



Report to: Licensing Committee Meeting – 22 September 2022  
Director Lead: Matthew Finch, Director – Communities & Environment  
Lead Officer: Alan Batty, Business Manager – Public Protection, Extn. 5467

<b>Report Summary</b>	
<b>Report Title</b>	Review Pool of Potential Conditions
<b>Purpose of Report</b>	To seek the Committee’s approval from Members in relation to the pool of potential conditions that is available for use when considering the appropriate conditions to attach to a licence.
<b>Recommendations</b>	Members are asked to approve the amended pool of potential conditions.
<b>Reason for Recommendations</b>	These are conditions that cover the four licensing objectives and have wording which is considered to be clear, precise and enforceable. The pool conditions are also provided to ensure that the wording of conditions is consistent to assist the Police and licensing enforcement staff as well as the licence holder.

## **1.0 Background**

- 1.1 There are three ways in which conditions can be attached to a premises licence, these are:
- Mandatory
  - Proffered
  - Imposed
- 1.2 Mandatory conditions are set out in regulations by Government and are conditions that apply across a range of premises. The regulations set out which conditions are applied to which type of premises and the Licensing Authority must apply them to any relevant licence issued.
- 1.3 Within an application the operator is required to set out the measures that are proposed to promote the licensing objectives. These are normally to be found within the operating schedule of an application. Where an application is received and there are no relevant representations, in such circumstances the authority is obliged to grant the licence in accordance with the application subject to such conditions as are consistent with the operating schedule.

- 1.4 From this it can be seen that the operating schedule is an important part of the application and that the applicant needs to have an understanding of the requirements of the local area. The statutory guidance makes this clear:

*In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives.*

- 1.5 It is the role of the Licensing Authority to transmute the statements in the operating schedule into enforceable appropriate licence conditions to promote the licensing objectives. In cases such as this the licence will have both mandatory and proffered conditions attached to the licence.

- 1.6 In cases where relevant representations are received in respect of an application the licensing authority must hold a hearing to consider them. One of the potential outcomes from the hearing is to grant the licence subject to conditions which are consistent with the operating schedule accompanying the application, modified to such an extent as the licensing authority considers necessary for the promotion of the licensing objectives.

- 1.7 Whilst this appears to give a wide discretion to attach such conditions as the authority considers appropriate, in reality the discretion is tempered by a series of considerations that are set out in the statutory guidance. This states that licence conditions:

- must be appropriate for the promotion of the licensing objectives
- must be precise and enforceable
- must be unambiguous and clear in what they intend to achieve
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation
- must be tailored to the individual type, location and characteristics of the premises and events concerned
- should not be standardised
- should not replicate offences
- should be proportionate, justifiable and be capable of being met
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff
- should be written in prescriptive format

- 1.8 At the outset of the new licensing regime the statutory guidance issued under section 182 contained a model pool of conditions. This has since been relegated to 'supporting guidance' but remain a useful reference point for the development of conditions.

- 1.9 The Act and its guidance are very clear that a list of standard conditions imposed in every case is not the correct manner in which conditions are to be used. They need to be applied where they are considered appropriate and proportional to the particular circumstances of any individual case. This does not mean however that a licensing authority cannot develop a 'pool of potential conditions' from which it can select an appropriate and proportional condition that fits the circumstances under consideration.
- 1.10 The Nottinghamshire Authorities Licensing Group (NALG) developed such a pool of conditions in conjunction with the responsible authorities some years ago. This was done so that there was some consistency across the county.
- 1.11 During a number of recent Licensing Hearings the validity and usefulness of some of the potential conditions has been questioned by both Members and officers and there was a subsequent request by Members to review the conditions.
- 1.12 These are conditions that cover the four licensing objectives and have wording which is considered to be clear, precise and enforceable. The pool conditions are also provided to ensure that the wording of conditions is consistent to assist the police and licensing enforcement staff as well as the licence holder.

## **2.0 Proposal/Options Considered**

- 2.1 A small group of officers from the Nottinghamshire Authorities Licensing Group were tasked with undertaking a review and updating the pool of conditions.
- 2.2 This review has unfortunately not been completed at the time of writing this report. A copy of the existing conditions are attached at **Appendix One**. It is anticipated that the revised pool of conditions will be considered by the aforementioned group of officers on 14 September 2022. The proposed changes will be verbalised at the Licensing Committee meeting.
- 2.3 The conditions cover the four licensing objectives and have wording which is considered to be clear, precise and enforceable. The pool of conditions are also provided to ensure that the wording of conditions is consistent to assist the Police and licensing enforcement staff as well as the licence holder.

## **3.0 Implications**

- 3.1 In writing this report and in putting forward recommendations, officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability. No implications have been identified.

## **Background Papers and Published Documents**

Licensing Act 2003