

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 23rd July 2014

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WARD(S): ALL

PART I

FOR INFORMATION

REVISION OF THE SECRETARY OF STATE GUIDANCE- SECTION 182 GUIDANCE (JUNE 2014)

1. **Purpose of Report**

To advise members on the revision to the Secretary of State's Guidance (Section 182) for the Licensing Act 2003 published in June 2014.

2. **Recommendation(s)/Proposed Action**

The Committee is requested to note that the Secretary of State's Section 182 Guidance for the Licensing Act 2003 has been revised and amended, including new guidance on the mandatory condition banning below cost sales of alcohol.

3. **Community Strategy Priorities-**

- **Being Safe, Feeling Safe**
- **A Cleaner, Greener place to Live, Work and Play**
- **Prosperity for All**

4. **Other Implications**

(a) **Financial**

There are no financial implications of the proposed action.

(b) **Risk Management**

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
None – information only	None – information only	None – information only

(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 of The Human Rights Act 1998 apply:

Article 1 of the First Protocol– Every person is entitled to a peaceful enjoyment of his or her possessions including the possession of a licence and shall not be deprived of the possession except in the public interest and subject to the conditions provided for by law.

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(d) Equalities Impact Assessment

The substantial majority of amendments to the Section 182 Guidance relate to the introduction of a new mandatory condition, attaching to premises licences and club premises certificates, banning the below cost selling of alcohol. This condition was brought into force by *The Licensing Act 2003 (Mandatory Conditions) Order 2014*. The Home Office prepared an Impact Assessment in connection with this Order, which did not identify any equality issues. No Impact Assessment was prepared by the Home Office in relation to the amended Section 182 Guidance.

Neither the amendments relating to the new mandatory condition nor the other amendments to the Section 182 present any significant issues in relation to the Council's duties under the Equalities Act 2010.

(e) There are no workforce implications from the publication of the revised Guidance.

5. Supporting Information

- 5.1 The Licensing Act 2003 introduced a regime for the licensing of alcohol, regulated entertainment and late night refreshment, administered by a local Licensing Authority. Under Section 182 of the Act, the Secretary of State issues guidance to accompany the primary legislation.
- 5.2 In June 2014, the Secretary of State issued amended guidance, a copy of which will be provided to all the Members at the Committee meeting. The Explanatory Memorandum of the amendments in the revised document is attached to the report at **Appendix A**. This details the main amendments and additions to the revised Section 182 guidance.
- 5.3 Although there are a number of minor amendments to the revised Guidance, the main revision to the Guidance relates to "The Licensing Act 2003 (Mandatory Conditions) Order 2014 banning the sale of alcohol below the cost of VAT and duty" which took effect on 28 May 2014. This new Mandatory Condition applies to the sale of all alcohol at all licensed premises with authorisation i.e. Premises Licences and Club Premises Certificates, regardless as to whether the sale is On and or Off sales.

- 5.4 With regards to discharging its functions under the Licensing Act 2003, **Point 4.2** of the Explanatory Memorandum states that - Licensing Authorities (which includes, the Members of the Licensing Committee, Licensing Sub Committees and Officers) must have regard to this Guidance but may depart from it if they have good reason to do so, although any such departure may give rise to an appeal or judicial review.
- 5.5 There is an important footnote added to **Paragraph 16.7** of the new guidance with regards to Early Morning Restriction Orders clarifying decision making and delegations which reads as follows:

“The final decision to make an EMRO (or to vary or revoke one) **must** be made by the full council of the licensing authority. However, all preceding steps, including advertising the proposed EMRO, holding hearings and making a determination to put before the full council for its final decision, are for the licensing committee of the licensing authority. The licensing committee may delegate these steps to the licensing sub-committee or officers as it sees fit”.

6. Comments of Other Committees

None.

7. Conclusion

For Members to note the changes to the Secretary of State’s Section 182 Guidance.

8. Appendices Attached

‘A’ - Explanatory memorandum

9. Background Papers

‘1’ - Licensing Act 2003.

‘2’ - Secretary of State’s Guidance issued under Section 182 of the Licensing Act 2003 (Revised June 2014).

‘3’ - The Licensing Act 2003 (Mandatory Conditions) Order 2014

‘4’ - Home Office’s non-statutory “Guidance on banning the sale of alcohol below the cost of duty plus VAT For suppliers of alcohol and enforcement authorities in England and Wales” (May 2014)

‘5’ - Home Office Impact Assessment “Banning the Below Cost Selling Of Alcohol (BBCS)”