who lives, works or visits the Town. This includes encouraging the development of a range of facilities to suit all tastes that as part of their business sell alcohol.
- 2.1.2 On 1<sup>st</sup> September 2001, sections 12-16 of the Criminal Justice and Police Act 2001 come into force. These provide local authorities with a power to restrict anti-social public drinking in designated public places and provides the police with the power to enforce this restriction.
- 2.1.3 On the same date the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 come into force. These set out the procedures to be followed by local authorities in designating public places for this purpose. A copy of the relevant section of the Regulations is provided at appendix 1.
- 2.1.4 These statutory powers replace the Home Office model byelaw relating to the consumption of intoxicating liquor in designated public places. From 1<sup>st</sup> September 2001 local authorities who wish to place a restriction on public drinking within their area, where this is associated with nuisance or annoyance to members of the public, or disorder, should consider whether to make an order under section 13 of the Act rather than proceeding with a byelaw.
- 2.1.5 Section 12 of the Act provides new police powers to deal with anti-social drinking in areas that have been designated for this purpose by the local authority. The police will have the power to require a person, in such a place, not to drink alcohol in that place where the officer reasonably believes that the person is, has or intends to do so, and to surrender any alcohol or alcohol containers (other than sealed containers) in the person's possession. **It will not be an offence to drink alcohol in a designated public place, but failure to comply with an officer's requirements in respect of public drinking or surrender of alcohol, without reasonable excuse, will be an arrestable offence.**
- 2.1.6 There is no intention that the provisions of the 2001 Act should lead to a comprehensive ban on drinking in the open air. Accordingly, section 13 allows local authorities to designate areas for this purpose only where they are satisfied that nuisance or annoyance to the public or disorder have been associated with public drinking in that place. Where there have been no such problems, a designation order under section 13 will not be appropriate.
- 2.1.7 It is for the local authority to be satisfied that public nuisance, annoyance or disorder has been associated with public drinking in the area concerned and that a designation order under section 13 is appropriate.

The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 do not place a requirement on the local authority to conduct a formal assessment, over a given period, of the nature of the problem, as was the case with the byelaws procedure. Whether or not a designation order is appropriate will be a matter for local judgement, based on the circumstances and evidence available.

2.1.8 The Council will need to satisfy itself that these powers are not being used disproportionately or in an arbitrary fashion, which could be the case if there is not substantial evidence to support a designation order. Clearly there must be evidence of an existing ongoing problem, with an assessment as to the likelihood that the problem will continue unless these powers are adopted. Against this background, a single, serious incident or isolated local problems will be insufficient to justify adoption of the powers .

2.1.9 The Regulations require local authorities to consult with the police prior to making a designation order (Regulation 3(1)(a)). This is to seek the views of the police on the nature of the problem and the appropriateness of adopting the section 12 powers to respond to it, in recognition of the fact that it will be the police who will have the responsibility for enforcing the resulting restrictions on public drinking.

Regulation 3 sets out the other bodies who must be consulted before a designation order is made. Those relevant to Harrow are :

- The police and neighbouring local authorities, parish or community councils, where a designation order covers an area on the boundaries with that neighbouring authority. This is to allow for consideration to be given to the consequences of the designation order on the neighbouring authority (such as the possible displacement of anti-social public drinking problems) before the designation order is made;
- Licensees within the area and licensees who may be affected by the designation order;
- The owners or occupiers of any land that may be identified in a designation order. There may well be occasions when it is impossible to identify or find the owners of particular land or property, so Regulation 3(2) does not place an absolute requirement on local authorities in this instance. It requires local authorities to take all reasonable steps to consult landowners e.g. through open public advertisement.

2.1.10 Regulations 5-9 cover publicity requirements. Regulations 5 and 6 are concerned with advance publicity. By virtue of regulation 4, local authorities are under a duty to consider any representations received as a result of this publicity. It is proposed that a Licensing Panel would consider these formally.

2.1.11 Regulation 7 concerns publicity once a decision has been made to designate an order under section 13 of the Act. Regulation 8 sets out the

requirement to erect signs to ensure that the public (including visitors to the area) are made aware that restrictions on public drinking may apply. As was previously the case under the Home Office byelaws guidance, signs to indicate the effect of a designation order should be clear and unambiguous and not conflict with or obscure traffic signs. They should be placed at the approaches to designated areas and repeated within them, and the local highway authority should be consulted.

2.1.12 Regulation 10 makes an amendment to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The effect of this is that this function will not become a function of the Executive under the terms of the Local Government Act 2000 but will be one that remains with the council. In all normal circumstances, the local authority may wish to ensure that decisions relating to designation orders are made by the full council or a committee of the council, as opposed to being delegated to an officer of the council. This has already been dealt with through the Council Motion and authority delegated the Licensing and General Purposes Committee.

2.1.13 By virtue of section 15 of the 2001 Act, existing public drinking byelaws will cease to have effect once the area is designated in accordance with section 13. The practical effect will be to enable the police to enforce the public drinking restriction through the use of the powers conferred by section 12 of the Act, once the area is designated.

2.1.14 To ensure that the public have full access to information about designation orders made under section 13 of the Act, Regulation 9 requires all local authorities to send a copy of any designation order made to the Secretary of State. These should be sent to Home Office.

