

# LICENSING AND REGISTRATION COMMITTEE

08 MARCH 2023

## REPORT OF THE DEPUTY CHIEF EXECUTIVE

### A5. HOME OFFICE ISSUE REVISED SECTION 182 GUIDANCE UNDER THE LICENSING ACT 2003 AND “MARTYN’S” LAW (Report prepared by Michael Cook and Keith Simmons)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To report to the Committee on an update to the Guidance issued under section 182 of the Licensing Act 2003 issued by the Home Secretary and the introduction of “Martyn’s” Law. The Committee is invited to determine that, notwithstanding the changes referred to, there is currently, no requirement for an interim review of the Council's Statement of Licensing Policy (under the 2003 Act).

##### EXECUTIVE SUMMARY

In adopting the most recent Statement of Licensing Policy (in 2022) in relation to the Licensing Act 2003, officers assured the Committee that the Committee would be updated with any changes to the Section 182 Guidance issued by the Home Secretary.

On 20 December 2022, the Home Secretary issued a revised Section 182 Guidance under the Licensing Act 2003. In subsequent sections of this report the amendments introduced by way of the revised guidance are set out.

The full revised guidance is available here.

[Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/section-182-guidance)

In addition to the above, on 19 December 2022, the Government announced details for the Protect Duty, now to be known as ‘Martyn’s Law’ in tribute of Martyn Hett, who was killed alongside 21 others in the Manchester Arena terrorist attack in 2017.

Officers have considered the above matters and consider that there is no immediate requirement to initiate an interim review of the Council’s statement of Licensing Policy (as adopted in 2022). However, it is important that the members of the Committee are made aware of the changes set out in this report as part of their responsibility to have regard to the section 182 Guidance as they (collectively) consider matters under the Licensing Act 2003.

##### RECOMMENDATION(S)

**It is recommended that:**

**The Committee consider the report, notes the principle amendments to the Statutory**

## **Guidance under the Licensing Act 2003 and the Introduction of “Martyns Law”.**

### **REASON(S) FOR THE RECOMMENDATION(S)**

The Council, in undertaking its duties under the Licensing Act 2003, must have regard to the Statutory Guidance issued by the Home Secretary. It is therefore important that the Committee is aware of changes to that guidance (as such changes are made). It is also important that the Council keeps under review its Statement of Licensing Policy and changes to the Statutory Guidance (among a range of matters) give rise to a need to review the Council’s Statement of Licensing Policy. Officers have read through the amended changes and suggest that the current policy is up to date and does not warrant any change at this time.

### **ALTERNATIVE OPTIONS CONSIDERED**

Non-notification to Councillors of amendments to the Statutory guidance would not support Councillors making informed decisions while notification of changes to the Statutory Guidance could have taken place outside of Committee, the holding of the meeting was timely to achieve this and supports the general commitment to keep the Council’s Statement of Licensing Policy under review.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

A licensing authority, such as this Council, must carry out its licensing functions under this 2003 Act in relation to alcohol supply, live and recorded entertainments and provision of late night refreshments with a view to promoting the licensing objectives. The licensing objectives in the 2003 Act are –

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

In promoting the four licensing objectives, the Council (in its role as licensing authority) will also ‘Deliver High Quality Services’, assist in ‘Building Sustainable Communities for the Future’, have ‘Strong Finances and Governance’, support a ‘Growing and Inclusive Economy’ and provide ‘Community Leadership through Partnerships’. These are the themes of the Council in its 2020-24 Corporate Plan.

### **LEGAL REQUIREMENTS (including legislation & constitutional powers)**

The legislative framework for this area of licensing is set out in the Licensing Act 2003. In general, in relation to carrying out its licensing functions, a licensing authority such as this Council, must have regard to any guidance issued by the Secretary of State under section 182 of the 2003 Act. This general requirement also applies to the development and content of its Statement of Licensing Policy.

It is therefore imperative that decision makers in respect of matters under the Licensing Act 2003 are aware of changes to the Secretary of State's guidance in a timely way.

#### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

None

#### **USE OF RESOURCES AND VALUE FOR MONEY**

The development of the licensing policy and the conduct of hearings under the Licensing Act 2003 is not an insignificant element of the work of Councillors on this Committee and, accordingly, it would not be an efficient use of the time of Councillors if they were not aware of the content of a cornerstone of the licensing framework as changes are made to it. As such, this report seeks to support informed and good decision making principles and to support efficient debate going forward.

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	An understanding of changes to the Statutory Guidance supports planning and resource allocation in respect of licensing.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	This is the underpinning reason for this report in relation to changes that Councillors on this Committee should be aware of.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Not appropriate to this report.

