

Item No. 10.	Classification: Open	Date: March 9 2010	Meeting Name: Licensing Committee
Report title:		Legislative change relevant to licensing issues 2010	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Housing	

RECOMMENDATION

1. That the committee notes the content of the report.

BACKGROUND INFORMATION

2. A number of changes to licensing and other related legislation, impacting upon the responsibilities of the committee have taken place / are proposed during the course of 2010. This report provides a brief summary of relevant matters.

KEY ISSUES FOR CONSIDERATION

EU Services Directive

3. The EU Services Directive is a flagship european directive intended to develop the single market for services by breaking down barriers to cross border trade within the EU and making it easier for service providers within scope to set up business or offer their services in other EU countries. The directive requires that all notices and authorisations in scope are able to be completed electronically and via a 'point of single contact'. The directive was implemented in the UK on December 28 2009 by the Provision of Services Regulations 2009 (S.I. 2009/2999). The UK point of single contact is the Electronic Application Facility (EAF) which is part of the www.businesslink.gov.uk website.
4. At present the Councils own web site provides full advice and guidance on the range of available licences and consents, together with downloadable forms. It is this authorities intention to provide full facility for on-line applications in due course and this is in development. In the meantime, in order to comply with the directive, electronic applications will be taken directly from the point of single contact.
5. A number of the council's licensing responsibilities have been deemed within scope of the directive. With regard to the 2003 Licensing Act, although only regulated entertainment is a 'service' as defined under the directive, the government has extended the electronic application process to all regulated activities and to all authorisations and notices with the exception of applications for, and renewals of, personal licences, reviews and representations.
6. The directive has had a number of immediate impacts on the 2003 Act licensing processes which members will wish to be aware of:
 - Electronic applications are now to be accepted with electronic signatures;

- Premises plans are now not be required to be submitted in any particular scale, but must be in a format which is 'clear and legible in all material respects' i.e. they must be accessible and provide sufficient detail for the licensing authority to be able to determine the application, including the relative size and position of any features relevant to the application. There is no requirement for plans to be professionally drawn as long as they are accurate, and clearly show all the prescribed information;
 - Where applications are made electronically it becomes the licensing authority's responsibility to notify the responsible authorities of the application;
 - A tacit consent is now applied to applications made electronically. Revised guidance issued to local licensing authorities by the Department of Culture Media and Sport under section 182 of the Act notes that "The period of 28 consecutive days during which the application must be advertised on a notice outside the premises is, effectively, the statutory timescale by which the application must be determined (unless representations are made). This will be published on businesslink and must also be published on the licensing authority's own electronic facility if one exists. If no representations are made during this period the licensing authority must notify the applicant as quickly as possible that the licence has been granted. Licensing authorities may 'hold' an application where required information is missing or incorrect. Licensing authorities may also 'defer' electronic applications once if the application is particularly complicated, for example if representations are received and a hearing is required."
7. Though forms and guidance are available to download from the council's web site for the majority of licensing responsibilities, the council does not yet have it's own electronic applications facility. This facility is currently in development as part of a broader council initiative. In the meantime, electronic applications may be made via the point of single contact.
8. All national and local licensing legislation and policy has been 'screened' to ensure that there is nothing that presents an 'artificial barrier' to cross border trade.

The Policing and Crime Act 2009

9. This Act received Royal Assent on November 12 2009. The Act is wide-ranging but several provisions within part 2 of the Act are relevant to licensing:
- Section 27 & Schedule 3 deals with the regulation of lap dancing and other sexual entertainment venues;
 - Sections 28 to 30 deal with alcohol misuse offences;
 - Section 32 & Schedule 4 deals with mandatory licensing conditions relating to alcohol; and
 - Section 33 deals with individual members of licensing authorities to become interested parties.