## 2.2 Options considered

2.2.1 There have been two options identified and considered. The provision of an Exclusion Zone for the entire borough and the provision of a zone for an identified area surrounding and including the Town Centre.

2.2.2 The Council Motion proposed the creation of a Zone to cover the whole of the Borough. In assessing the likely evidence to support this proposal we have considered the evidence available from the Police and Council data in terms of violent against the person, drunkenness and Ambulance data. See Appendix 2. It is clear, and this is confirmed following discussion with the borough commander, that the evidence does not support the provision of a borough wide Exclusion Zone.

2.2.3 The evidence is however, very clear in identifying that disturbance and disorder, associated with the consumption of alcohol in public areas, is concentrated in the Town Centre and South Harrow. The evidence supports the provision of an Exclusion Zone for a designated area of the Town Centre and South Harrow, and this need is fully supported by the Police. This is in line with Paras; 2.1.5; 2.1.6 and 2.1.7 relating to the

evidence on which the decision must be based and the fact that police must be consulted and agree the proposal.

## 2.3 The Proposal

### 2.3.1 It is therefore proposed that:

- A designated Alcohol Exclusion Zone be implemented as per attached plan at Appendix 3.

## 2.3 Consultation

2.3.1 The consultation process is set out in Para 2.1.8.

## 2.4 Financial Implications

2.4.1 The financial implications arising to the Council identified at present are as follows:

[a] Placement of advertisements in a Local newspaper; as part of the statutory Consultation Process and management of the process itself.

[b] Consultation/mail shot to owner/occupiers of properties in the area concerned and to licensees;

[c] The placement and replacement of street signs to advertise the Alcohol Exclusion Zone;

[d] The costs to the council and/or police for any prosecution and general enforcement costs. Responsibility for enforcement of the powers remains primarily with the Police but other agencies would be required to assist;

[e] any legal costs associated with the review of the Alcohol Exclusion Zone as a result of objections to the process;

## 2.5 Legal Implications

2.5.1 The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2001 set out the procedure to be followed by local authorities in connection with orders designating a public place under section 13 of the Criminal Justice and Police Act 2001. The Regulations set out the consultation requirements before making an order and the publicity requirements before and after making an order. Once an order is made under section 13 in relation to a public place in their area, the police powers under section 12 of the Act (to require a person not to consume intoxicating liquor and to surrender opened containers of such liquor) will be available.

2.5.2 Section 14 of the Criminal Justice and Police Act 2001 makes it clear that premises are not designated public places if a premises licence, club premises certificate, or temporary event notice under the Licensing Act 2003 has effect in relation to the premises (or, in relation to a TEN, had



effect within the last 20 minutes). There are, consequently, some limitations to the effect of an order designating an Alcohol Exclusion Zone.

## 2.6 Equalities Impact

- 2.6.1 As part of the implementation of the zones it will be critical to the work with local agencies to reach, in particular, street drinkers, and offer assistance and referral to support agencies.
- 2.6.2 There are no other Equal Opportunities implications arising directly from this report.

## 2.7 Section 17 Crime and Disorder Act 1998 Considerations

- 2.7.1 The provision of an alcohol exclusion zones will have a positive effect on the local environment and with the associated promotion, education and enforcement would help reduce incidents of broken glass, litter as well as the visible negative impact of street drinking and related ASB and fear of crime.
- 2.7.2 The use of such orders would assist in tackling alcohol related crime and disorder and anti social behaviour as well as providing support for the Licensing Policy through reducing under age drinking, reducing public drunkenness and preventing alcohol related crime.
- 2.7.3 In this manner it would directly deliver against key corporate priorities and the Priority of Reducing Drug and Alcohol related harm and under the Crime and Disorder Reduction Strategy 2005-8

## **Section 3: Supporting Information/Background Documents**

Background Documents: Regulations.

## **Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001**

1.1. Section 13 [2] of the Criminal Justice and Police Act 2001 states:

“ A Local Authority may for the purposes of subsection [1] by order identify any public place in their area if they are satisfied that:

[a] nuisance or annoyance to members of the public or a section of the public; or

[b] disorder has been associated with the consumption of intoxicating liquor [alcohol] in that place.”

1.2. Section 13 [4] further states:

“ The Secretary of State shall by regulations prescribe the procedure to be followed in connection with the making of orders under subsection [2].”

1.3. The Local Authorities [Alcohol Consumption in Designated Public Places] Regulations 2001 came into force on 1st September, 2001.

1.4. The Regulations prescribe the process of consultation, and publicity which must be followed before a Local Authority takes action to make an order creating a designated public place.

## **2. THE REGULATIONS**

2.1. Regulation 3 [1] states:

“ Before making an order, a local authority shall consult:

[a] the Chief Officer of Police for the area in which the public place proposes to be identified in the order is situated;

[b] the parish or community council in whose area the public place is situated;

[c] the chief officer of police, the local authority and the parish or community council for any area near to the public place which they consider may be affected by the designation; and

[d] the licensee of any licensed premises in that place or which they consider may be affected by the designation.”

2.2. Regulation 3 [2] goes on to require the Local Authority to take reasonable steps to consult the owners or occupiers of any land proposed to be identified.