#### **MILESTONES AND DELIVERY**

Officers gave commitments to the Committee at its 3 November 2022 meeting to keep under review legislative and statutory changes and report on these to the Committee from time to time. This is a measure that seeks to ensure that the Council will keep its Statement of Licensing Policy up to date and initiate reviews of it as necessary.

#### **ASSOCIATED RISKS AND MITIGATION**

The principal risk in respect of this report is that the changes to the guidance have been incorrectly identified. The use of official guidance seeks to mitigate against this risk.

#### **OUTCOME OF CONSULTATION AND ENGAGEMENT**

The following Council units or officers and/or other organisation have been consulted in preparing this report: Management Team

#### **EQUALITIES**

The Licensing Authority will have due regard to the public sector equality duty under the Equality Act 2010. Under this duty, the Authority (in the exercise of its functions) must have due regard to the need to:

- eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act)
- advance equality of opportunity between people who share a relevant characteristic and people who do not
- foster good relations between people who share a protected characteristic and people who do not

**SOCIAL VALUE CONSIDERATIONS**

There are no direct social value considerations arising in this report.

**IMPLICATIONS FOR THE COUNCIL’S AIM TO BE NET ZERO BY 2030**

There are no direct implications for climate change.

**OTHER RELEVANT IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

<b>Crime and Disorder</b>	As set out earlier, two of the four licensing objectives under the 2003 Act are the Prevention of Crime and Disorder and the Prevention of Public Nuisance. The Council also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in its area. The Council’s Statement of Licensing Policy has been prepared with the intention to promote positively the four licensing objectives as a whole including the prevention of crime and disorder and the prevention of public nuisance in the District.
<b>Health Inequalities</b>	There are no implications in respect of the matters in this report.
<b>Area or Ward affected</b>	All

**ANY OTHER RELEVANT INFORMATION**

None

**PART 3 – SUPPORTING INFORMATION**

**BACKGROUND**

The following has been taken directly from the amended version of the Section 182 Guidance following it’s changes from the previous guidance (April 2018). The changes include:

1. In terms of right to work and entitlement, the revised guidance substantially changed 4.21

onwards

2. Lessening the burden on persons operating an alcohol delivery service to suggest they "may consider contacting their licensing authority" (previously "should") under paragraph 3.10

*Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, may consider contacting their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.*

3. New section on "Closure Notices" at paragraph 4.83

*Section 19 of the Criminal Justice and Police Act 2001 (the Act) gives licensing authorities, police and local authorities the power to serve a closure notice where any premises are being used (or have been used within the last 24 hours), for the sale of alcohol for consumption on or in the vicinity of the premises; and the activity was not authorised (premises licence, club premises certificate or temporary event notice) or not in accordance with the conditions of authorisation. The notice informs the person with control of, or responsibility for, the activities carried on at the premises (normally the licence holder or the designated premises supervisor) that if unauthorised alcohol sales continue, an application may be made to a court under section 20 for an order to close the premises under section 21 of the Act. Such an application cannot be made less than seven days or more than six months after the service of the closure notice under section 19.*

4. Clarifying that Home Office Immigration Enforcement is not responsible for Clubs (para 6.11)

*The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those for a premises licence. Clubs may also use the minor variation process to make small changes to their certificates as long as these could have no adverse impact on the licensing objectives. Licensing authorities should refer to Chapter 8 of this Guidance on the handling of such applications. Licensing authorities do not have to satisfy themselves that applicants for club premises certificates are entitled to work in the UK before issuing a club premises certificate. Consequently, Home Office Immigration Enforcement is not a responsible authority in relation to club premises certificates.*

5. Updates to TENs statutory limits (para 7.15)

*•the number of times a TEN may be given for any particular premises is 15 times in a calendar year (for the 2022 to 2023 calendar years this will increase from 15 to 20); • the maximum duration of an event authorised by a TEN is 168 hours (seven days); • the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year (for the 2022 to 2023 calendar years this will increase from 21 to 26 days);*

6. Clarifying that there is no right of appeal in respect of late TENs following objection by the police or EHOs (para 7.34)

*Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings (or appeals) in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.*

7. Clarifying that full variations should not be used to "vary **substantially** the premises to which the licence relates" at paragraph 8.76

*However, it should be noted that a section 34 application cannot be used to vary a licence so as to: • extend a time limited licence; vary substantially the premises to which the licence relates; • transfer the licence from one holder to another; or • transfer the licence from one premises to another*

8. Paragraph 10.5 added clarification that operating schedules should be converted to conditions which must be "appropriate and proportionate for the promotion of the licensing objectives."