Regulation of lap dancing and other sexual entertainment venues

10. Section 27 of the Policing and Crime Act 2009 inserts a new category of “sex establishment” called a “sexual entertainment venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the “1982 Act”). This will bring the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas. Sub-paragraphs (1), (2), (12) and (14) of the new paragraph define a “sexual entertainment venue” as premises where relevant entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. “Relevant entertainment” may take the form of a live performance or live display of nudity and must be of such a nature that, ignoring financial gain, it must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. Sub-paragraph (14) states that an audience can consist of just one person.
11. Sub-paragraph (3), however, omits from the definition of sexual entertainment venue, any premises that:
 - has not provided relevant entertainment on more than 11 occasions within the previous 12 months;
 - no such occasion has begun within the period of one month beginning with the end of any previous occasion; and
 - no such occasion has lasted for more than 24 hours
12. Subsection (5) substitutes paragraph 12(3)(c) of Schedule 3 to the 1982 Act, which deals with refusal of licences, to allow local authorities to set a limit on the number of sex establishments of a particular type in a locality, as well as the number of sex establishments generally, and to refuse a licence on the basis that the number of establishments in the locality is equal to or exceeds the number which the authority considers appropriate.
13. Subsection (6) amends paragraph 13(2) and (3) of Schedule 3 to the 1982 Act which provides local authorities with the power to prescribe in regulations standard terms and conditions for sex establishment licences. The amendments allow local authorities to impose different standard conditions on a sexual entertainment venue compared with other kinds of sex establishment, such as a sex shop.
14. Under the new arrangements it will no longer be sufficient for a lap dancing or similar venue to operate under a premises licence issued under the 2003 Licensing Act 2003. Transitional arrangements will be confirmed under further regulations due later this year. A further report considering relevant policy issues will be put to the committee following the publication of the regulations.

Alcohol misuse offences

15. The Act also amends ‘alcohol misuse offences’ contained in existing legislation. Each of these amendments came into effect on January 20 2010 under the provisions of the The Policing and Crime Act 2009 (Commencement No.3) Order

2010.

16. Section 28 of the Act amends section 147A(1)(a) of the Licensing Act 2003 (offence of selling alcohol to children on different occasions) by changing the reference to '3 or more different occasions' down to '2 or more different occasion'.
17. Section 29 amends Section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (c. 33) (confiscation of alcohol from young persons in a public place etc) is amended so as to require that a constable who imposes a requirement on a person to hand over any alcohol intended to be consumed in a public place, may also require that person to state their name and address and, where the constable reasonably suspects that the person is under 16 years of age , to remove the person to the person's place of residency or a place of safety.
18. Section 30 creates a new offence of 'persistently possessing alcohol in a public place, being any relevant place on 3 or more occasions within a period of 12 months. 'Relevant place' includes any public place (other than 'exempted places') or any place to which the person has gained illegal entry. 'Exempted places' include licensed premises.

Mandatory licence conditions relating to alcohol

19. Section 32 of the Act introduces Schedule 4 which makes provision about mandatory licensing conditions relating to alcohol.
20. Schedule 4 has the effect of amending the Licensing Act 2003 to create an enabling power that allows the Secretary of State to set out (in secondary legislation) no more than nine new national mandatory licence conditions relating to the supply of alcohol to be applied to all new and existing premises licences and club premises certificates.
21. The first five conditions are to be introduced under The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010. These conditions are set out in full in appendix A to this report but, in brief, these provide:
 - a ban on irresponsible drinks promotions such as drinking games, speed drinking, women drink for free, all you can drink for £10 etc;
 - a ban on one person dispensing alcohol directly into the mouth of another;
 - a requirement for the provision of free tap water;
 - a requirement for age verification policies to be in place, which include the checking of ID of anyone who appears to be under 18 years of age who attempts to purchase alcohol; and
 - a requirement that small measures of beers, spirits and wines are made available to customers.
22. The proposed conditions relating to drinks promotions, dispensing alcohol directly into the mouth and provision of free tap water are due to become effective on April 6 2010. The two remaining conditions are scheduled for introduction on October 1 2010. From the implementation dates the relevant conditions will apply retrospectively to relevant existing premises licences and club premises certificates and to all relevant future premises licences and club premises certificates. The condition relating to checking of ID will apply to all premises licences and club premises certificates authorising the sale or supply of

alcohol for consumption both on and off the premises. The other conditions apply only to licences and certificates authorising the sale or supply of alcohol for consumption on the premises.