2.3. Wider publicity to a proposed order is required under Regulation 5 which states:

“Before making an order, a Local Authority shall cause to be published in a newspaper circulating in their area a notice:

[a] identifying specifically or by description the place proposed to be identified:

[b] setting out the effect of an order being made in relation to that place: and

[c] inviting representations as to whether or not an order should be made.”

2.4. No order shall be made until at least 28 days after the publication of the notice referred to in Regulation 5 [detailed in paragraph 3.3 above.

2.5. After making an order and before it takes effect the Local Authority must “cause to be published in a newspaper circulating in their area a notice:

[a] identifying the place which has been identified in the order;

[b] setting out the effect of the order in relation to that place; and

[c] indicating the date on which the order will take effect.”

2.6. Regulation 4 provides:

“ A Local Authority shall consider any representations as to whether or not a particular public place should be identified in an order whether made as a result of consultation under Regulation 3, in response to a notice under Regulation 5, or otherwise.”

2.7. If the Local Authority make an order and before that order has effect the Local Authority must erect in the place identified in the order such signs as they consider sufficient to “draw to the attention of members of the public in that place to the effect of the order”. There is essentially a requirement to have signs that specify that it is an offence to consume alcohol in the designated area. Additionally the Local authority must send a copy of any order made to the Secretary of State.

### 3. EFFECT OF DESIGNATING A PUBLIC PLACE

3.1. Designation of a Public Place in accordance with the Regulations invokes sections 12 and 14 of the Criminal Justice and Police Act 2001. Section 12 States:

“12. 1 Subsection [2] applies if a constable reasonably believes that a person is, or has been, consuming intoxicating liquor [alcohol] in a designated public place or intends to consume intoxicating liquor [alcohol] in such a place.

12.2 The constable may require the person concerned:

[a] not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor [alcohol];

[b] to surrender anything in his possession which is, or which the constable reasonably believes to be , intoxicating liquor [alcohol] or a container for such liquor [alcohol].

12.3 A constable may dispose of anything surrendered to him under subsection [2] in such manner as he considers appropriate.

12.4 A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection [2] commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale [£500].

12.5 A constable who imposes a requirement on a person under subsection [2] shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.”

3.2. Section 14 provides for places which “are not public places”. Such places are exempted from the impact of an order made by the Council:

[a] a licensed premises or a registered club;

[b] a place within the curtilage of any licensed premises or registered club;

[c] a place where the sale of intoxicating liquor is for the time being authorised by an occasional permission or was so authorised within the last twenty minutes;

[d] a place where the sale of intoxicating liquor is not for the time being authorised by an occasional licence but was so authorised within the last twenty minutes;

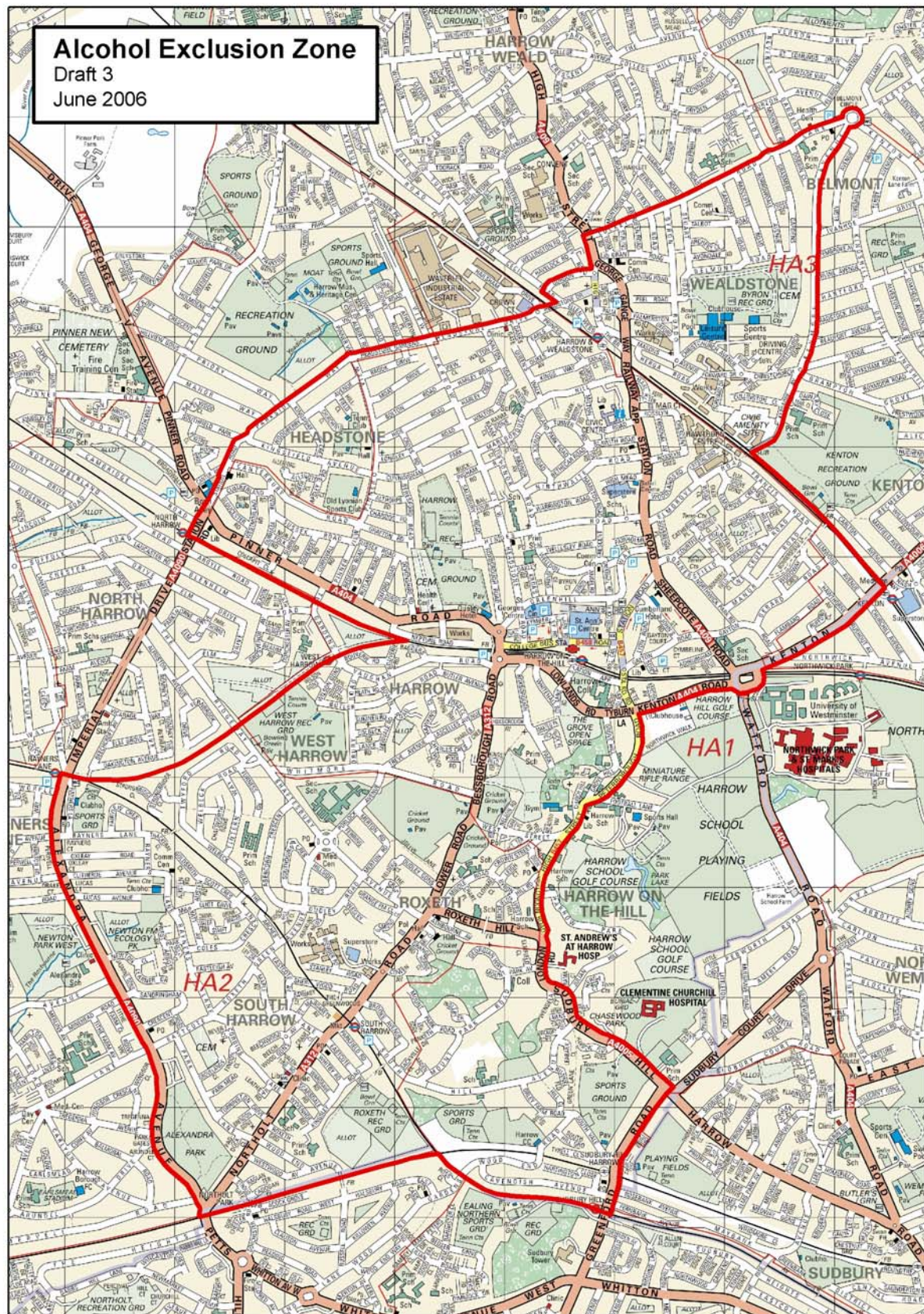
NB. The above description relate to the provisions of the Licensing Act 1964. They are altered when the Licensing Act 2003 takes full effect later this year.

