

Item No	Classification	Committee	Date
23	Open	Licensing Committee	4 February 2003
From		Title of Report	
Director of Environment and Leisure		The Alcohol and Entertainment Licensing Bill 2002	

1 PURPOSE OF REPORT

- 2 To update the Committee on the current position regarding the progress of the Alcohol and Entertainment Licensing Bill 2002 and preparations for implementation of the Act.

3 RECOMMENDATIONS

- 4 That the Committee notes the contents of this report.
- 5 That Members' views are invited on the consultation to be undertaken on the preparation of a "Southwark Licensing Statement" to form the basis for future licence application decisions under the new proposed legislation.

6 BACKGROUND INFORMATION

- 7 In April 2000 the Government published the white paper "Time for Reform: Proposals for the Modernisation of Our Licensing Laws". The white paper was heralded as the way in which the government would sweep away the outdated licensing controls of restaurants, pubs and clubs and off-licences, bringing England and Wales into line with Scotland and most European countries. At the heart of the white paper were recommendations for a single, integrated licensing system to be administered by the local authorities covering all premises which are used for the sale of alcohol, the provision of public entertainment or the provision of late night refreshments. The system incorporated portable personal licences, long term premises licences and a relaxation of the fixed opening hours.
- 8 Following a lengthy consultation process the Alcohol and Entertainment Licensing Bill 2002 was announced in the Queen's Speech of November 2002 – a bill making provision "about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment". The Bill was published at the end of November 2002 and is now progressing through Parliament.
- 9 The Bill incorporates all of the main licensing proposals in the white paper including the recommendations of the Government's Better Regulation Task Force for transferring responsibility for licensing premises and people from magistrates to local authorities. The intention of the Bill is that it will complement the work of councils in developing community plans and crime and disorder strategies, while maintaining

current responsibilities for public safety, nuisance and public entertainment licensing. As anticipated the Bill also moves toward the relaxation of fixed opening hours which is anticipated to bring potential benefits in terms of tourism, culture and regeneration strategies.

10 This paper provides a brief outline of the Bill's main provisions.

11 **FACTORS FOR CONSIDERATION**

12 **The Current Legal Position**

13 At present the entertainment, night café and liquor licensing functions are split between the local authority and the local magistrates. In Southwark, this Council holds responsibility for both entertainment and night café licensing while the Licensing Justices at Camberwell Magistrates Court administer the liquor licensing function. The Alcohol and Entertainment Licensing Bill 2002, once enacted, will replace all current public entertainment, night café and liquor licensing legislation with the single, consolidated Alcohol and Entertainment Licensing Act 2003.

14 Legislation that will be affected by the introduction of the new Act will include:

- a) The Licensing Act 1963 (governing the sale and consumption of alcohol);
- b) Schedule 12 to the London Government Act 1963 (governing public music and music and dancing, indoor sports and outdoor boxing and wrestling);
- c) The Private Places of Entertainment Act 1967 (governing private music and music and dancing);
- d) The Theatres Act 1968;
- e) The Cinemas Act 1985; and
- f) The London Local Authorities Act 1990 (governing night cafes and take-aways).

15 **The Main Provisions of the Bill**

16 The Alcohol and Entertainment Licensing Bill proposes that current legislation is replaced by a new two-tier system of licensing comprising Personal and Premises Licences, both of which are to be administered by the Local Authority.

17 **Licensable Activities**

18 Proposed licensable activities under the new Act will comprise

- a) The retail sale of alcohol;
- b) The supply of alcohol to club members;
- c) The provision of regulated entertainment (covering live music, recorded music, dance, films, plays, indoor sports and boxing and wrestling) for a profit; and
- d) The provision of late night refreshment.

19 **Administration Arrangements**

20 If enacted, a duty will be placed upon the local authority to carry out the functions under the Act with a view to promoting licensing objectives given as:

- a) The prevention of crime and disorder;
- b) The maintenance of public safety;
- c) The prevention of public nuisance; and
- d) The protection of children from harm.

21 The Bill provides for every licensing authority to delegate its functions to a licensing committee. The Committee is expected to consider policy issues including the compilation and continual review of a local licensing statement which should arise from consultation with local stakeholders. The licensing statement is expected to be continually reviewed and fully revised and re-published every three years. This licensing statement is to form the basis for decisions taken by the Committee.

