

LICENSING ACT COMMITTEE

Amendments to the Licensing Act 2003 by Part 2 of the Police Reform & Social Responsibility Act 2011

21 June 2012

Report of the Licensing Manager

PURPOSE OF REPORT

This report is to inform Members of recent changes to the Licensing Act 2003 and to take the necessary action to implement these changes.

This report is public

RECOMMENDATIONS

- 1. That delegated authority is granted to the Head of Governance to act on behalf of the Licensing Authority as Responsible Authority when required under the Licensing Act 2003, and that the Head of Governance, as Monitoring Officer, is authorised to amend the Constitution accordingly.**
- 2. That delegated authority is granted to the Head of Governance to suspend Premises Licences and Club Premises Certificates for non-payment of annual fees in accordance with the Licensing Act 2003, and that the Head of Governance, as Monitoring Officer, is authorised to amend the Constitution accordingly.**
- 3. That the remaining content of this report is noted.**

1.0 INTRODUCTION

- 1.1** Members will be aware that from July to September 2010 the Home Office conducted a public consultation exercise on 'Rebalancing the Licensing Act 2003' (the Act). The proposals outlined in the consultation were implemented by the Police Reform and Social Responsibility Act 2011 (the PRSR Act), which received Royal Assent on 15 September 2011.
- 1.2** Amended statutory guidance issued under Section 182 of the Act (the Guidance) and most of the reforms contained in the PRSR Act were brought into force on the 25 April 2012. However, some reforms remain outstanding as these require complex secondary legislation (i.e. early morning alcohol restriction orders (EMROs), the late night levy and the ability to set licence

fees locally). The Government aims to introduce these measures in October 2012 or April 2013 and will be the subject of future reports.

2.0 REFORMS WHICH CAME INTO FORCE ON 25TH APRIL 2012

2.1 Licensing Authorities to act as Responsible Authorities:

The intention of Government is to give Licensing Authorities (LA) more power and flexibility, and as such, has given them Responsible Authority (RA) status under the Act. This allows the LA to make representations and call for reviews in its own right, thereby enabling it to make early interventions to premises that are causing problems without having to wait for other RAs. (However, it should be noted that this approach is not intended to remove or replace the responsibility from existing RAs and the LA is still bound by the same rules of evidence that apply to all RAs).

This change creates two roles within the Council when acting as LA under the Act, i.e. the role of decision making body and the role of RA. To ensure procedural fairness and avoid conflicts of interest, the Guidance stresses the need for clear separation between these two roles when determining applications.

Current hearing procedures preserve this separation in part. The role of decision making body is carried out by the Licensing Act 2003 Sub-Committee and is kept separate from Licensing Officers as the Sub-Committee determines all applications in private (supported only by a Legal Officer and a Democratic Services Officer who have no involvement in the application process). However, to ensure compliance with the Guidance, the Sub-Committee (and therefore the full Committee from which Sub-Committees are sourced) cannot also act as RA. Therefore, given that Licensing Officers are separate from the decision making process and that they have an in depth understanding of the issues presented by the Act, they are most suited to represent the LA in its role as RA. Therefore, if there is an issue, Licensing Officers would initially liaise with applicants and would submit representations to the Sub-Committee as required. Similarly, Licensing Officers would instigate review proceedings on behalf of the LA in its role as RA.

To allow Licensing Officers to fulfil the role of RA, delegated authority is requested to enable the Head of Governance to act formally on behalf of the LA as RA when required under the Act.

2.2 Non payment of annual fees

Members will be aware that the Act gave no direct power to LAs to take action against licences where there were outstanding Premises Licence and Club Premises Certificate annual fees. LAs were only able to pursue outstanding fees as a debt. The reforms seek to address this issue by granting LAs the power to suspend a Premises Licence or Club Premises Certificate if the annual fee is not paid when it is due. Guidance issued under the Act states that the Licence or Club Premises Certificate should be suspended if the fee is not paid.