[e] a place where facilities or activities relating to the sale or consumption of intoxicating liquor [alcohol] are for the time being permitted by virtue of a permission granted under section 115E of the Highways Act 1980.

## Time Table for Implementation

	12- Jun	19- Jun	26- Jun	3- Jul	10- Jul	17- Jul	24- Jul	31- Jul	7- Aug	14- Aug	21- Aug	28- Aug	4- Sep
Approval of Zone													
prepare consult docs													
Public Consultation													
Newspaper advert													
Final adjustments													
erect signs													
Final Order													

# Proposed Controlled Drinking Zone



Alcohol Exclusion Zone  
Draft 3  
June 2006

DIGITAL MAP DATA © COLLINS BARTHOLOMEW LTD (2005)



Meeting:	Licensing and General Purposes Committee
Date:	15 June 2006
Subject:	Outline Report on Gambling Act 2005
Responsible Officer:	Gareth Llywelyn-Roberts, Group Manager, Community Safety Services
Contact Officer:	P Sivashankar, Licensing Service Manager, ext 5605
Portfolio Holder:	Councillor Eileen Kinnear
Key Decision:	No
Status:	Public

### **Section 1: Summary**

#### **Decision Required**

To approve the proposed timescales for Gambling Policy draft, consultation and publication.

#### **Reason for report**

To inform members of the procedure to be followed by the Council to implement the gambling Act 2005.

#### **Benefits**

To meet the Council's duties under the Gambling Act 2005, the Licensing Service is proposing these time scales so that local residents and businesses can take part in an informed consultation exercise.

## **Cost of Proposals**

A growth bid was submitted to the last budget process to implement this additional function. However, the bid was unsuccessful, hence implementation will be undertaken within existing approved staff resources and budgets. This will have a significant additional strain on an already stretched Licensing Team, and members will be kept fully informed regarding any delays and/or service related issues. Whilst a during the ,it given the financial priorities of the Council.

## **Risks**

Not publishing a Gambling Police by 31 December 2006 will be outside the Regulations and Guidance issued by the gambling Commission. Operators are expected to start applying to convert their existing permits and licences from February 2007. It would not be possible for this Authority to receive these applications without publishing the Policy by 31 December 2006.

## **Implications if recommendations rejected**

Within the existing staffing compliments this Service will just meet these deadlines. There is also a recommendation by the Cabinet Office that all public consultations must be for a 12-week period.

## **Section 2: Report**

### **2.1 Brief History**

- 2.1.1 The Gambling Act 2005 creates a new system of licensing and regulation for commercial gambling in this country. Amongst other changes, it gives to local authorities new and extended responsibilities for licensing premises for gambling. In some cases (such as gaming machine arcades), those build on existing responsibilities. But in other major areas, including betting, casino gaming and bingo, they transfer to local authorities responsibilities, which previously lay with local licensing justices.
- 2.1.2 The new Act comes fully into force in September 2007. In preparation, each licensing authority is required to develop, consult on and publish a statement of its licensing policy. The statement must set out the principles, which the authority proposes to apply in exercising its licensing functions under the Act.
- 2.1.3 To help the process, the Act requires the Gambling Commission to issue guidance to licensing authorities on the manner in which they are to exercise their functions under the Act and the principles to be applied by them in exercising those functions. Licensing authorities are required to take account of all such guidance.



2.1.4 The Act contains three licensing objectives, which underpin the functions that the Commission and licensing authorities will perform. These objectives are central to the new regulatory regime created by the Act.

They are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

The Commission has an overriding obligation to pursue and have regard to the objectives, and to permit gambling so far as it thinks is reasonably consistent with them.

