



Committee and Date

Strategic Licensing Committee

5 October 2022

Item

Public

## **Responsibilities of Premises Licence Holders under the Licensing Act 2003**

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### **1. Synopsis**

- 1.1 This report sets out the responsibilities placed on premises licence holders, when undertaking licensable activities that are authorised under the Licensing Act 2003 ('the 2003 Act'), with a focus on the safety of those who attend licensed premises.

### **2. Executive Summary**

- 2.1 This report is in response to a Motion that was agreed by Council, part of which requested clarity on the obligations placed on premises licence holders, who sell/supply alcohol as it relates to the safety of those who attend licensed premises.
- 2.2 The 2003 Act exists to regulate the carrying on of licensable activities taking place on or from licensed premises and focuses on the promotion of four statutory licensing objectives, which must be addressed when licensing functions are undertaken. The licensing objectives aim to protect the public from harm.
- 2.3 The report sets out the most relevant legal responsibilities placed on premises licence holders as they relate to adult customers and highlights the advice available in statutory guidance. Compliance with the statutory guidance helps licensees to demonstrate that they have satisfied their legal responsibilities.

### **3. Recommendation**

- 3.1 That Members consider and note the information provided in the report.

## REPORT

### 4. Risk Assessment and Opportunities Appraisal

- 4.1 As this is an information report a risk assessment and opportunities appraisal has not been carried out.

### 5. Financial Implications

- 5.1 There are no financial implications associated with this report.

### 6. Climate Change Appraisal

- 6.1 There are no anticipated climate change or environmental impacts associated with the recommendations in this report.

### 7. Background

- 7.1 At a meeting of the Full Council on the 12 May 2022, the following motion was agreed:

*“Call a meeting of the Strategic Licensing Committee to clarify the obligations on liquor licensees regarding care and protection of their users and work with the Police to ensure that the responsibilities are exercised, including giving advice to vulnerable people on leaving such premises.”*

- 7.2 The 2003 Act replaced the Licensing Act 1964 and reference to ‘liquor licensees’ was amended. The 2003 Act refers to premises licence holders and the supply of alcohol is a licensable activity for which a premises licence can be held.

- 7.3 The 2003 Act exists to regulate the carrying on of licensable activities taking place on or from licensed premises. The licensable activities are:

- The sale by retail of alcohol
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
- The provision of regulated entertainment
- The provision of late-night refreshment

- 7.4 The 2003 Act focuses on the promotion of four statutory licensing objectives which must be addressed when licensing functions are undertaken:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

- 7.5 The promotion of the four objectives is paramount in any decision making under the 2003 Act and in the operation of any premises authorised to carry out licensable activities under the 2003 Act. This is managed through a set of mandatory conditions, which are set out in the 2003 Act and attached to all premises licences, together with licence specific conditions which are determined through the application process for a new licence, and through its ongoing management once granted.
- 7.6 Ensuring the safety of people using licensed premises is one of the main responsibilities of premises licence holders. This responsibility includes implementing measures to prevent accidents and injuries occurring on a premises and preventing the immediate harms that can occur as a result of the consumption of alcohol. The specific measures required are determined on a case-by-case basis as they must be capable of addressing identified risks, which will be different at different premises.
- 7.7 The guidance issued under section 182 of the 2003 Act ('the Section 182 Guidance') states that licence holders should make provision to ensure that those using their premises are able to leave safely, which might include steps such as providing information on local taxi companies inside the premises and ensuring adequate lighting outside the premises and in any carparks associated with it. Importantly, the Section 182 Guidance does not extend the licence holder's responsibility for customer safety to those who have already left the premises. Furthermore, a premises that has implemented measures described in the Section 182 Guidance (and any other measures deemed necessary/appropriate) does not guarantee that customers will make use of these measures. Making it possible for customers to leave safely does not necessarily mean that they will; this ultimately remains in the control of individual customers.
- 7.8 To further protect customers of licensed premises from the potential harms of alcohol consumption, the 2003 Act makes it an offence under section 141 to knowingly sell or attempt to sell alcohol to a person who is drunk, or to knowingly allow alcohol to be sold to such a person on a licensed premises. The clear intention of this is to protect customers of licensed premises from the immediate risks of alcohol consumption both on licensed premises and once they have left them. This offence can be enforced by both the Police and the Licensing Authority. It is generally accepted that the best professional opinion on whether a person is drunk would come from a police officer, because they are also responsible for enforcing public order offences such as being drunk and disorderly and are professionally trained to recognise the signs of intoxication.
- 7.9 There is, however, no precise legal definition of 'drunk', and no official guidance available to premises licence holders on how to accurately assess levels of drunkenness. Alcohol affects people in different ways, different people can consume different amounts before they might be deemed 'drunk' and there are many other variables which could impact on a person's behaviour, e.g., prescription or illegal drugs or a medical condition. The way in which alcohol is consumed has also changed greatly in recent years. 'Pre-loading' is now common practice, so a person may only need to consume one drink in a licensed premises to become 'drunk', having already consumed significant amounts at home.

