

FOR: SPECIAL REGULATORY AND LICENSING COMMITTEE

Date: 17th May 2012

Agenda Item: 3

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**THE POLICE REFORM & SOCIAL RESPONSIBILITY ACT 2011 AND
LICENSING ACT 2003**

1. PURPOSE OF REPORT

- 1.1 Members to consider the implications of the key changes to the Licensing Act 2003 (2003 Act), introduced by the Police Reform & Social Responsibility Act 2011 following a Central Government consultation in 2010 entitled “Rebalancing the Licensing Act 2003”.

2. BACKGROUND

- 2.1 A Government consultation entitled “Rebalancing the Licensing Act 2003” was undertaken in 2010. Members have received a previous report on this matter (23rd September 2010) and a formal response was submitted in late 2011 to the Government following consultations with the Chairman and Vice Chairman.
- 2.2 In this document the Government outlined their proposals to overhaul the current licensing regime to give greater powers to licensing authorities and Police to control licensable activities in order to avoid adversely affecting local residents and businesses in relation to the “licensing objectives”.
- 2.3 The Police Reform and Social Responsibility Act 2011 (2011 Act) received Royal Assent on 15 September 2011. The effect of the 2011 Act is that it enables central government to make certain amendments to the Licensing Act 2003.
- 2.4 Resultant from these proposals and the public consultation process in 2011 we have now been formally advised by the Home Office in a letter from the Minister of State for Crime Prevention and Antisocial Behaviour Reduction dated 13th April and attachment **(see Appendix A and B)** of the Governments Alcohol Strategy **(see Appendix C)**.
- 2.5 It advises on the changes to the Licensing Act 2003 enabled through the Police Reform and Social Responsibility Act 2011 together with proposals to relax licensing

hours to celebrate the Queens Diamond Jubilee in June 2012.

2.6 In summary the proposed amendments are in relation to:

- Temporary Event Notices
- List of Responsible Authorities
- Removal of definition of “interested party” and the “vicinity” test
- Early Morning Restriction Orders
- Fees
- Underage sales
- Licensing Policy statements
- Alcohol Disorder Zones
- Late Night Levy

3. AMENDMENTS AND MATTERS FOR CONSIDERATION

3.1 Detailed below is a detailed summary of the proposed amendments

3.2 Temporary Event Notices (TENs)

3.3 Under the proposed changes to the legislation, the local authority exercising environmental health functions will, for the first time, be able to object to TENs where they consider the proposed activities will have a detrimental effect on the licensing objectives. Currently only the Police can object and then only on the grounds of crime prevention.

3.4 If objections to a TEN are made, for the first time conditions can be applied to such an event by the licensing authority where:

- a) The licensing authority considers it appropriate to do so;
- b) There are existing conditions already included on a premises licence/ club premises certificate for those premises; and
- c) It would not be inconsistent with carrying out the licensable activities under the TEN.

3.5 In the new licensing regime it will be possible for TENs to be submitted up to five days in advance of the proposed event. Currently, a minimum of ten working days notice must be given to licensing authorities and the police.

3.6 A TEN can now last for up to **168 hours** (7 days) – (*up from 96 hours*)

3.7 Every premises now entitled to **21 days** of TEN's per year (*up from 15 days*)

3.8 The current limit of **12** notices per year per premises remains unchanged.

- 3.9 Only a single copy of the TEN form now has to be given to the Licensing Unit (*rather than in duplicate.*)
- 3.10 Requirement for the Licensing Unit to return an endorsed copy of the TEN replaced by a simple acknowledgment letter.
- 3.11 Both Police and Environmental Health Department able to object to TEN's under any of the four licensing objectives (*no longer just crime prevention*) and both authorities will have three working days to object to a TEN. The current time limit is two working days for Police.
- 3.12 Objections to be made within 3 working days of receipt (*up from 2*)
- 3.13 New provisions for acceptance of late TENs (**5-9 working days** before event start)
- 3.14 Limit of **2 late TEN's** per year per applicant (**10** if a Personal Licence holder)
- 3.15 Limits of **5 total TENs** per year per applicant (**50** if a Personal Licence holder) remain unchanged
- 3.16 Late TEN's can be rejected where objections are received. (*Standard TEN's with objection must still go to Committee hearing.*)
- 3.17 Conditions can be carried over from a Premises Licence following objection/committee hearing.
- 3.18 **Responsible Authority/Interested Party**
- 3.19 The licensing authority will become a "responsible authority" under the new licensing regime. This means that it will be able to make representations and apply for reviews in its own right.
- 3.20 Local councillors can make representations in their own right as they fall into the definition of "other persons", i.e. any individual, body or business entitled to make representations regardless of their geographic proximity to the premises, and are likely to be affected by the application. They may also be asked to make representations on a resident's behalf.
- 3.21 Primary Care Trusts and Local Health Boards will also become responsible authorities under the amended 2003 Act.
- 3.22 **Removal of definition of "interested party" and the scrapping of the "vicinity" test.**
- 3.23 This has the effect of allowing anyone to make representations on a new or variation application for a Premises Licence or to ask for a review, whether or not they live close to the premises concerned. This however, must be in relation to one or more of the licensing objectives.
- 3.24 **Advertising**
- 3.25 The Licensing authority is now required to advertise new or variation applications on their website in addition to the previous requirements for applicants to advertise in a prescribed way.

