

Report of the Head of Licensing and Registration

Report to Licensing Committee

Date: 15th November 2011

Subject: Changes to the Licensing Act 2003

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The current Government promised sweeping changes to the Licensing Act 2003 in an effort to rebalance the legislation and to bring greater power to local authorities and local residents.
2. The Police Reform and Social Responsibility Bill has been making its way through the legislative process and received Royal Assent in September
3. This report provides information on the changes.

Recommendations

4. That Licensing Committee notes the content of this report.

1.0 Purpose of this report

1.1 To present to Licensing Committee the changes to the Licensing Act 2003 brought about by the Police Reform and Social Responsibility Act 2011 (“the Act”).

2.0 Background information

2.1 The current Government’s Coalition Agreement stated:

- We will 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.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for under-age alcohol sales to £20,000.
- We will permit local councils to charge more for late-night licences to pay for additional policing.

2.2 In order to do this radical changes to the Licensing Act were required which will be brought in through the Act.

3.0 Main issues

3.1 The Act received Royal Assent in September 2011. It will bring in a range of measures designed to overhaul the Licensing Act to give more powers to local authorities and police to tackle any premises that are causing problems, doubling the maximum fine for persistent underage sales and permitting local authorities to charge more for late-night licences to contribute towards the cost of policing the late-night economy.

3.2 In addition the Government has promised to make other changes to the legislation through guidance and secondary legislation.

4.0 Changes to the Licensing Act

4.1 The Home Office have provided a short description of the impact of each of the changes which is reproduced under each heading in *italics*.

Licensing authorities a responsible authority

4.1 *Making licensing authorities a responsible authority will give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority.*

4.2 This will mean that the licensing authority will be able to make representations and request reviews in their own right based on evidence gathered as part of their normal enforcement duties, rather than rely on the police or environmental health to request reviews.

Licensing decision to be appropriate rather than necessary

- 4.3 *Making Licensing authorities decisions appropriate for the promotion of the objectives will remove the need for licensing authorities to demonstrate their decisions on licences “are necessary” for (rather than of benefit to) the promotion of the licensing objectives and reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.*
- 4.4 This change is designed to make it easier for the council to refuse or revoke licences. The Licensing Committee will be able to make decisions that are appropriate rather than necessary. However only time and legal challenge will tell what effect this will have on the council.

Remove the “vicinity” test.

- 4.5 *Remove the “vicinity” test to increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises.*
- 4.6 This will have a large impact on the council, as anyone will be able to make a representation regardless of where they live or the impact the licence will have upon them. It will open the debate on licence applications and will increase the number of representations we deal with.

Health bodies a responsible authority

- 4.7 *Make Health Bodies a responsible authority to enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority*
- 4.8 Making the Primary Care Trust a responsible authority would not impact on the council, but will allow the PCT to be automatically consulted upon any policy change, and if they can directly link a premises to people visiting the hospital they could request a review of the licence.

Introduce a Late Night Levy

- 4.9 *Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.*
- 4.10 It is difficult to tell at the moment if there would be an appetite to set such a levy until the detail is known. Hopefully the process is not so complicated and the levy set so low as to make this unworkable. Further information on the Late Night Levy is available on the Home Office website.

- 4.11 It is not clear yet who would make the decision to introduce a late night levy. As this amendment is in the Act, rather than an amendment to the Licensing Act, the responsibility would not automatically fall to the Licensing Committee as a function of the Licensing Act 2003. All decisions default automatically to Executive Board, unless the legislation states that it is a council function. This information would be in the regulations.