2.1.4 Licensing authorities will license gambling premises and issue a range of permits to authorise other gambling facilities in their licensing area. In exercising their functions generally under the Act, licensing authorities must have regard to the guidance issued by the Commission. Authorities will have similar regulatory powers to the Commission with respect to their licensees, including the power to impose conditions and to review licenses, however they will not be able to impose financial penalties.

2.1.5 Functions of licensing authorities

The Act gives licensing authorities a number of important regulatory functions in relation to gambling. Their main functions are to:

- license premises for gambling activities;
- consider notices given for the temporary use of premises for gambling;
- grant permits for gaming and gaming machines in clubs and miners' welfare institutes;
- regulate gaming and gaming machines in alcohol licensed premises;
- grant permits to family entertainment centres for the use of certain lower stake gaming machines;
- grant permits for prize gaming;
- consider occasional use notices for betting at tracks; and
- register small societies' lotteries.

2.1.6 Licensing authorities have an obligation to provide information to the Gambling Commission, including details of licenses, permits and registrations issued.

2.1.7 In addition, licensing authorities are required to prepare, every three years, a statement of the principles, which they propose to apply when exercising their functions, and they must publish the statement. The statement, which may also be referred to as a 'policy', can be reviewed and re-published during the three-year period in which it has effect. In preparing the statement, licensing authorities must follow the procedure set out in the Act, including whom they should consult.

2.1.8 The requirement on licensing authorities in relation to the principles that must be applied in exercising their functions in relation to part 8 of the act, including premises licensing, is more prescriptive. Section 153 of the Act provides that licensing authorities should aim to permit the use of premises for gambling in so far as they think it:

- (a) in accordance with any relevant code of practice under section 24;
- (b) in accordance with any relevant guidance issued by the Commission under section 25;
- (c) reasonably consistent with the licensing objectives; and
- (d) in accordance with the authority's statement of licensing policy.

#### 2.1.9 Premises licenses

Premises licenses will be granted by licensing authorities and may authorize the provision of facilities on:

- casino premises;
- bingo premises;
- betting premises, including tracks;
- adult gaming centres; and
- family entertainment centres.

2.1.10 In addition to licenses, there are other forms of authorisation that a licensing authority may grant, for example, authorisations for the temporary use of premises, occasional use notices and five different sorts of permit for unlicensed family entertainment centres, prize gaming, gaming machines on alcohol-licensed premises and club gaming and club gaming machines, respectively.

## 2.2 Options considered – Policy consultation and Publication

2.2.1 There have been two options identified and considered. The attached timetable gives details of the two. The first time-line is to meet the pre-arranged Full Council on 19 October 2006. This would only give this Service less than a month to draft the initial document for internal consultation. Due to delays in publishing the template and guidance, it would not be possible to meet this time-line.

2.2.2 The second time-line is to report the statement of the principle to a proposed Full Council meeting to be arranged in December 2006. This proposal would give this Service a preparation time of at least 6 weeks and a full 12 week public consultation.

## 2.3 The Proposal

### 2.3.1 It is therefore proposed that:

- Officers to work to the second time-line and to plan a Full Council meeting in December 2006 to approve the Gambling Policy.

## 2.4 Consultation

2.4.1 Section 349 (3) requires the licensing authority to consult the following on the licensing policy statement or any subsequent revision:

- in England and Wales, the chief officer of police for the authority's area;
- in Scotland, the Chief Constable of the police force maintained for the police area comprising that area;
- one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area; and
- one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.

The list of persons to be consulted when preparing the licensing policy statement is deliberately wide. This enables licensing authorities to undertake a comprehensive consultation exercise with anyone who may be affected by or otherwise have an interest in the licensing policy statement.

Licensing authorities will develop their own consultation practices but they may like to consider the following:

- consultation with a range of organisations including faith groups, voluntary and community organisations working with children and young people, organizations working with people who are problem gamblers, medical practices or primary care trusts, and advocacy organisations (such as the Citizen's Advice Bureau and trade unions);
- consultation with other tiers of local government (where they exist);
- consultation with businesses who are, or will be, holders of a premises licence;
- consultation with the organisations named as responsible authorities in the Act; and
- using a variety of consultation methods including meetings with gambling businesses in the local authority area and open forums for the public.

Any written consultation should follow best practice as set out by the Cabinet Office including allowing 12 weeks for responses to consultation. Consultation documents could be provided on the Council's website.

## 2.4 Financial Implications

2.4.1 As the fee levels are not yet published by the DCMS, it is not possible to forecast the final cost and financial implications with any great certainty at this moment.

2.4.2 It is anticipated that the costs of implementing Gambling Act 2005 will be met from the existing budget of the relevant Head of Service and this could have an effect on service delivery. However the situation will be monitored as part of the planning process and if significant costs are likely to be incurred the matter will be re-considered and brought to the attention of members.