23. The licensing service is making arrangements to ensure that all Southwark premises and personal licence and club premises certificate holders are provided with advance notification of the inclusion of these new conditions on licences.
24. Members will wish to note that an earlier proposal to allow local licensing authorities to impose further blanket conditions on groups of two or more premises, chosen from an accompanying set of “discretionary” conditions, and intended to deal with identified local concerns, which received some media attention, has been dropped.

Expansion of the definition of ‘interested parties’ to individual members of the licensing authority

25. Section 33 of the Act came into force on January 29 2010. It had the effect of expanding the definition of “interested parties” stated within s13(3) of the Licensing Act 2003 to include all members of the licensing authority, so that elected councillors of the authority can now make representations or seek a review in their own right.
26. Elected councillors are not required to live in the vicinity or in the same ward as the licensed premises they are making a representation about, and are not required to have been requested to act by any other person or body.
27. The term “member of the licensing authority” refers only to elected councillors, and not officers or other employees of the authority.
28. Further information has been circulated to all members of the licensing authority under members’ bulletin dated February 1 2010. Full guidance on representations and reviews is available from the licensing service.

Department of Culture Media and Sport (DCMS) consultations - Proposed exemption for small live music events

29. The DCMS is currently seeking views (up until 18 March 2010) on a proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the 2003 Licensing Act, relating to the licensing of live music as regulated entertainment. DCMS proposes that the change would be delivered through a Legislative Reform Order.
30. The detailed consultation document sets out that the Government proposes to exempt small live music events in licensed and unlicensed premises subject to the following conditions:
 - the performance takes place wholly inside a building;
 - the audience does not exceed 100 people and is accommodated entirely inside the building where the performance is taking place
 - the performance does not take place between 11pm – 8am
 - the performance does not take place in a premises which is subject to an “exclusion decision” – (the government proposes that residents, interested parties, and RAs can apply for a premises to be excluded from the

exemption.

31. The Licensing Service is consulting with relevant responsible authorities to provide a joint response on the situation.

DCMS consultations – further simplification plan proposals

32. The DCMS has also recently consulted on the next stage of its simplification plan, making the following proposals:

- To remove the requirement for licensing authorities to review licensing statements every three years on the grounds that this is unnecessary and burdensome, for all parties concerned. A requirement for local authorities to keep licensing statements under review and carry out revisions as necessary would be likely to remain;
- To remove the requirement to consult all statutory consultees for all revisions of policy, in recognition of the fact that many changes will be of limited scope and may not be of interest to stakeholders. The government therefore recommends that local authorities should only be required to consult those statutory consultees that will be affected by the revision;
- To extend the period during which an interim authority notice (IAN) can be issued or a reinstatement of the licence on transfer applied for, from seven consecutive days to 28 consecutive days, so as to allow a realistic timescale for licence issues to be addressed following the death, incapacity or insolvency of a licence holder. Related amendment to the deadline for the police to object to an IAN from 48 hours to two working days and extension of the period during which an IAN has effect from two to three months is proposed also; and
- To allow the police to issue a ‘confirmation’ of a late TEN up to three working days before a proposed event is due to commence. While the current ten day notification period is considered reasonable in most cases, it is argued that the notification is too rigid in some cases and has led to cultural loss to the community as well as financial loss to organisers. Beside this proposal are further proposals to change the current police objection period on TENs from 48 hours to either two or three working days.

Policy implications

33. Each of the matters outlined above affect licensing process and practice to some extent. In most cases the effects of the changes will not impact on the council’s published licensing policy statements though amendments may be required to some of the authority’s range of published guidance notes. Where changes need to be reflected within the relevant statement(s) of licensing policy also, minor amendments will be covered by addendum notes until the time of the next major revision.
34. Of particular note, however, the introduction of the new licensing regime for lap dancing venues under the Local Government (Miscellaneous Provisions) Act 1982 will mean that the section of the Southwark statement of (alcohol / entertainment / late night refreshment) licensing policy dealing with

“entertainment involving striptease and nudity” will need to be amended and a specific policy on sex establishments licensing established alongside the existing policy statement. A new sex establishments licensing policy should include the licensing authority’s position on setting appropriate numbers of premises.