Changes to Temporary Event Notices

- 4.12 *Environmental Health to be able to object to TENs. These changes allows environmental health teams the ability to object to a temporary event notice as well as the police. All objections (police and environmental health) will be able to be made on the basis of all the licensing objectives in the Licensing Act 2003 rather than just crime and disorder*
- 4.13 This will increase the number of temporary event notices that are rejected and increase the administrative burden placed on the council, without an increase in fees. However it will stop problem premises from using TENs to provide live music and so reduce the number of disturbances to residents.
- 4.14 *Allow Licensing Authorities to apply conditions to TENs - under the Act, licensing authorities will be able to impose conditions on a temporary event notice if there have been objections, and the temporary event notice relates to a premises that has a premises licence. The conditions must be consistent with the activities described on the TEN, and the conditions already applied to the premises licence. The licensing authority will provide a "statement of conditions" and will have to send this to the police and environmental health body as well as the premises user.*
- 4.15 This is a welcomed change and will stop licensed premises from using TENs to get around conditions on their licence. Previously TENs superseded the premises licence, which allowed heavily conditioned premises to provide occasional events without any conditions.
- 4.16 *A new type of TEN. There will be two types of temporary event notices – standard and late. A late TEN is given within 5 days of the event but no earlier than 9 days before. If an objection is given for a late TEN a counter notice will be provided and the event cannot lawfully take place. Premises users will only be able to give 10 late TENs if they are a personal licence holder and 2 if not.*
- 4.17 At the moment the council has no discretion to accept TENs if they are submitted within 10 days of the event. Local authorities have been asking for this discretion since the implementation of the Licensing Act and this is one of the major causes of upset to organisers of local events, especially when the events are low risk and mostly to raise money for charitable causes. However introducing a new type of TEN may lead to more complexity, rather than reducing the burden.

- 4.18 *Increase the duration of TENs. Provisions will also enable premises users, in any calendar year, to hold a single event under a temporary event notice for up to seven days (instead of 4), use a single premises for an aggregate 21 days (instead of 15) and to give a limited number of temporary event notices later than the existing process permits.*
- 4.19 Although this will have little effect on the council it may make a big difference to people applying for temporary event notices.
- 4.20 *Change the way a Licensing Authority acknowledges TENs. Licensing authorities will not have to return one copy of the TEN, but instead a written acknowledgement.*
- 4.21 This will make very little difference to local authorities or the premises users. In Leeds we provide a copy of the TEN plus an acknowledgement that the premises user can use to display.
- 4.22 *Extend the objection period for TENs. The objection period for police and environmental health will be extended from 2 days to 3.*
- 4.23 It is believed this will be welcomed by the police but shouldn't impact on the licensing authority or the premises user.

Underage Sales

- 4.24 *Introduce tougher sentences for persistent underage sales. This increases the maximum fine from £10,000 to £20,000. Although this might increase the deterrent to people who may sell alcohol to children, it will not affect the council. It is rare that the maximum fine is given for underage sales.*

Suspension of licence on non-payment of fees

- 4.25 *Enable licensing authorities to suspend licenses due to non-payment of fees.*
- 4.26 This will have a positive impact on the licensing authority. At the moment the amount outstanding in individual annual fees may not be worth pursuing as a civil debt through the courts and we have to wait a number of years until the debt has accumulated before we are able to take this course. Although each individual fee is small, the accumulation of unpaid fees to the council is large. This change will lead to instant action if an annual fee is unpaid after 21 days. Should a premises continue trading after their licence has been suspended they may be liable, on summary conviction, to a fine not exceeding £20,000 and/or six months in prison.

Early Morning Restriction Orders

- 4.27 *Extend Early Morning Restriction Orders so they can be applied flexibly between midnight and 6am*

- 4.28 Early morning restriction orders allow councils to effectively zone their city centres. Should a particular hotspot area occur, making an early morning restriction order may enable the area to be better managed by the police. It is difficult to tell at the moment if there is an appetite to make such an order in Leeds. It would depend on the detail provided by regulations, and the process involved.

Advertising of applications

- 4.29 *At the moment all applications are advertised by a site notice and a newspaper advert, arranged by the applicant. Under the Act, applications will have to be advertised in 'a manner which is prescribed and is likely to bring the application to the attention of the persons who are likely to be affected by it by both the applicant and the licensing authority.*
- 4.30 We expect that this will mean that local authorities have to advertise applications on the website. As all licensing application details are available through the council's Public Access system this will not be an additional burden to the council.

