

**AMENDMENTS TO THE LICENSING ACT 2003 ARISING FROM THE POLICE  
REFORM AND SOCIAL RESPONSIBILITY ACT 2011  
(Report by the Head of Legal and Democratic Services)**

**1. INTRODUCTION**

- 1.1 The purpose of this report is to provide members with an overview of the new Police Reform and Social Responsibility Act 2011 (the Act) which gained Royal Assent on 15<sup>th</sup> September 2011. The commencement date has yet to be announced, although the majority of the Act is expected to come into force in late spring 2012, with the late night levy and fees elements following in the autumn of 2012.
- 1.2 The Act contains a number of amendments to the Licensing Act 2003 which are summarised below. The amendments are to be reviewed by the Government five years after they come into effect with a view to assessing the effect of the amendments on the scheme established by the Licensing Act 2003.

**2. BACKGROUND INFORMATION**

- 2.1 **Overview.** The Conservative Party manifesto for the 2010 general election indicated that they would 'overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to any premises that are causing problems.' The coalition government consulted for 6 weeks over the summer of 2010 on the reform proposals. The Police Reform and Social Responsibility Bill was given its first reading in the House of Commons in November 2010 and its second reading in the House of Lords in April 2011. The Bill gained Royal Assent on 15<sup>th</sup> September 2011.
- 2.2 Responsibility for licensing within the Government has also changed from the Department of Culture, Media and Sport (DCMS) to the Home Office, although responsibility for entertainment licensing remains with the DCMS.
- 2.3 Chapter 2, Sections 103 to 139 of the new Act will introduce amendments to the Licensing Act 2003 in a number of distinct areas, outlined below:
- 2.4 **Responsible Authorities.** Two new categories of Responsible Authority have been created, the Licensing Authority and the Primary Care Trust or Local Health Board, who are able to make representations and initiate a review of a premises licence or club premises certificate in their own right.
- 2.5 **Removal of the vicinity test.** The vicinity and interested party tests are removed, enabling any person to make representations in relation to applications for grant or variation, provided they are not frivolous or vexatious. The definition 'interested party' is deleted. Interested parties become 'persons who live, or are involved in a business, in the relevant licensing authority's area' and are referred to as 'other persons'. This potentially increases the number of people who can make representations, with the

possibility of more representations leading to more contested applications and hearings.

- 2.6 Regulations will require the licensing authority to advertise applications 'in a manner which is prescribed and likely to bring the application to the attention of the persons who are likely to be affected by it.'
- 2.7 **Reducing the evidential burden.** The Licensing Act 2003 imposes a general duty on licensing authorities to exercise their licensing functions with a view to promoting the licensing objectives. A number of processes require licensing authorities to take steps which are 'necessary' for the promotion of those objectives. The new Act amends those provisions, instead requiring licensing authorities to take steps which are 'appropriate' for the promotion of the licensing objectives. This has the effect of lowering the threshold which licensing authorities must meet to achieve promotion of the objectives, but ensures that their decisions continue to be solely for the purpose of promoting the objectives.
- 2.8 **Temporary Event Notices (TENS).** A number of changes are being made to TENSs. It extends the right of objection to Environmental Health, whereas previously only the Police could object on crime prevention grounds. Both parties will be able to object on the basis of any of the four licensing objectives. In addition, licensing authorities will be able to impose conditions on a TEN in limited circumstances, following a hearing, if they consider that this promotes the licensing objectives. Other changes include the ability for applicants to submit a limited number of late TEN's and to hold events of up to 168 hours (previously 96 hours) over a maximum of 21 days (previously 15 days). Acknowledgement will be extended from 2 to 3 days.
- 2.9 The changes in processes are likely to involve the receipt of more TEN requests, more hearings and more officer compliance checks to ensure that the conditions on TENSs have been met. Any counter notices and a separate statement of conditions applicable to the TEN must be given to the premises user, police and Environmental Health. The late TEN process is likely to become a normality which although easier for applicants, will be more complicated to administer and may put time pressures on officers.
- 2.10 **Under age Sales.** On conviction, the fine is increased from £10,000 to £20,000 and the closure option extended from a maximum of 48 hours to a minimum of 48 hours and a maximum 336 hours (14 days).
- 2.11 **Early morning alcohol restriction orders.** Where it is appropriate for the promotion of the licensing objectives, a licensing authority can impose an early morning restriction order to prohibit the sale or supply of alcohol between 3am and 6am in the whole or part of its area. This power is extended to give authorities greater flexibility and the ability to make orders in the whole or part of their area between midnight and 6am. Different orders can be made for different periods on different days and can be made on a temporary basis. They may be varied or revoked and can contain exemptions in prescribed cases or circumstances.
- 2.12 Before an order can be made the proposal needs to be advertised, consulted upon and representations considered in accordance with statutory regulations.