## 2.5 Legal Implications

- 2.5.1 The Council is a statutory licensing authority for the purposes of the Gambling Act 2005 (“the Act”) and, in addition to complying with its statutory obligations, is obliged to have regard to guidance issued from time to time by the Gambling Commission.
- 2.5.2 The Gambling Commission has now published a revised version of its *Guidance to Licensing Authorities*.
- 2.5.3 Under the Act, licensing authorities are required to produce, at least every three years, a statement of the principles that they propose to apply when exercising their functions under the Act (“a statement”). A licensing authority may revise a statement at any time during which it has effect.
- 2.5.4 The Gambling Act 2005 (Licensing Authority Policy Statement)(England and Wales) Regulations 2006 (“the Regulations”) set out the requirements as to the form and publication of a statement or a revision of a statement.
- 2.5.5 The form of the statement is for the licensing authority to determine, subject to complying with the requirements that it include an introductory section summarising the matters contained in the statement, describing the geographical area in respect of which the authority exercises functions under the Act, and listing the persons consulted in preparing the statement.
- 2.5.6 The statement is also required to include four sections, which deal separately with:
- (a) the principles to be applied by the authority in exercising the powers under the Act to designate, in writing, a body which is competent to advise the authority about the protection of children from harm;
  - (b) the principles to be applied by the authority in exercising the powers under the Act to determine whether a person is an interested party in relation to a premises licence, or an application for or in respect of a premises licence;
  - (c) the principles to be applied by the authority in exercising the functions under the Act with respect to the exchange of information between it and the Gambling Commission, and the functions under the Act with respect to the exchange of information between it and the other persons listed in Schedule 6 to the Act;
  - (d) the principles to be applied by the authority in exercising the functions under the Act with respect to the inspection of premises; and the powers under the Act to institute criminal proceedings in respect of the offences specified therein.

2.5.7 The Regulations set out the requirements relating to the advertisement and publication of a statement. The statement must be published on the licensing authority's website, and in at least one of the places set out in the Regulations, for a period of at least 4 weeks before it comes into effect. The authority must advertise the publication of the statement in a notice published in accordance with the Regulations. The notice must give specified information about the statement or revision, including details about when the statement or revision will be published, when the statement or revision will come into effect, and where it can be viewed.

## 2.6 Equalities Impact

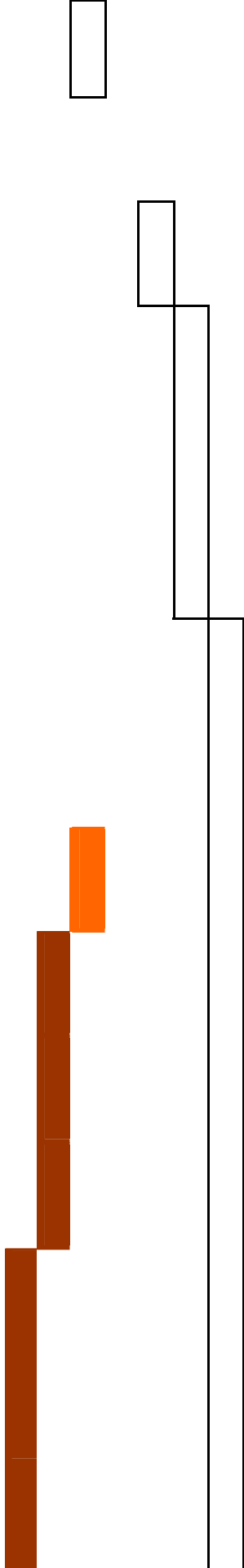
2.6.1 There is impact on small operators of late night refreshments, where AWP's will be removed under this legislation. This Section will provide adequate advance information to these operators regarding these changes.

## 2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 Metropolitan Police is a statutory consultee for this legislation and Police will be consulted on the Policy at the earliest opportunity and before the full public consultation is taken.

	22-May	29-May	05-Jun	12-Jun	19-Jun	26-Jun	03-Jul	10-Jul	17-Jul	24-Jul	31-Jul	10-Jul	17-Jul	24-Jul	31-Jul	07-Aug	14-Aug	21-Aug	28-Aug	04-Sep
CMT Report																				
Report to L&GP																				
Internal consultation																				
amendments																				
public consultation																				
Final amendments																				
Full Council																				
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04-Sep 11-Sep 18-Sep 25-Sep 02-Oct 09-Oct 16-Oct 23-Oct 30-Oct 06-Nov 13-Nov 20-Nov 27-Nov 04-Dec 11-Dec 18-Dec





Meeting:	Licensing and General Purposes Committee
Date:	15 June 2006
Subject:	Summary of Concluded Licensing Appeals
Responsible Officer:	Director of Legal Services
Contact Officer:	David Galpin, Senior Lawyer – Litigation and Licensing, ext 7500
Portfolio Holder:	Councillor Eileen Kinnear
Key Decision:	No
Status:	Public

### **Section 1: Summary**

#### **Decision Required**

That the Committee note the report, which contains a summary of concluded licensing appeals brought pursuant to the Licensing Act 2003, section 181 and Schedule 5.

#### **Reason for report**

To inform members as to how decisions of the Licensing Panel are being treated following appeal to the Harrow Magistrates' Court.

#### **Benefits**

Members will gain an understanding of how decisions of the Licensing Panel are being treated following appeal.

## Cost of Proposals

There are no costs associated with the proposed decision.

## Risks

The risk of failing to note how decisions of the Licensing Panel are being treated on appeal is that an opportunity to learn from past experience may be lost.

## Implications if recommendations rejected

As for "Risks".

