

**LICENSING ACT 2003  
IMPLICATIONS OF EUROPEAN SERVICES DIRECTORATE**

**(Report by Head of Democratic and Central Services)**

**1. Introduction**

- 1.1 The Committee's attention is drawn to the implications of the EU Services Directive which requires that by 28th December 2009, EU Member States should put in place a system to allow service providers located in the EU to apply for, vary and pay for licences and permits on line.
- 1.2 The only service that this applies to in the case of the Licensing Committee is regulated entertainment but for consistency, the Government proposes to extend this to the sale and supply of alcohol and late night refreshment. The Directive does apply to a variety of other licences and permits that fall within the terms of reference of the Licensing and Protection Panel.

**2. The Implications**

- 2.1 The Licensing Act contains fixed timescales for the determination of applications, issue of counter notices etc. It also requires forms and certificates to be dealt with in certain prescribed ways. Changes will be required to accommodate the implications of the EU Directive and the Department for Culture, Media and Sport has launched a brief consultation period prior to making regulations to alter the present arrangements.
- 2.2 The principal changes can be summarised as –
- It will no longer be necessary to submit a written application with a signature, although applicants may continue to do so if they so wish.
  - Applicants who apply electronically will no longer have to send copies to the responsible authorities. This will become the responsibility of the licensing authority on receipt of the electronic application.
  - Licensing authorities will no longer be able to determine the scale of plans accompanying applications. As these can be submitted electronically, it will be sufficient for them to be 'clear and legible in all material respects'.
  - Temporary events notices can be served electronically and it will be the responsibility of the licensing authority to send a copy to the Police no later than the next working day after their receipt.
  - Applications can be submitted electronically either direct to those licensing authorities who can accept them in that way or through a point of single contact which the Department of Business, Innovation and Skills is developing (the Electronic Application Facility or EAF). Licensing authorities will then be able to collect submitted applications through a business link facility known as the Electronic Licence Management System or ELMS.
  - An application will be deemed to have been made or notice served when the form is made available on the ELMS for the authority to download.
  - The Directive requires that applications are dealt with promptly and processed within a previously announced timescale. If the application is not determined within that timescale, it will be deemed to have received consent.

- The timescale can be halted for incomplete or incorrect applications/notifications.
- An extension of time is permitted where this is necessary 'by the complexity of the issue' which will enable applications where representations to have been made to be determined at a hearing.
- Where an application has been submitted electronically, the permission must be given electronically.
- The Directive only applies to regulated entertainment. As this forms only part of a premises licence, together with the sale and supply of alcohol and late night refreshment, the DCMS propose to extend the requirements to the latter also.
- The new arrangement will not apply to personal licences or certain other limited applications.

### **3. Effect of the Changes**

3.1 The DCMS have calculated the saving for applicants to be in the region of £500,00 - £1,500,00 per annum with 'a small additional burden' for licensing authorities. The latter include –

- The complication that applications can now arrive through one of three routes, ELMS, electronically direct, or paper with slightly different timescales for each.
- A requirement to check daily or more frequently whether applications have been received through ELMS.
- The requirement for the licensing authority to now notify responsible authorities where an application has been submitted electronically, as opposed to this being the responsibility of the applicants.
- The removal of the requirement for a signature in writing which may require the need for further verification where an electronic application is not accompanied by a signature.
- A requirement for plans to be printed by the licensing authority where necessary which will require access to a large plan printer.
- A requirement for the licensing authority to notify the police on the first working day after receipt of a Temporary Event Notice. This does not allow for Christmas closure of the offices or staffing shortages for inclement weather or other causes.
- The shorter timescale available to deal with Temporary Events Notices.
- The need to notify an applicant that an application is incomplete which could be out of step with the notice posted on site or in a local newspaper.
- The need to notify an applicant of the approval of an application electronically and the possibility that the licence summary will not be displayed on the premises.

The principles involved are not at issue as the Directive must be complied with. The DCMS have consulted however on certain aspects of the details. Suggested answers are attached as an annex to this report.

#### **4. Conclusion and Recommendations**

- 4.1 The ability to apply for licences and permits electronically is in line with the transition to on line transactions but requires amendment to various aspects of the legislative procedure. It is difficult to quantify the cost involved for the licensing authority but on balance this is likely to be marginally more time consuming and costly than the present arrangements.
- 4.2 It is recommended
- (a) that the Committee notes the changes resulting from the implementation of the EU Services Directorate; and
  - (b) that the Committee authorises the attached answers to the consultation paper.

#### **Contact Person**

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#### **Background Papers**

Proposal to Introduce a New process for Electronic Application – consultation paper issued by the DCMS.

Question 1 – Do you agree that applications submitted via the EAF should be taken to be ‘given’ to the LA once a completed form has been submitted to the system and is available for the LA to download?

*Answer – Yes, provided that payment has been made with the application.*

Question 2 – Do you agree that LAs should request at least daily notification of completed applications available to download from the EAF?

*Answer – Yes.*

Question 3 – Do you agree that applications submitted via the LA’s own electronic application facility should be taken to be ‘given’ to the LA once the applicant has submitted a complete and valid form and paid the fee?

*Answer – Yes.*

Question 4 – Do you agree that applicants applying electronically via the EAF or an LA’s own facility should not have to wait for the licence to arrive to start the licensed activity?

*Answer – No. There is a risk, albeit slight, that activities may be provided that do not promote the licensing objectives which would not be permitted by the licence.*

Question 5 – Should licences be provided electronically or on paper (option 1), electronically but with licence holders required to keep a certified paper copy on the premises (option 2) or on paper (option 3)?

*Answer – Option 1. The choice should be at the discretion of the licensing authority.*

Question 6 – As above but for licence summaries?

*Answer – Option 1. This should help ensure that a licence holder displays a copy of the licence summary on the licensed premises as required by the legislation.*

Question 7 – Do you agree that applicants applying electronically should not be required to provide any additional proof of identity?

*Answer – No. Where there is reasonable doubt about the identity of the applicant, the licensing authority should be able to require the submission of additional proof of identity in the interests of ensuring the promotion of the licensing objectives.*

Question 8 – Do you agree that the Regulations should be amended to allow applicants applying electronically or in writing to submit plans in any format that is clear and legible in all material respects?

*Answer – Yes, provided that the licensing authority has discretion to reject plans that, in its opinion, are not clear and legible.*

Question 9 - Do you agree with the requirement to enclose the licence is compatible with the new electronic application arrangements?

*Answer – Yes.*

Question 10 – Do you agree that the new provisions for electronic applications should be available for all licensable activities?

*Answer – Yes in relation to the sale and supply of the alcohol and late night refreshment.*

Question 11 – Do you agree that applications for personal licences should not be included in the new arrangements for electronic applications?

*Yes, having regard to the need to supply a CRB check and signed photographs.*

Question 12 – Do you agree that applications for review should not be included in the new arrangements for electronic applications?

*Answer – Yes.*

Question 13 - Do you agree that all DPS-related applications should be included in the new electronic arrangements?

*Answer – Yes.*

Question 14 – Do you agree that the cost of the portion of the fee that relates to the application/notification process is proportionate to the costs of the work involved?

*Answer – No. The new arrangements are likely to be more time consuming than previously. This should be reflected in an increase in the fee which equates to the saving that applicants will make as a result of the change.*

Question 16 – Do you agree with the estimated costs and benefits set out in the Impact Assessment?

*Answer – The Impact Assessment deals with only with the savings for applicants. It does not attempt to quantify the additional costs for licensing authorities which should be reflected in an adjustment of the fee.*