

South Lakeland District Council
Licensing Committee
Licensing Regulatory Committee
7th November 2017

Protocol on Good Practice in Licensing for Members

PORTFOLIO:	Councillor Matt Severn – Culture, Media and Leisure Portfolio Holder
REPORT FROM:	Simon Rowley – Assistant Director, Neighbourhood Services
REPORT AUTHOR:	Hardeep Burnley – Principal Food, Licensing and Safety Officer
WARDS:	All
FORWARD PLAN:	Not applicable

1.0 EXPECTED OUTCOME

- 1.1 That Members agree to recommend to Full Council that the Protocol on Good Practice in Licensing for Members as set out in the report is adopted, thereby complying with best practice. This will assist the Council in making robust licensing decisions and reduce the risk of successful legal challenge in courts or before the Local Government Ombudsman.

2.0 RECOMMENDATION

- 2.1 **It is recommended that Licensing Committee/Licensing Regulatory Committee;**
- (1) **Note the contents of the report; and**
 - (2) **Recommend to Full Council for approval the draft Protocol on Good Practice in Licensing as attached at Appendix 1 of this report.**

3.0 BACKGROUND AND PROPOSALS

- 3.1 It is widely known that, in matters of planning, local authorities are required to produce a code of conduct which guides members on making sound, fair and impartial planning decisions. There is no such requirement under the Licensing Act 2003 or the Gambling Act 2005.
- 3.2 In August 2007 the Local Authority Coordinators of Regulatory Services (LACORS) produced a handbook for councillors on matters relating to the Licensing Act 2003, however since this date there have been significant changes to the Act and the document has not been updated to reflect these changes.
- 3.3 The role of the Licensing Authority is to give a clear focus to licensees and applicants, on the promotion of the four statutory objectives which must be addressed when licensing functions are undertaken.

- 3.4 The legislation therefore allows protection to the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises. However the licensing framework also recognises the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on businesses, encouraging innovation and supporting responsible premises.
- 3.5 The legislation provides a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area.
- 3.6 It is important that the Council should make decisions about licensing openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting, with any justification, that a decision has been partial, biased or ill founded. For this reason the draft protocol in Appendix 1 has been devised.
- 3.7 The document attached to this report as Appendix 1 is suggested as the South Lakeland District Council Protocol on Good Practice on Licensing for Members. Members are asked to give consideration to this document. If approved, the Protocol will be subject to further review in light of any update in legislation or best practice. Any updated document will be reviewed by the Licensing Committee, Licensing Regulatory Committee and Standards Committee with any consequent changes to be recommended to Full Council.
- 3.8 Provisions are set out in section 4.1 and 4.2 of the draft Protocol which if approved would enable a member who:
- (a) due to ward activities or otherwise may have had to declare bias and pre-determination; or
 - (b) has a Disclosable Pecuniary Interest:
- to register under the Public Participation Scheme to speak on an agenda item but then leave the room during the remainder of the discussion.
- 3.9 It is a criminal offence for a member to fail to appropriately register a Disclosable Pecuniary Interest (DPI) or to speak and vote where they have a DPI unless they have obtained a dispensation. The Council's Constitution also requires that if a Member has a DPI in any matter to be considered, or being considered, at the meeting, then the Member should declare that interest to the meeting and should leave the room whilst any discussion or vote takes place.
- 3.10 If a dispensation has been granted to a Member in relation to a DPI then subject to the terms of the dispensation the Member may be relieved from the above restrictions but will still be required to declare the interest to the meeting.

4.0 CONSULTATION

- 4.1 Although there has not been any formal consultation on the Protocol, it has been discussed with the Chair of the Licensing Committee and Licensing Regulatory Committee.
- 4.2 The draft has been submitted to the Standards Committee and is being submitted to the Licensing Committees for any comments they may have prior to referral to Full Council.
- 4.3 The draft Protocol was discussed by the Standards Committee on the 19th September 2017, where the recommendations in paragraph 2 above were accepted subject to a couple of grammatical amendments which have been incorporated into the attachment.