## Section 2: Report

### 2.1 Brief History

2.1.1 Pursuant to the Licensing Act 2003, section 181 and Schedule 5, appeals may be brought against decisions of the Council as licensing authority.

2.1.2 In each licensing appeal, the decision appealed against is a decision of the Licensing Panel. This is not surprising, given that applications under the Licensing Act 2003 determined by the Panel are those in which there have been relevant representations. In other cases, where there are no relevant representations, the Licensing Act requires that the Council as licensing authority grant the application as sought.

2.1.3 The Licensing Panel is comprised of members of the Committee, who will likely be interested in how decisions of the Licensing Panel have fared on appeal.

2.1.4 A report was made to the meeting on 6 March 2006 reporting on six concluded appeals.

2.1.5 This report summarises two appeals that have been concluded since the report to the meeting of 6 March 2006 was prepared.

2.1.6 The report also provides supplementary information as to the costs of the appeal in relation to the Vine. This information was requested at the meeting of 6 March 2006.

### 2.2 Options considered

2.2.1 The attached Schedule contains details of the two appeals that have been concluded. In summary, the appeals have been dealt with as follows –

**Royal Oak**      Withdrawn

**Leaping Bar**      By consent of the parties, remitted to the Council on the basis that the Council delete additional condition 9 ('The bar serving food to be designated a no smoking



area and to allow the admittance of children accompanied by a responsible adult.’)

2.2.2 The consent for the compromise in respect of the Leaping Bar was obtained in accordance with the Council’s procedure for urgent non-executive action. Details of the information provided to members as part of that procedure are included in the Schedule.

2.2.3 The legal costs of the appeal in relation to the Vine, 154 Stanmore Hill, Stanmore, reported on at the meeting of 6 March 2006, were as follows –

Employed solicitor:	6.4 hours at £80/hour	£512.00
Employed trainee:	16.6 hours at £40/hour	£664.00
Barrister	Hearing	£881.25
<b>Total:</b>		<b>£2,057.25</b>

2.2.4 In the case of Council employees, the costs are based upon an internal charging rate used for budget purposes.

### 2.3 Consultation

2.3.1 There has been no external consultation in respect of this report.

### 2.4 Financial Implications

2.4.1 There are no financial implications within this report, it provides information only.

### 2.5 Legal Implications

2.5.1 No legal implications arise.

### 2.6 Equalities Impact

2.6.1 No equalities issues appear to arise from the disposal of the licensing appeals dealt with in the Schedule.

### 2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 The prevention of crime and disorder is one of the four licensing objectives. The extent to which this was an issue in any appeal is indicated in the attached Schedule.

## **Section 3: Supporting Information/Background Documents**

Supporting Information: Attached Schedule.

**SCHEDULE OF LICENSING APPEALS  
LICENSING ACT 2003, SECTION 181 AND SCHEDULE 5**

**PREMISES:** ROYAL OAK (TO BE OPERATED AS “PAPA J’S”, 60 PEEL ROAD, WEALDSTONE

**Nature of premises:** Restaurant/Public house

**Appellant:** Thomas Gregory

**Original Application:** Application by Mitchells and Butlers Leisure Retail Ltd to convert an existing Justices’ Licence to a premises licence, with simultaneous variation. The applicant sought opening hours of 1000 – 0030 (Mon – Sun). The applicant sought the following licensable activities, to conclude half an hour prior to closing time: late night refreshment; and supply of alcohol. The applicant sought extended hours on a number of nominated days.

**Panel hearing:** 18 August 2005

**Panel decision:** The Panel granted the conversion and variation subject to 4 additional conditions and the following amendments: withdrawal of extra hours sought for Burns Night, St David’s Day, Halloween, all Bank Holiday Mondays, December 27<sup>th</sup>, December 28<sup>th</sup>, December 30<sup>th</sup> and Valentine’s Night; withdrawal of the request to permit licensable activities for one hour before and after ‘recognised and international sporting events’; the reduction of extended hours requested for January 1<sup>st</sup>, St Patrick’s Day, Easter Sunday, Sundays prior to bank holidays, Christmas Eve and Boxing Day from 2 hours to 1 hour.

**Issue on appeal:** The Appellant, a resident objector, raised a number of grounds of appeal –

1. Peel Road is a quiet residential street.
2. Prior conduct of the establishment has been poor, with under-age drinking, drug sales, drug abuse, drunken behaviour, street fighting, loud music and destruction of property.
3. An incident of youth binge drinking occurred a week after the Panel Hearing.
4. There will be increased traffic in a street which already has noise and parking problems.
5. The Panel seemed unfamiliar with the area and the police were overly optimistic about future conduct of the premises.

**Magistrates' Court hearing:** N/A

**Decision on appeal:** Appeal withdrawn 22 March 2006.

**PREMISES:** **LEAPING BAR, CARMELITE ROAD, HARROW**

**Nature of premises:** Public House

**Appellant:** Punch Taverns Plc

**Original Application:** Application by Punch Taverns Plc to convert an existing Justices' Licence to a premises licence, with simultaneous variation. The applicant sought extended opening hours: 1000 – 2330 (Mon – Wed), 1000 – 0030 (Thurs), 1000 – 0130 (Fri, Sat) and 1200 – 0000 (Sun), including half an hour drinking up time. The applicant sought additional hours on May, Spring and August bank holiday weekends, Easter, Christmas Eve and Boxing Day.

