

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

meeting date: 31 JANUARY 2023
title: SECTION 182 GUIDANCE LICENSING ACT 2003
submitted by: CHIEF EXECUTIVE
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1 PURPOSE

1.1 To inform Committee of the revision of the guidance issued under Section 182 of the Licensing Act 2003.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives - }
- Corporate Priorities - } The Council aims to be a well-managed authority these proposals support that objective.
- Other Considerations – }

2 BACKGROUND

2.1 Section 182 of the Licensing Act 2003 provides that the Secretary of State must provide guidance to licensing authorities on the discharge of their functions under this Act. A copy of the revised guidance can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125660/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_December_2022.pdf

3 ISSUES

3.1 The Home Office revised this guidance in December 2022 in the following respects:

- Entitlement to Work in the UK

This section of the guidance has changed and must be considered. Paragraphs 4.8 – 4.48 replace paragraphs 4.8 – 4.18 under the previous guidance. There are significant changes to the 'Entitlement to Work' section in the document, and much of this reflects the change in relationship between the United Kingdom and the European Union/ European Economic Area. There are extensive changes which are pointed out in this expanded section, which need to be carefully considered when dealing with non-UK applicants.

- Relevant Offences

Paragraph 4.51, which dealt with relevant offences under the 2018 edition, has been expanded to paragraphs 4.81 – 4.84 in the new edition. This introduces section 19 of the Criminal Justice and Police Act 2001, dealing with closure notices.

- Temporary Event Notices – Section 7

There are some changes to the 'Temporary Event Notice' section within the document.

Paragraph 7.15, in the bullet points, refers to the increase in the allowance of temporary event notices from the year 2022 to 2023, which will increase from 15 to 20 per calendar year. This also increases also for 2022 to 2023, the total duration from 21 to 26 days per calendar year.

In addition, in paragraph 7.34, it is clarified that there is no ability for an appeal in relation to a late temporary event notice, following objection by the Police or Environmental Health Officer. The event is invalid and cannot go ahead.

- Full Variation Process

Paragraph 8.76 has been amended to include the phrase “vary substantially the premises to which the licence relates.” This is an interesting addition to the full variation process, suggesting that if there are to be a substantial change to the premises, there should be a new licence application rather than a full variation. Applicants often go down the route of a new licence in any event, rather than adopt the variation route, as this removes the ability for additional conditions to be attached to a premises licence, without achieving the benefit of the variation sought.

- Conditions Attached to a Premises Licence

The wording of paragraph 10.5 has been changed to read “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.” This expands on the previous guidance, stressing the requirement for conditions to be appropriate and proportionate.

- Planning and Building Control

A new paragraph has been added at 14.66, which states “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 a 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.”

3.2 Section 4 of the Licensing Act 2003 stresses that in carrying out its functions, a Licensing Authority must “have regard to” guidance issued by the Secretary of State under Section 182. To this effect, the guidance is binding on all Licensing Authorities. To depart from the guidance could give rise to an appeal or judicial review, and therefore any reasons for departure need to be given clearly. This is a key document to which applicants and licensing lawyers will refer, along with the Council’s Statement of Licensing Policy, before drafting and submitting an application. It will normally be referred to in licensing hearings before Licensing Sub-Committees, and on appeals before the Magistrates’ Court.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – No implications identified.
- Technical, Environmental and Legal - No implications identified.
- Political - No implications identified.
- Reputation – No implications identified.
- Equality & Diversity – No implications identified.

5 CONCLUSION

5.1 Committee is asked to note the contents of the report.

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BACKGROUND PAPERS

None

For further information please ask for Stephen Barker, extension 3216.