22 The Committee or a Sub-Committee established by it will also be expected to consider representations received from interested parties or statutory bodies in respect of applications for new or amended licences. It is expected that all other routine approvals and renewals of licences will be delegated to an officer. Appeals against a licensing authority's decision will be heard by the Magistrates Court. Rights of appeal are given to both applicants and objectors.

23 Each local authority will be required to keep various public registers - including a register of licences granted by it.

24 **Fees and Procedures**

25 The Bill itself is a lengthy document of some 170 pages. It runs over 196 Sections and a further 8 schedules. While it contains the basic provisions of the proposed new licensing legislation, the detail of issues such as the fees that may be charged for licence applications; and the processes and the procedures that are to be followed are currently unavailable. These are to be covered under Regulations to be issued in due course.

26 **Personal Licences**

27 The Bill proposes a new personal licence for everyone taking responsibility for the supply of alcohol at licensed premises. These licences are anticipated as being valid for 10 years and will follow a licence holder from premises to premises during that time period. Applicants for a licence will have to pass appropriate checks made by the Criminal Records Bureau and have obtained a specified qualification.

28 The Bill sets out that local authorities shall grant a personal licence where all conditions of application are met and no objection is lodged from the Police. In the case of an objection being made then a personal hearing must be held unless all involved parties agree this is not necessary.

29 Premises Licence

- 30 The Bill also proposes that all the licensable activities shown in paragraph 15 above may be covered under one premises licence. Any person over 18 years of age who carries on or proposes to carry on a business involving the use of a premises for a licensable activity may apply. Applications are required to be accompanied by an “operating schedule”; a plan of the premises; and (where alcohol sales are intended) by a form of consent to the “designated premises supervisor”.
- 31 The premises “operating schedule” effectively forms the premises business plan and should include
- a) The intended relevant licensable activities;
 - b) The operating times for licensable activities;
 - c) Other operating times;
 - d) The period of licence if of limited time;
 - e) Prescribed information on the person intended to be named as the “designated premises supervisor”;
 - f) Whether alcohol sales are for consumption on or off the premises;
 - g) The steps to be taken to promote the business; and
 - h) Other matters to be prescribed.
- 32 Applications for premises licences will be required to be advertised and interested parties may make representations to the local authority. Where no representations are made the local authority must grant the licence in accordance with the application subject to “such conditions as are consistent with the operating schedule accompanying the application”.
- 33 Where representations are made the local authority must hold a hearing to consider them - unless all parties involved agree this is unnecessary. Having had regard to the representations the local authority may
- a) Grant the licence subject to “such conditions as are consistent with the operating schedule accompanying the application ... as modified to such extent as the authority considers necessary for the promotion of the licensing objectives”;
 - b) Exclude from the scope of the licence any of the licensable activities to which the application relates;
 - c) Refuse to specify a person in the licence as the “designated premises supervisor”; or
 - d) Reject the application.
- 34 Once granted it is intended that each licence should remain valid for the life of the business - unless sought only for a limited period; or until the licence is revoked; or surrendered; or the licence holder dies, is incapacitated or becomes insolvent.
- 35 So, it is not intended that the premises licence will be annually renewable - as is the case currently with public entertainments licences. But while the Bill omits this existing opportunity for annual review of existing licensed operations, it addresses this by enabling interested parties or responsible authorities to apply for a review of a premises licence at any time. Applications for review may be rejected by the

licensing authority where the grounds are not relevant to the licensing objectives or where they are repetitious of previous reviews. Upon review of a premises licence the Authority may:

- a) Modify the conditions of the licence;
- b) Exclude a licensable activity from the scope of the licence;
- c) Remove the “designated premises supervisor”;
- d) Suspend the licence for a maximum of 3 months; or
- e) Revoke the licence.

36 Provisional Statement

37 Applicants for premises that are to be newly constructed or extensively altered for the purpose may seek a “provisional statement” as a prelude to a full premises licence. With such applications the applicant must provide a schedule of works.

38 Club Premises Certificate

39 The Bill also provides for the grant by a licensing authority of a “Club Premises Certificate” for premises “occupied by, and habitually used for the purposes of, a club”. To apply for a “Club Premises Certificate” a qualifying club must meet certain conditions including that it must have at least 25 members and a minimum 48 hour vetting procedure for membership applications.