Community impact statement

35. This report details a number of current licensing and related initiatives, each of which has potential positive community impacts.
36. As stated, the EU Services Directive is established with the intention of helping to remove barriers to cross border trade. However, the facility for electronic applications (which is a requirement of the Directive) will also be available for national internal use. This development supports the council’s modernisation agenda, aiding and extending electronic access to council services.
37. The extension of the current sex establishments licensing regime to include lap dancing venues, deals with a long standing local concern over the perceived flawed current legal situation by which such venues may be licensed as music and dancing venues under the Licensing Act 2003 with consideration limited to matters relevant to the four licensing objectives. This authority has been of the opinion that such applications should be subject of broader considerations, particularly location, and without this consideration local residents are not afforded appropriate protection, with matters of amenity and local redevelopment or regeneration programmes potentially affected. Indeed, this authority has made past representations to the DCMS and the Home Office on this matter. The new proposals will be welcomed.
38. Also welcomed, will be the decision to define elected ward councillors as ‘interested parties’ under the 2003 Licensing Act. This situation, which is already established within the 2005 Gambling Act, has also been the subject of representations to central government, and the ability to participate in the representations and review processes is seen as a natural extension to the ward councilors role as representative of their constituents.
39. Proposals around alcohol offences and the proposed mandatory licence conditions are all made in pursuit of the licensing objectives and help promote safe well managed venues which contribute positively to community life.
40. With regard to the consultation on relaxation of controls around live music, the council’s stated position within the statement of licensing policy is that it is supportive of moves to encourage live music, seeing this as an opportunity to broaden choice of leisure activity and enable all to experience and benefit from cultural diversity. The proposal conversely, however, has some potential impacts in terms of potential nuisance. A response to the exercise remains under consideration.

Resource implications

41. There are no particular resource implications arising from the preparation of this report at this stage. The proposed new regime for licensing lap dancing clubs provides the ability for the council to recover the costs of administering the process through licence fees. This issue will be examined further in future reports.

Consultation

42. No formal consultation has taken place in the preparation of this report.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

43. The legal issues for consideration are as set out in the body of this report.
44. The Policing Crime Act 2009 has introduced some changes to the interpretation of the Licensing Act 2003. The Licensing Committee must satisfy itself that adequate arrangements are in place to deal with the changes brought about by the amendment inserted into the Act by the Policing and Crime Act 2009. Particularly, those concerning definition of who is an interested party as it relates to the ward Councilors and Members of the parliament.
45. Section 13(3) and 69 (3) have now been amended to insert "members of the Licensing Authority and Members of Parliament in the definition of interested Parties.
46. The changes mean, that there is now no requirement for the ward Councilors and the area MP to provide formal written instruction of the interested persons before they can make representation on matters affecting their wards. All that is required is to show that they represent the ward/area.

Finance Director (ENV/SMR/22/01/2010)

47. The head of community safety and enforcement has confirmed that IT development costs arising from implementing the EU Services Directive proposals, set out in the report, will be met from central budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
EU Services Directive Policing & Crime Act 2009 Local Government (Miscellaneous Provisions) Act 1982 Southwark Statement of Licensing Policy Licensing Act 2003 Gambling Act 2005 Various associated DCMS / Home Office Guidance DCMS consultation papers	Health Safety & Licensing Unit, The Chaplin centre, Thurlow Street, London, SE17 2DG	Name : Kirtikula Read Telephone number: 020 7525 5748

APPENDICES

No.	Title
A.	New mandatory licence conditions

AUDIT TRAIL

Lead Officer	Strategic Director of Environment & Housing	
Report Author	Richard Parkins, Health Safety & Licensing Unit Manager	
Version	Final	
Dated	1 March 2010	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	No
Finance Director	Yes	No
List other officers here	None	None
Executive Member	Yes	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	1 March 2010	