*It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention and be appropriate and proportionate for the promotion of the licensing objectives.*

9. Inclusion of the "Agent of Change" principle in 14.66

*Where there is an application for planning permission, the National Planning Policy Framework expects new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required by the local planning authority to provide suitable mitigation before the development has been completed.*

10. Removal of "Annex A – documents which demonstrate entitlement to work in the UK"

Section 4 of the Licensing Act 2003 provides that, in carrying out its functions, a licensing authority must 'have regard to' the s.182 guidance and it is therefore binding on all licensing authorities to that extent.

### **Martyn's Law**

On 19 December, the Government announced details for the Protect Duty, now to be known as 'Martyn's Law' in tribute of Martyn Hett, who was killed alongside 21 others in the Manchester Arena terrorist attack in 2017. A fact sheet was released with the following

details:

### **Why do we need Martyn's Law?**

There have been 14 terror attacks in the UK since 2017. These tragic attacks have caused deaths and casualties amongst people going about their everyday lives.

The terrorist threat we currently face is multifaceted, diverse, and continually evolving. As such, it remains difficult to predict which locations could be targeted by terrorists with attempts being harder to spot and harder to stop.

We need to improve security and ensure robust, proportionate, and consistent measures at public places to make sure we can better prepare and improve public security, in light of possible future attacks.

We are aware through engagement with industry that, without legal compulsion, counter terrorism security efforts often fall behind legally required activities. The prioritisation, consideration and application of security processes and measures is currently inconsistent.

### **What will Martyn's Law do?**

Martyn's Law will keep people safe, enhancing our national security and reducing the risk to the public from terrorism by the protection of public venues.

It will place a requirement on those responsible for certain locations to consider the threat from terrorism and implement appropriate and proportionate mitigation measures.

The legislation will ensure parties are prepared, ready to respond and know what to do in the event of an attack. Better protection will be delivered through enhanced security systems, staff training, and clearer processes.

### **Who will be in scope?**

Premises will fall within the scope of the Duty where "qualifying activities" take place. This will include locations for purposes such as entertainment and leisure, retail, food and drink, museums and galleries, sports grounds, public areas of local and central Government buildings (e.g., town halls), visitor attractions, temporary events, Places of Worship, health, and education.

It is proposed that the Duty will apply to eligible locations which are either: a building (including collections of buildings used for the same purposes, e.g., a campus); or location/event (including a temporary event) that has a defined boundary, allowing capacity to be known. Eligible locations whose maximum occupancy meets the above specified thresholds will be then drawn into the relevant tier.

Therefore, premises will be drawn into the scope of the Duty if they meet the following three tests:

- That the premises is an eligible one – i.e., building or event with a defined boundary.
- That a qualifying activity takes place at the location; and
- That the maximum occupancy of the premises meets a specified threshold – either 100+ or 800+

## How will it work?

The Bill will impose a duty on the owners and operators of certain locations to increase their preparedness for and protection from a terrorist attack by requiring them to take proportionate steps, depending on the size and nature of the activities that take place there.

Proportionality is a fundamental consideration for this legislation. It will therefore establish a tiered model, linked to the activity that takes place at a location and its capacity:

- **A standard tier** will drive good preparedness outcomes. Duty holders will be required to undertake simple yet effective activities to improve protective security and preparedness. This will apply to qualifying locations with a maximum capacity of over 100. This could include larger retail stores, bars, or restaurants.
- **An enhanced tier** will see additional requirements placed on high-capacity locations in recognition of the potential catastrophic consequences of a successful attack. This will apply to locations with a capacity of over 800 people at any time. This could include live music venues, theatres, and department stores.

## Who will it apply to?

Premises will fall within the scope of Martyn's Law where "qualifying activities" take place. This will include locations for purposes such as entertainment and leisure, retail, food and drink, museums and galleries, sports grounds, public areas of local and central Government buildings (e.g., town halls), visitor attractions, temporary events, Places of Worship, health and education.

## When will this important legislation be introduced?

The Government will introduce the Protect Duty as soon as parliamentary time allows.

## When will the Protect Duty become law?

It is not possible to give a date. There will be a lead in time allowing for those captured by the Duty to prepare for commencement, and as soon as the parliamentary timetable is known this will be set out.

Considering the amendments to the section 182 Guidance and the changes introduced through "Martyn's" Law Officers do not consider that there is a requirement (at this stage) to initiate an interim review of the statement of Licensing Policy adopted in 2022.

## PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

Licensing and Registration Committee of 3 November 2022 recommended to Council the adoption of the Statement of Licensing Policy.

## BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

[Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/section-182-guidance)

[Martyn's Law Factsheet - Home Office in the media \(blog.gov.uk\)](https://www.blog.gov.uk/2022/03/01/martyns-law-factsheet/)



**APPENDICES**

None

**REPORT CONTACT OFFICER(S)**

*Include here the Name, Job Title and Email/Telephone details of the person(s) who wrote the report and who can answer questions on the content.*

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