3.26 **Determination of Applications**

3.27 The word “necessary” shall be replaced with “appropriate” in relation to the steps a licensing authority may take when determining applications following representations being made, including review applications.

3.28 **Early Morning Restriction Order (EMRO)**

3.29 EMROs will allow licensing authorities to prohibit the sale of alcohol between midnight and 06.00 from certain types of premises to be specified. The Order must be deemed appropriate to promote the licensing objectives.

3.30 **Licence fees**

3.31 Currently, if licensed premises fail to pay its annual fee the licensing authority’s only redress is to pursue non payment as a civil debt. However, under the amended 2003 Act, if this situation occurs following enactment the licensing authority can suspend the premises licence until payment has been received.

3.32 Exemptions are built in to allow for administrative error or disputes, and a “grace period” will apply in these circumstances. Receipts must be issued within 2 working days. Subject to ministerial approval, the licensing authority will be able to set certain fees on a cost recovery basis. The costs may include the cost of work undertaken by other responsible authorities under the 2003 Act.

3.33 **Under Age Sales**

3.34 Maximum fines to licensed premises for persistently selling to under age children will be doubled to £20,000. The period by which a County Council’s Trading Standards service can order premises to cease trading in such circumstances is amended from the current maximum 48 hours to a minimum of 48 hours and a maximum of 336 hours (14 days).

3.35 **Licensing Policy statements**

3.36 The legal requirement for licensing authorities’ to review their policy statements will be extended from every three to five years under the new regime.

3.37 **Alcohol Disorder Zones (ADZs)**

3.38 ADZs will be repealed under the amended 2003 Act.

3.39 **Late Night Levy.**

3.40 The introduction of a “late night levy” is intended to cover the costs of policing and other arrangements for the reduction or prevention of crime or disorder, in connection with the sale or supply of alcohol between midnight and 06.00.

3.41 If the licensing authority decides to apply the late night levy it must apply to the whole of the District. The licensing authority may choose to specify time restrictions applicable to the levy and any permitted exemption categories and/or permitted reduction categories.

3.42 Regulations will specify how payments are collected, including time periods for payment. The regulations will also specify the relevant expenses that may be deducted in calculating the net amount of levy payments.

- 3.43 Not less than 70% of the levy will go to the Police to cover policing costs. The remainder will be applied in accordance with the regulations.
- 3.44 **Time table for implementation.**
- 3.45 The Alcohol Strategy sets out the Governments intention to bring into force all of the Police Reform and Social Responsibility Act alcohol reforms on the 25th April 2012, except for Early Morning Alcohol restriction orders, the late night levy, and locally set licensing fees which will require complex secondary legislation. These matters are expected to be introduced from October 2012.
- 3.46 Further information on the measures being introduced on the 25th April are detailed at **Appendix B**. Preliminary and supporting guidance is available on the Home Office website and on the 25th April the Home Office issued a revised version of the Statutory Guidance to Licensing Authorities issued under sec 182 of the Licensing Act 2003.

4. Recommendation requested

- 4.1 Members are requested to note these proposed changes to the 2003 Act and consider any implications resulting from them.
- 4.2 That delegated authority be granted to the Strategic Director Community Housing and Health, Strategic Director Democratic and Legal Services, Environmental Health Manager, Licensing and Electoral Services Manager.

5. Financial Implications

- 5.1 The licensing service currently provided by the Council is financed by fees Licensing Act set by the Government nationally and has not increased since they were first set in 2005. Income received under the current regime is £78,264 per annum.
- 5.2 Some of the proposed changes will have resource implications as licensing authorities will be given additional responsibilities and powers. This matter will need to be considered in more depth when further detail and guidance is available.
- 5.3 Any additional resources required will need to be reflected in the fees charged to licensed premises in order to achieve full cost recovery.

6. Strategic Plan Implications

- 6.1 Reducing disturbance and Antisocial behaviours through our powers under the Licensing Act is a key strategic action.

7. Sustainability Issues

- 7.1 Services for licensing and regulatory functions contribute to the well-being and safety of our residents and towards protecting and providing a high quality and sustainable environment for this and future generations.

8. Human Rights Issues

- 8.1 The impact of entertainment related activities and the operating of licensed premises all have Human Rights implications both in terms of nuisance and via the regulatory control of business effected through licence conditions

9. Crime and Community Safety Issues

- 9.1 Possible impact on community safety resulting from these proposals by reason of its deregulatory purposes.

10. Risk Management Issues

- 10.1 None identified.

Background Documents:

Appendix A – Letter from Home Office Minister 13th April

Appendix B – Annex to above letter detailing timing and measures to be implemented

Appendix C - The Governments Alcohol Strategy