

APPENDIX 5 - Briefing Note

Licensing Act 2003 – The Council Role



Purpose

This briefing note provides information regarding the role of the Licensing Authority (Leeds City Council) under the Licensing Act 2003.

Scope

The Licensing Act 2003 provides the licensing regime for pubs, bars, nightclubs, working men's clubs, village halls and schools. It is concerned with the sale of alcohol, regulated entertainment and the sale of hot food and drink after 11pm.

Key points include:

- Flexible operating hours
- Single Premises Licence covering multiple licensable activities
- Personal Licences
- Temporary Events Notices
- Licensing objectives
- Operating schedules

There are four licensing objectives that underpin the regime:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

The licensing objectives are considered by the applicant and provide the structure for an operating schedule they must submit as part of the application form. The objectives are also taken into consideration by the Licensing Authority when the licence is determined and when enforcing the Licensing Act 2003 during planned and unplanned visits.

The objective of Public Health, which is featured in the Scottish Licensing Act was not included in the Licensing Act 2003 despite being discussed during the early stages of the legislative process.

Our role as a Licensing Authority

The Licensing Authority operates on three main levels:

- Full Licensing Committee (15 elected members)
 - Assumes ultimate responsibility for Licensing, makes final decisions regarding Licensing Policy.
- Licensing Sub-Committee (3 of 15 elected members)
 - Makes decisions regarding individual applications which have received objections, or licences which have been brought up for review. Also deals with most other contentious matters.

- Licensing Officers (employees of Leeds City Council)
 - Responsible for the administrative process surrounding licensing applications and ensuring that licence holders are compliant with their operating schedules (Enforcement Officers). Has a duty to grant licences where no relevant representations are received.

Our role as Enforcement:

Leeds City Council have a dedicated Liaison and Enforcement Team within Entertainment Licensing. The team of seven officers ensure licence holders are compliant with the operating schedules attached to their licences by undertaking a risk based inspection programme. They prevent unauthorised licensable activities from taking place and ensure licence holders operate to promote licensing objectives.

Various means are employed by our Enforcement Officers however, the most notable of these are:

- Issuing of warnings (both formal & informal)
- Prosecution for offences under The Act
- Closure Notices (Section 19 Criminal Justice & Police Act 2001)

Officers also attend Pubwatch, which is a scheme whereby licence holder meet regularly to discuss issues relating to the trade, as well as undertaking multi agency visits to premises along with West Yorkshire Police, Trading Standard and West Yorkshire Fire and Rescue Service.

Definitions:

“**Responsible authority**” means any of the following—

- (a) the chief officer of police for any police area in which the premises are situated,
- (b) the fire authority for any area in which the premises are situated,
- (c) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 for any area in which the premises are situated,
- (d) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (c. 8) for any area in which the premises are situated,
- (e) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
- (f) a body which—
 - (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
 - (ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters,
- (g) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated,
- (h) in relation to a vessel—
 - (i) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c. 57) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, navigated at a time when it is used for licensable activities,
 - (ii) the Environment Agency,
 - (iii) the British Waterways Board, or

- (iv) the Secretary of State,
- (v) a person prescribed for the purposes of this subsection.

“Interested party” means any of the following—

- (a) a person living in the vicinity of the premises,
- (b) a body representing persons who live in that vicinity,
- (c) a person involved in a business in that vicinity,
- (d) a body representing persons involved in such businesses,
- (e) member of the relevant licensing authority.

Licence Conditions

During the application process the applicant offers an operating schedule which shows how the applicant will promote the four licensing objectives. Should the responsible authorities feel the operating schedule is inadequate, they can make a representation against the application and suggest conditions to be placed on the licence.

Interested parties are also able to make representations.

The Licensing Authority are only able to accept representations from either responsible authorities or interested parties, both of which are defined in the Act. All representations must be relevant; relating to one or more of the four licensing objectives.

Should the applicant disagree with the proposed conditions the matter is heard before a Licensing Sub-committee of 3 members who are able to apply conditions to the licence that are relevant and proportional. The Sub-committee may choose to add conditions that mitigate the concerns raised in the relevant representations. The Sub-committee is not able to add conditions which duplicate the requirements of existing legislation – for example requirements under the Health and Safety at Work etc Act 1974.

Carrying on a licensable activity in breach of a condition on an authorisation is an offence under the Licensing Act 2003 which is liable, on summary conviction, to a fine not exceeding £20,000 and/or six months imprisonment.

Reviewing a Licence

Occasionally things go wrong once a premises licence has been granted. The bad management of premises may lead to problems such as noise, litter or antisocial behaviour.

A premises licence can be reviewed at any time and the review process forms one of the main safeguards in the Licensing Act. It investigates if a premises licence or a club premises certificate is having an ongoing negative impact on one or more of the licensing objectives. Both interested parties and responsible authorities can request a review.