**Panel hearing:** 8 August 2005

**Panel decision:** The Panel granted the conversion and variation subject to a number of variations. The Panel limited the hours for sale of alcohol to the following finishing times: 2330 (Thurs); 0000 (Fri, Sat); and 2300 (Sun). The Panel granted a further hour on the Friday of each May, Spring and August bank holiday weekend, Good Friday, Boxing Day and Christmas Eve. The Panel required all other licensable activities to cease 30 minutes before closing. The Panel imposed nine additional conditions: (1) Outside patio/seating area to be cleared of patrons by 2330; (2) Regular monitoring patrol of sound leaving the premises to check noise levels at the start of an event and hourly thereafter; (3) No drinks promotions; (4) Visible and legible signs and notices to be clearly displayed asking patrons to leave quietly; (5) Doors and windows to remain closed during musical entertainment; (6) AWP machines to be emptied each night or "boot" to be fitted; (7) Fully operational CCTV during the hours the premises were open to the public; (8) DPS to join the Pubwatch scheme and regularly attend meetings; (9) The bar serving food to be designated a no smoking area and to allow the admittance of children accompanied by a responsible adult.

**Issue on** The appellant contended that: (1) the decision was against the

**appeal:** weight of the evidence; (2) the Council failed to consider, or failed to consider sufficiently, the application for variation and its respective merits; (3) the Council failed to consider, or failed to consider sufficiently, relevant and appropriate documentation and information provided by the complainant; (4) the Council placed undue weight and consideration upon the representations provided and by those making representations at the Hearing; (5) the Council failed to attach conditions to the licence commensurate with the evidence.

**Magistrates' Court hearing:** N/A

**Decision on appeal:** By consent of the parties, the Court remitted the matter to the Council with the following direction: "The Council is to issue the premises licence in accordance with the decision of the Council's Licensing Panel on 8 August 2005, save for the deletion of proposed additional condition 9." The consent for this compromise was obtained in accordance with the Council's procedure for urgent non-executive action.<sup>1</sup>

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<sup>1</sup> The matters put to members as part of this procedure included the following –

*In arguing for deletion of additional condition 9, the Appellant refers to two matters –*

- 1. The imposition of the requirement for a no smoking area is contrary to the Guidance under section 182 of the Licensing Act 2003.*
- 2. The operating schedule for the premises states that: "Unaccompanied children are not permitted on the premises and children are not permitted on the premises after 19:30 hours on Sunday through to Thursday and 20:30 hours on Friday and Saturday".*

*The effect of the words in the operating schedule is that there will be a condition requiring children on the premises to be accompanied, whether the Panel's additional condition 9 is deleted or not. This means that the only real consequence of deleting additional condition 9 would be to delete the requirement for a no smoking area.*

*Paragraph 7.32 of the Guidance contains the following provisions –*

*"Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene. In addition, no attempt should be made to use a licensing condition to impose a smoking ban for either health or desirability.*

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*These are matters for other legislation and voluntary codes of practice and duplication should be avoided...” (emphasis added).*

*The Guidance is a mandatory consideration for the Council in carrying out its function as licensing authority and, consequently, for the Court on appeal. There does not appear to be any reason for departing from the Guidance in this case.*

*In these circumstances, it is highly likely that the Court would, following a hearing, delete the condition.*

*The Licensing Panel hearing in this case was held following relevant representations from: Louise Roberts of Council’s Environment Protection Team; and Sergeant Carl Davis of the Metropolitan Police. No representations were received from the general public. Ms Roberts’ representation related to noise and said nothing about a no smoking area. The representation from Sergeant Davis stated: “I ask that the non-smoking area for children is not only provided but is enforced and that the panel consider the use of smoke extractors as a condition”.*

*Despite that original submission, Sergeant Davis has indicated, following consultation, that the Metropolitan Police agree with the appeal being compromised by the deletion of additional condition 9. The police do not consider it to be in the public interest to go to a full contested hearing in circumstances where the dispute can be resolved by deletion of this one condition – particularly in light of the Guidance.*

*If the appeal is not compromised, then Council will incur costs associated with preparing and arguing the appeal. This will include the time of Council’s Senior Lawyer – Litigation and Licensing and Service Manager (Licensing). The Metropolitan Police will also incur costs as Sergeant Davis will be required to attend and give evidence at the hearing, which is presently fixed for a day. If the result at appeal is that additional condition 9 is deleted, as seems likely, then the Council may also be the subject of an adverse costs order in favour of the Appellant, in consequence of having rejected the proposed compromise.*

*In summary, it would appear to be contrary to the public interest to go to a full hearing in circumstances where –*

- 1. The appeal can be resolved without full hearing by deletion of additional condition 9.*
- 2. Additional condition 9 is contrary to the Guidance and would likely be deleted by the Court in any event.*
- 3. The Metropolitan Police, who originally argued for a no smoking area, are in agreement with the proposed compromise of the appeal.*
- 4. Costs can be avoided by compromising the appeal.*

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