- 2.13 **Fees.** The Act now requires that the licensing authority must suspend a premises licence if the holder has failed to pay an annual fee when due. There are exceptions for administrative error. The time frame is prescriptive. The licence must be suspended no less than two working days after the annual fee not being paid within 21 days of it being due. Receipts must be issued within two working days.
- 2.14 This will require compliance checks where the fee remains unpaid. The prescriptive timeframe and need for receipts will need to be carefully monitored. In particular there will be a peak in workload between June and October when the vast majority of fees become due. We will need to ensure that we have efficient systems in place to enable us to comply with the tight prescriptive timeframe requirement.
- 2.15 A new clause was added by the Government at report stage in the House of Commons giving licensing authorities powers to set certain fees, on a cost recovery basis. In addition to administrative costs and the costs acting as the licensing authority, we may also include the costs incurred by the licensing authority acting in a capacity other than as the licensing authority, e.g. planning authority. Regulations will specify constraints on the licensing authority's power to determine the amount of the fee.
- 2.16 **Licensing Policy Statements.** The current requirement to prepare and publish a statement of licensing policy is now extended from three years to five years. A five year period means 6 January 2016 and each subsequent five year period. This will represent an efficiency in not having to review policies as frequently, providing the risk of ensuring our policy is relevant and up to date is managed. The Act will allow, on commencement, for any policy published for three years from 7 January 2011 to be treated as if it were published for five years from 7 January 2011, i.e. to 6 January 2016.
- 2.17 **Personal Licence – relevant offences.** Further relevant offences have been added that may disqualify persons from holding a personal licence.
- 2.18 **Late night levy.** A new power has been created 'the late night levy requirement'. Licensing authorities may decide that a late night levy is to apply in its area, after considering the policing and other costs for reducing or preventing alcohol-related crime and disorder between midnight and 6am and having regard to those costs, the desirability of raising revenue in accordance with regulation, of which not less than 70% must be plied to the local policing body.
- The levy must apply to the whole area, it cannot apply to a part of the area.
  - Premises must pay unless the holder falls within a permitted exemption category or permitted reduction category.
  - The licensing authority may determine the time of day between midnight and 6am, it must be the same throughout the 'payment year'.
  - The amount of the levy and its administration is to be prescribed by regulation.
  - The licensing authority can decide the 'applicable exemption' and 'applicable reduction' categories (e.g. a reduction for Pubwatch members).
  - Regulations will specify how payments are collected, administered and enforced.

- Failure to pay will be recovered as a civil debt and lead to suspension of the premises licence provisions for non payment of the annual fee.
- Regulations will specify the relevant expenses that can be deducted in calculating the net amount of levy payments to be taken into account.
- Licensing Authorities must publish statements of estimated and net deductions at the start and end of the levy year.
- The procedure and decisions on the introduction, variation or revocation of a levy will be subject to regulations. It will require consultation with the local policing body and chief officer of police, holders of relevant late night authorisations and other prescribed persons. Notices of decisions must be published.
- Premises subject to a proposed levy may amend their licence for free prior to the levy coming into force, so as to exempt them from having to pay the levy

2.19 **Alcohol Disorder Zones.** The relevant sections of the Violent Crime Reduction Act 2006 giving power to designate an alcohol disorder zone have been repealed.

#### 4. CONCLUSION

4.1 As the new custodian of licensing, the Home Office has launched a number of measures designed to 'shake up' the licensing regime through the new Act. The Home Secretary has said the system needs to be 'rebalanced in favour of local communities' and promised 'tougher action to crack down on the small number of licensed premises which cause problems'.

4.2 We now await regulations to be made under secondary legislation to enable implementation of the Act. Until those details are available it is not possible to gauge the full impact on the Council, however initial indications are that the changes will impact considerably upon both members and officers. In addition, the role of the licensing authority will need to remain separated from its new powers as a responsible authority in the representation and review processes.

#### 5. IMPLICATIONS

5.1 **Staffing and financial implications.** There will be an efficiency arising from the extension of the statement of licensing policy from 3-5 years, however the rest of the proposed changes are all likely to add to the licensing workload in terms of staff resource and financial implications. The new ability to apply fees on a full cost recovery basis should provide for the resultant funding of the proposed amendments. The main implications are as follows:

- The impact of removing the vicinity test and replacing 'interested parties' with 'other persons', will allow greater scope for representations and will likely result in the need for more hearings.
- There will be an added advertising burden on the council in terms of cost and administration.
- The increased complexity of procedures, timeframes and changes to the TEN provisions, coupled with ensuring compliance with conditions will add to the administrative burden and could result in more hearings and pressures on officer time.

- Fees are currently prescribed by regulation. Exercises on the setting of fees will need to be undertaken to show transparency and justification of full cost recovery.
- Powers of suspension for non payment of fees will need to be monitored and complied with. Receipts will need to be issued.
- Should the council decide it wishes to consult on the introduction of a late night levy, then to set up and administer will require additional staff resource. Any early morning alcohol restriction order would also require consultation.

5.2 **Community.** Amendments to the Act bring about a number of positive changes for the community with the ability for wider representation, increased advertising of applications and wider responsible authority provisions. Further assurances relating to the licensing objectives are also achieved through the addition of the Primary Care Trust or Local Health Body as a new responsible authority, the ability for Environmental Health to make representations on temporary event notices and the ability to put conditions on temporary event notices.

## 6. RECOMMENDATION

6.1 The Committee are invited to note the contents of this report.

### BACKGROUND INFORMATION

Police Reform and Social Responsibility Act 2011  
Responses to Consultation. Rebalancing the Licensing Act (Home Office)

**Contact Officer: Christine Allison, Licensing Manager**  
**☎ 01480 388010**

Filepath: <http://teams.huntsdc.gov.uk/admin/Democratic%20Services/Shared%20Documents/Forms/AllItems.aspx>