40 Temporary Events Notice

41 Where it is intended to use a premises capable of accommodating fewer than 500 persons for one or more licensable activities during any period not exceeding 72 hours, an individual may give to the relevant licensing authority and police a “Temporary Events Notice”. At least 10 working days notice must be given. If made by an existing personal licence holder up to 50 such notices may be given in any 12 month period. No two “temporary events” at the same premises can run within 24 hours of each other.

42 Offences

43 The Bill proposes a range of offences under the Act including offences dealing with:

- a) The carrying on of unauthorised licensable activities (including providing licensable activities without a licence and breaching the terms of authorisations granted);
- b) Drunkenness and disorderly conduct;
- c) Smuggled goods;
- d) Children and alcohol; and
- e) Making of false statements in connection with licence applications.

44 Enforcement Powers

45 The Bill proposes new powers of premises closure for magistrates and senior police officers. A senior police officer may make a closure order of up to 24 hours in relation

to any premises, where such action is necessary to prevent existing or anticipated public disorder or nuisance. Where it is necessary to extend a closure order to cover several premises in a specified area for the purposes of preventing disorder, a police officer of the rank of superintendent and above may apply to the magistrates court.

46 Following the issue of a closure order upon a licensed premises in its area, the local authority then has 28 days to review the order. Provisions are made for representations to be invited and a hearing convened at which the authority may consider appropriate actions ranging from modification of the licence through to suspension or revocation of the premises licence.

47 Powers of right of entry are extended to both police and other authorised officers:

- a) For the purposes of ensuring that any licensable activity is carried out in accordance with the authorisation; and
- b) To investigate offences.

48 **Late Night Refreshments**

49 As indicated in paragraph 15 one of the proposed licensable activities is the supply of hot food or hot drink to members of the public between the hours of 11p.m. and 5a.m. Under the current proposals the existing distinction between refreshments made available for consumption on a premises and take-away sales is no longer recognised.

50 **Children**

51 The Bill envisages children under 18 years of age to be allowed in licensed premises - provided the proprietor agrees and the children are not supplied with alcohol (except wine, beer or cider by over 16s at a meal table). It will continue to be an offence for anyone under 18 years to purchase alcohol.

52 **Timetable for Progression of the Bill**

53 On the assumption that there will not be any major change to the Bill and it progresses according to the published timetable it will receive Royal Assent in July 2003. Current proposals are for a 12 month transitional period before local authorities take over full responsibility from the licensing justices (i.e. in August 2004).

54 In the meantime the Government is working together with various local authority representative bodies, leisure industry and related business representatives and other interested parties on issues arising from the Bill and the detail of guidance and regulations to follow.

55 Some of the main issues currently being raised on behalf of local licensing authorities are

- a) The ability of the local authority to properly condition licences to achieve the set licensing objectives;

- b) Local discretion for councils to set the fees for administering the licensing function in order that no council should have to financially subsidise the issuing of licences and therefore be able to recover full costs; and
- c) Extension of the currently proposed 12 month transitional period.

56 Funding of the Transition

57 The Department of Culture, Media & Sport has intimated that additional funding will be made available to local authorities to cater for the start-up costs of these new responsibilities, though the extent of this is unclear.

58 RESOURCE IMPLICATIONS

59 It is clear that the new licensing function, incorporating as it does the transfer of liquor licensing from the Justices, represents a considerable increase in the volume of applications for licences (particularly during the transition and initial start-up periods). Estimates anticipate as much as a three-fold increase in current licensing volume.

60 However, it is difficult to project at this stage what this means in terms of resource implications, due to the lack of detail in the Bill regarding the Council's ability to set fees and also of the licensing processes and procedures that will be established. As indicated some help may be forthcoming with start-up costs but the extent of this is unknown.

61 CONSULTATION

62 Work should commence shortly on the preparation of the Southwark licensing statement – the basis for future licensing decisions. In order to overcome reservations voiced by a section of the industry that decision-making will become too political, the Local Government Association recommends that consultation should be conducted through a local licensing forum incorporating representatives of local businesses, residents and statutory services (police, fire brigade) which will meet on a regular basis to discuss common issues. Members initial views on the consultation process are invited at this stage. Proposals will be brought to the Committee in due course.

63 CONCURRENT REPORT FROM THE BOROUGH SOLICITOR - LEGAL IMPLICATIONS

64 The Legal implications of this legislation to the Council are contained in the body of the report.

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Background information to this report may be viewed by arrangement with the Licensing Unit during office hours at the Chaplin Centre, Thurlow Street, SE17.
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