- 7.10 Proving that a section 141 offence has taken place is challenging, primarily because it is about knowingly selling or allowing the sale of alcohol to a person who is drunk. Firstly, it must be proven that the person who has been sold the alcohol was drunk (for which there is no legal definition, and a professional opinion would be required) and that the person who sold to them knew they were drunk. Clearly, proving what a person did or did not know is very difficult and consequently there is a very high evidential bar. Very few prosecutions are taken for this offence nationally, and even fewer are successful.
- 7.11 It is right that premises licence holders should be expected to do everything within their power on their premises to ensure the safety of their customers, both when they are in the premises and when they leave. It is standard practice for premises licences issued by Shropshire Council to include conditions on new and varied premises licences that, amongst other measures, require licensees to make available telephone numbers for local taxi firms, to train all their staff in their responsibilities under the 2003 Act (including not serving a person who is drunk) and to keep a log of people they have refused to serve, in order to protect public safety.
- 7.12 The extent to which a premises licence holder's responsibility extends to areas away from the licensed premises, and for customers who have left the premises, is not defined by the 2003 Act. Where a licence holder has met their responsibilities, as defined by the Act, and no offences have been committed, the 2003 Act does not hold premises licence holders responsible for what may happen to a customer once they have left the premises.
- 7.13 Caution does need to be exercised in terms of correlating licensed premises that sell/supply alcohol with any specific public safety issue as there are a number of variables that will impact on this, many of which may be unknown. Focusing on licensed premises as a cause of any specific issue may be misleading, could inadvertently mask another issue and potentially damage businesses.
- 7.14 Where an individual or organisation considers that a licensee has failed/is failing to meet their responsibilities referred to above, it is important that this information is reported to the Council's Licensing Team and/or the relevant responsible authority. This will ensure the issues are investigated and, where necessary, a licence review can be brought before the Strategic Licensing Committee. The Committee can then apply further conditions to the premises licence or amend existing conditions aimed at addressing the failures of the licensee. The licensee will be responsible for ensuring compliance with these conditions. In the most serious cases, such a review can lead to the revocation of a premises licence.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

- Full Council Meeting on Thursday 12 May 2022  
[Agenda for Council on Thursday, 12th May, 2022, 10.00 am — Shropshire Council](#)
- The Licensing Act 2003  
<https://www.legislation.gov.uk/ukpga/2003/17/contents>
- Revised guidance issued under section 182 of the Licensing Act 2003  
[Revised guidance issued under section 182 of Licensing Act 2003 - GOV.UK \(www.gov.uk\)](#)

**Cabinet Member (Portfolio Holder)**

Councillor Ed Potter, Deputy Leader, Economic Growth, Regeneration and Planning

**Local Member**

Not applicable – report has county wide application

**Appendices**

None