5.0 ALTERNATIVE OPTIONS

- 5.1 The alternative is not to have a Protocol on Good Practice in Licensing for Members. This is not recommended as there is no recognised published guidance for members considering Licensing matters.

6.0 LINKS TO COUNCIL PRIORITIES

- 6.1 The proposals in this report are relevant to the following Council Values:

Excellence: Seeking continuous improvement in what we do, ensuring that our actions address the needs of South Lakeland; and

Open and Transparent: Being courteous, efficient and transparent in our dealings with the public.

7.0 IMPLICATIONS

7.1 Financial and Resources

- 7.1.1 The recommendations in this report do not have any financial implications, as any training cost are met from existing budgets.

7.2 Human Resources

- 7.2.1 The recommendations in this report do not have any staffing implications.

7.3 Legal

- 7.3.1 Whilst the adoption of a Protocol of good practice on Licensing for Members is not a statutory requirement, the recommendations in this report should assist the Council in establishing best practice and minimising:

- (i) the risk of legal challenge to its licensing decisions;
- (ii) the risk of an adverse finding from the Local Government Ombudsman;
- (iii) the number of the Council's decisions which are overturned on appeal; and
- (iv) the risk of a cost award being made against the Council by a Magistrates in respect of licensing decision.

- 7.3.2 The Localism Act 2011 sets out criteria which can be applied in considering dispensation and the following are relevant in this case:

- (1) That it is considered that the granting of the dispensation is in the interest of the persons living in the authority's area; or
- (2) That it is considered that it is otherwise appropriate to grant a dispensation.

- 7.3.3 Dispensations cannot be given for Members who are affected by bias and pre-determination. The proposals set out in this report if approved will mean that there is similar treatment for members in circumstances in which they wish to use the Public Participation scheme applicable to Licensing Committee.

7.4 Health, Social, Economic and Environmental

7.4.1

Have you completed and Health, Social, Economic and Environmental Impact Assessment?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If yes, please confirm that it is attached to the report in the appendices.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Summary of health, social, economic and environmental impacts.	The protocol, will provide a clear and transparent way of applying the policy and therefore a clear way of achieving the licensing objectives.
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7.5 Equality and Diversity

7.5.1

Have you completed an Equality Impact Analysis?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If yes, please confirm that it is attached to the report in the appendices.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If you have not completed an Impact Assessment, please explain your reasons.	No such impact has been carried out as this proposal is considered to have a neutral impact.	

7.6 Risk

Risk	Consequence	Controls required
Failure of Members and Officers to comply with the Protocol of Good Practice for Members on Licensing Matters.	1.Potential legal challenge to licensing decisions	1.Regular Member training
	2.Potential finding of maladministration by the Local Government Ombudsman	2.Members, Officers and the Public can make a complaint to the Monitoring Officer in the event of any failure to comply with the Protocol of Good Practice for Members on Licensing Matters which results in a breach of Members' Code of Conduct.

CONTACT OFFICERS

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APPENDICES ATTACHED TO THIS REPORT

Appendix No.	
1	Protocol on Good Practice for Members on Licensing Matters
2	Health, Social, Economic and Environmental Impact form

BACKGROUND DOCUMENTS AVAILABLE

Name of Background document	Where it is available (examples as shown)
LACORS Licensing Act 2003 Councillors Handbook	http://www.ihsti.com/lacors/upload/15991.pdf

TRACKING INFORMATION

Assistant Director	Portfolio Holder	Solicitor to the Council	SMT	Scrutiny Committee
20/09/2017	N/a	20/09/2017	N/a	N/a
Executive (Cabinet)	Committee	Council	Section 151 Officer	Monitoring Officer
N/A	07/11/2017	19/12/2017	20/09/2017	20/09/2017
Human Resource Services Manager	Leader	Ward Councillor(s)	Standards Committee	Use these boxes for additional tracking
20/09/2017	N/a	N/a	19/09/2017	