Statement of Licensing Policies

- 4.31 *Statement of Licensing Policies will have to be reviewed every 5 years rather than every 3 years.*
- 4.32 Although welcomed, it is disappointing that the Act does not allow licensing authorities to review their policies as and when required. Because of the five cumulative impact policies and a need to review these regularly, Leeds City Council is likely to keep to a regular review period in any case.

Fees based on cost recovery

- 4.33 *A late amendment to the Act enables local authorities to increase licensing fees so that they are based on full cost recovery. It will enable councils to include costs not just for the application process but for all its general expenses in relation to licensing including enforcement activities.*
- 4.34 This is obviously a very welcome change, and long overdue. The Licensing Act fees were reviewed by the Elton Report many years ago and found to be insufficient to cover the council's costs. The fees are not even in line with fees charged under other regimes. For example an SIA Door Supervisor licence costs £245 and is renewed every three years. It follows broadly the same application process as a Personal Licence under the Licensing Act. The fee for a personal licence is £37 and is renewed after ten years.

Increase in Relevant Offences

- 4.35 These changes simply fill loopholes in the existing offences. Leeds City Council has licensed 5,000 people to sell alcohol and only a handful of applications have been refused due to relevant offences, so this change will have little to no impact on the council.

Changes to be effected by updating the S182 Guidance to Licensing Authorities

- 4.36 Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police.
- 4.37 Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.
- 4.38 Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
- 4.39 Applicants to give greater consideration to the local area when making their application.
- 3.42 Trigger automatic licence reviews following persistent underage sales.

5.0 Next Steps

- 5.1 None of the alcohol provisions in the Act came into force immediately upon Royal Assent. The Act includes a commencement provision for the government to commence any or all of the provisions when it so chooses.
- 5.2 Measures are normally commenced in either April or October each year, so the earliest any of these provisions will be introduced is likely to be 6 April 2012, with more complex proposals which require more detailed secondary legislation likely to be commenced later.
- 5.3 Some of the alcohol provisions introduced in the Act require substantive changes to secondary legislation prior to commencement and it is expected that there will be further consultation.
- 5.4 The Home Office will have to make substantial revisions to the statutory guidance issued under section 182 of the Licensing Act 2003 before the first provisions are commenced. The amendments to the statutory guidance will also include a number of other changes the government committed to making in its response to the 'Rebalancing the Licensing Act' consultation.
- 5.5 The Home Office is seeking input as secondary legislation and guidance is developed. Leeds City Council has offered to be part of this process.

6.0 Corporate Considerations

6.1 Consultation and Engagement

- 6.1.1 As these are changes made to national legislation, and this report is purely advisory, there has not been a wider consultation. However briefing notes have been provided to senior officers.
- 6.1.2 The Home Office consulted upon these changes and Licensing Committee endorsed a consultation response from Leeds City Council in 2010.

6.2 Equality and Diversity / Cohesion and Integration

6.2.1 There are no concerns for equality and diversity.

6.3 Council Policies and City Priorities

6.3.1 This consultation will have a serious impact on the Council's Licensing Act 2003 Statement of Licensing Policy, which will need to be amended in advance of the normal three yearly review.

6.4 Resources and Value for Money

6.4.1 The changes to the legislation will necessitate an overhaul of the Statement of Licensing Policy which has a cost implication.

6.4.2 The ability to set fees based on cost recovery, and to suspend licences on the non-payment of annual fees will enable the licensing authority to increase revenue.

6.5 Legal Implications, Access to Information and Call In

6.5.1 The changes to the legislation will necessitate retraining of Licensing Committee and licensing officers to mitigate the risk of legal challenge.

6.6 Risk Management

6.6.1 As this report is purely advisory there are no risks inherent in this process. However the amendments to the Licensing Act and the introduction of a late night levy do have a risk of legal challenge. Training for Licensing Committee and licensing officers will mitigate some of the risk. A robust Statement of Licensing Policy will support these changes.

7.0 Conclusions

7.1 The Government has made changes to the Licensing Act and introduced new powers through the Police Reform and Social Responsibility Act 2011 which will be commenced in 2012.

8.0 Recommendations

8.1 That Licensing Committee note the content of this report