Once a Licence or Certificate is suspended, licensable activities cannot take place until the outstanding fee has been paid. Where the annual fee for a Licence or Certificate has not been paid for more than one year, the outstanding fee in relation to each year will be required to reinstate the Licence or Certificate. However, it should be noted that the suspension of a Licence or Certificate does not prevent the submission of a transfer application or the calling of a hearing.

To enable Officers to administer this new provision, delegated authority is requested to the Head of Governance to suspend Premises Licences and Club Premises Certificates for non-payment of annual fees in accordance with the Act.

2.3 Changes to Temporary Event Notices (TENs)

Two types of TENs have been created by the reforms – “Standard” and “Late”. Whilst the legislation stipulates several limitations on the number of TENs that can be served in any one year, by any one person in any given location - the maximum length of time a TEN may have effect has been increased from 96 hours (or 4 days) to 168 hours (or 7 days).

The requirements for a Standard TEN are no different to those prior to the reforms. However, Late TENs can be submitted to the Council between nine and five working days before an event. Therefore, Late TENs are intended to be used only in exceptional circumstances – for example, when circumstances arise beyond the organiser’s control that requires an aspect of the event to be changed at short notice.

In a similar manner to Standard TENs, the Police and the Council’s Health and Housing Section have three working days from receipt of the Late Ten to object on the basis of any of the Licensing Objectives. However, if there is an objection from either service, the event will not go ahead. Under the provisions for a Late TEN, there is no scope for a hearing or the application of existing conditions.

If an objection is received in relation to a standard TEN the licensing authority must set up a hearing before a sub committee to consider the representation with 7 days of the last day a representation can be submitted. The sub committee can apply conditions to a TEN, moderate the notice or stop the event from taking place. Conditions and moderations of the notice can be agreed between all parties without the need for a hearing.

2.4 Lowering evidential thresholds

The Act has been amended in an attempt to reduce the evidential burden on LAs when making decisions. Therefore, any action the Licensing Act 2003 Sub-Committee may take is now required to be “appropriate” rather than “necessary” for the promotion of the Licensing Objectives.

2.5 Removing the ‘vicinity test’ and publicity of applications

Under the previous controls, only residents who lived within the “vicinity” of a premises could make representations about an application related to that premises. This definition has been amended so that anyone can make a

representation regardless of whether they live close to the premises concerned. However, the tests of “frivolous”, “vexatious” or “irrelevant” still exist to control potentially unnecessary representations.

The Council is also required to publish details of all applications and reviews on its website during the prescribed consultation period of 28 days.

2.6 Health Bodies as Responsible Authorities

All Primary Care Trusts (PCTs) have been given RA status under the reforms. Accordingly, NHS Central Lancashire will be automatically notified of applications and can make representations to the Council. It is the Government’s intention that PCTs can provide additional information that may be of use to LAs when making decisions. For example, information relating to drunkenness that has led to accidents and/or injuries from violence, which required the need for emergency and ambulance services, so long as this information relates to specific premises.

When the relevant provisions in the new Health and Social Care Act 2012 are brought into force, PCTs will be replaced as RAs by the Public Health function of the relevant local authority.

2.7 Licensing Policies

The frequency that the Council is required to review and publish its Licensing Policy has been changed from 3 to 5 years. Lancaster City Council last reviewed its Licensing Policy in January 2011.

2.8 Sales of alcohol to children

The maximum fine for the offence of selling alcohol to children has been doubled to £20,000. The Government has also changed the process by which businesses that have been found guilty of this offence can be shut down (voluntarily or involuntarily).

2.9 Relevant offences

The list of relevant offences has been extended to include criminal attempt and conspiracy offences. This increases the number of offences that can be taken into account by the Licensing Act 2003 Sub-Committee when determining a new Personal Licence and, in the event of convictions during the period of licence, the suspension and forfeiture of these Licences.

3.0 CONCLUSION

In summary Recent changes to the Licensing Act 2003 which came into effect in April 2012 enable some greater scope for representations to be made at the licensing application stage and suspend licences where fee payment is not received. It is appropriate that delegated authority be given to the Head of Governance to exercise these powers.

Additional changes relate to process and Members are requested to note these changes.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None.

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

Contained in the report

BACKGROUND PAPERS

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