Prosecution

An alternative to reviewing the premises licence is prosecuting either the premises licence holder or the designated premises supervisor.

The two main offences under the Licensing Act are:

- Carrying on a licensable activity without the required authorisation (premises licence, club premises certificate or temporary event notice);
- and
- Carrying on a licensable activity in breach of a condition in an authorisation;

Summary conviction of either of these offences can lead to six months imprisonment and/or a fine of £20,000 (S136).

Other offences include the following:-

- Conducting licensable activities without authorisation or in breach of an authorisation (s136)
- Putting alcohol on display for sale without a licence (S137)
- Keeping alcohol on a premises for unauthorised sale (S138)
- Allowing disorderly conduct on a licensed premises (S140)
- Selling alcohol to someone who is drunk (S141) or obtaining alcohol for someone who is drunk (S142)
- Failing to leave licensed premises without reasonable excuse when drunk and disorderly and when requested to do so by a constable, a licence holder or their authorised agents (S143)
- Entering or attempting to enter licensed premises without reasonable excuse if drunk and disorderly after a constable, a licence holder or authorised agent has requested him not to enter (S143)
- Allowing children under 16 years of age on the premises when alcohol is being sold, without being accompanied by a person of over 18 years old (S145)
- Allowing the sale of alcohol to children under the age of 18 (S146)
- Selling liqueur confectionary to children under 16 (S147)
- Buying or attempting to buy alcohol whilst under the age of 18 but note the exemption for trading standards officers and police officers to conduct test purchases (S149)
- Buying or attempting to buy alcohol for children under 18 unless the child is over 16, accompanied by a person over 18, and beer, wine or cider has been purchased with a table meal (S149)
- Consuming alcohol by children under 18 on licensed premises unless the same exceptions as above apply (S150)
- Knowingly deliver alcohol to children under 18 (S151)
- Sending a child under 18 to obtain alcohol from off-licences but note the exception for police and trading standards officers to conduct test purchasing (S152)
- Knowingly allow a person under the age of 18 to sell alcohol unless the sale has been specifically approved by the licence holder or another responsible person (S153)

Most offences are punishable by a fine of up to level 1 or level 2 on the standard scale (£200 and £500 respectively), although offences relating to disorder on licensed premises or children can attract maximum penalties of up to level 5 (£5000).

Both Leeds City Council and West Yorkshire Police have the authority to bring prosecutions under the Act (S186). Trading Standards have authority to bring prosecutions in relation to test purchasing under S146 and S147, which they have a legal duty to enforce.

Review or Prosecution?

Deciding which way to handle a breach of a licence is a difficult choice. A Licensing Authority must decide on a case by case basis which is the most appropriate penalty as each has their strengths and weaknesses.

A prosecution can lead to a large fine and/or imprisonment, however either the premises licence holder or designated premises supervisor is prosecuted and the licence is unaffected. A prosecution can take a long time but has lasting consequences especially if that person then needs to undertake a criminal records bureau check.

A review is quicker, only takes 60 days but if there is serious crime or disorder the Police can request a summary review which provides immediate sanctions. However it is the licence that

is affected, not the management. The penalty provided by a review is not punishment, in the same way as prosecution is, but allows the premises time to change its operating practices in such a way as to not have a detrimental affect on the four licensing objectives.

Case law now shows us that we should only prosecute for serious breaches or unlicensed activity. Any issues relating to the management of the premises should be dealt with by a review of the premises licence.

More Information

More information is available on the Council's website at:

Making a representation:

[http://www.leeds.gov.uk/Business/Licences and street trading/Licence alcohol and entertainment/Licensing Act 2003 Guidance on making representations \(objections\).aspx](http://www.leeds.gov.uk/Business/Licences%20and%20street%20trading/Licence%20alcohol%20and%20entertainment/Licensing%20Act%202003%20Guidance%20on%20making%20representations%20(objections).aspx)

This page includes a separate guidance note on making representations, including the action you might like to take if asked to make a representation on behalf of a resident. It also hosts the form IP1 which has been designed to help interested parties in making a representation.

Requesting a review:

[http://www.leeds.gov.uk/Business/Licences and street trading/Licence alcohol and entertainment/Licensing Act 2003 Guidance for the public on problem premises .aspx](http://www.leeds.gov.uk/Business/Licences%20and%20street%20trading/Licence%20alcohol%20and%20entertainment/Licensing%20Act%202003%20Guidance%20for%20the%20public%20on%20problem%20premises.aspx)

This page includes information on the action to take when dealing with problem premises. It includes the contact details of other departments who can handle nuisance complaints, and more detailed information on requesting a review.

Should you have any questions, require clarification on any point, or would like to request any of the forms mentioned in this briefing note please contact Entertainment Licensing on the number below.

Contact details:

Entertainment Licensing Section

Phone: 0113 247 4095

Email: entertainment.licensing@leeds.gov.uk