

## **Member Briefing**

### **Licensing Act 2003 – Changes to licensing regime brought about by Part 2 of the Police Reform and Social Responsibility Act 2011**

1. The Police Reform and Social Responsibility Bill received Royal Assent on 15 September 2011. The primary function of the Act is to make provisions about the administration and governance of police forces. However, Part 2 of the Act focuses on reforms of the Licensing Act 2003. New licensing provisions introduced under Part 2 of the 2011 Act are subject of a staged introduction with the first provisions taking effect as of 25 April 2012.
2. To coincide with the first stage of amendments the Home Office also published revised guidance under section 182 of the Licensing Act 2003.
3. This briefing note is intended to make the committee aware of the changes to the Act and guidance and to enable discussion around the implications for licensing policy, practice and procedure.
4. The main changes are summarised below. A further briefing will be produced on stage two changes, once the detail and commencement date are confirmed.

#### **Licensing authority as responsible authority**

5. The licensing authority itself becomes a responsible authority under the Act. It joins the police; fire authority; environmental health; trading standards; and relevant body for the protection of children (among others) in being able to make representations upon applications for new and varied premises licences and club premises certificates and call for licence reviews.
6. In order to prevent any appearance of bias, arrangements are being put into place to ensure separation of roles within the licensing service. In future different officers will be allocated responsible authority and case processing duties. Should it be necessary to pursue representation through the public hearing in front of the licensing sub-committee, then the representation will be made by the responsible authority officer and the report to committee presented by the allocated case officer.
7. Additionally, in order to ensure consistency, guidance notes have been developed for officers acting in the responsible authority role. A copy is attached at Appendix A to this briefing note.

#### **Health authority as responsible authority**

8. The PCT and the successor local health boards also join the list of responsible authorities under the Act.
9. Though it remains likely that 'health' will become the fifth licensing objective at some future time, this has not yet been confirmed. Currently the health authority is able to make representations across all four of the existing licensing objectives.
10. This formalisation of the working relationship will support improved exchange of information and broader policy development.

11. The Director of Public Health is named as the health authority contact for the responsible authority role.

### **Other persons able to make representations**

12. The Licensing Act 2003 now no longer refers to 'interested parties'. Instead representations may now be made and reviews called for by any responsible authority and also any other persons who live or are involved in a business in the area, that may be affected by the application.
13. This also has the effect of removing the vicinity test and leaving it open to people to lodge relevant representations if the application impacts upon them.
14. Representations must still relate to one or more of the four licensing objectives and must not be frivolous, repetitious or vexatious.

### **Reduction in burden of evidence**

15. A licensing committee is now able to make decisions that are 'appropriate' for the promotion of the licensing objectives. Previously committees were able to make decisions that were 'necessary' for the promotion of licensing objectives.
16. This subtle word change represents a relaxation of the burden of evidence placed upon the committee.
17. This will impact upon both future licensing policy and applications determinations.
18. In accordance with the rules of natural justice, however, each application continues to be required to be considered upon its own merits with all relevant matters taken into account.

### **Police representations**

19. Home Office guidance now advises licensing authorities that it should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the licensing objectives.

### **Temporary Event Notices (TENs)**

20. The Act now includes provision for standard and late TENs.
21. Standard TENs still require 10 clear working days notice. Late TENs require 5 clear working days notice.
22. Revised limitations apply
  - Personal licence holder may give up to 50 TENs per year (including 10 late TENs);
  - Other persons may give up to 5 TENs per year (including 2 late TENs);
  - No premises may be used under a TENs for more than 12 occasions or aggregate of 21 days per year;
  - No TENs may be given for an event of more than 499 persons;

- No TENs may be given for an event that lasts more than 168 hours duration
23. The environmental protection team (EPT - having responsibility for the prevention of nuisance) is now able to make representations alongside the police. The EPT and Police have 3 working days following receipt of TENs to object.
  24. If the EPT or police object to standard TENs a hearing may be necessary although conciliation is urged by the Home Office guidance.
  25. At the hearing of any case relating to a TENs concerning occasional use of a licensed premises, the sub-committee may decide that conditions of the premises licence apply to the TENs. Conditions may not otherwise be applied.
  26. If EPT or police object to a late TENs the event will not go ahead (no potential for a hearing). Instead a counter notice will be issued by the licensing authority refusing the notification.

### **Suspension of licence for failure to pay due fee**

27. Any licence holder failing to pay his / her premises licence fee within 21 days of the due date will now have their licence suspended.
28. The licensing authority must firstly serve a notice detailing the suspension and giving a minimum of 2 days notice.
29. The suspension does not take effect if the licence holder has given notice in writing within the 21 day period that either there has been an administrative error (by the authority or the licensee) or the fee is contested.
30. The suspension ends as soon as any due fee is paid.

### **Increased penalties for persistent sales of alcohol to children**

31. Where trading standards have evidence of persistent sales of alcohol to children they may accept a voluntary closure of the (alcohol sales) part of the premises for up to two weeks in lieu of prosecution.
32. Additionally, the maximum fine for such is increased to Scale 5 - £20k or 6 months imprisonment.
33. Home Office guidance directs that reviews of licences in such circumstances should become routine.

### **Licensing policy**

34. Licensing authorities are now directed to review their licensing policy every five years instead of every three years.
35. This council's statement of licensing policy was last revised in 2011.
36. Given the significant changes being brought about by the Police Reform and Social Responsibility Act 2011 and amended Home Office guidance and in light of the new powers being afforded the authority, it is intended to review the

Southwark policy after the next stage of changes are introduced later this year.

### **Future changes**

37. Currently scheduled for introduction on or around 1 October 2012 are:

- The introduction of extended early morning restrictions orders; and
- The late night levy.

38. Other reforms understood to be upon the current government agenda are:

- Ability for licensing authorities to set their own licence fees;
- Introduction of minimum price fixing for alcohol; and
- Introduction of a health objective.

39. Future reports will cover further developments.

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