

Committee: Licensing Committee  
Date: 29 February 2012  
Agenda item: 4  
Subject: Proposed changes in legislation and their likely effects  
Lead officer: Marc Dubet, EH Licensing & Pollution Manager  
Lead member: Cllr Martin Whelton, Cabinet Member for Community & Culture  
Forward Plan reference number: n/a  
Contact officer: Marc Dubet, EH Licensing & Pollution Manager

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## **RECOMMENDATIONS:**

A. That the Licensing Committee consider and comment upon the report

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### **1. Purpose of Report and Executive Summary**

The report provides information for Members regarding the proposed changes in the Police Reform and Social Responsibility Act 2011 and the Gambling Act 2005.

### **2. Update on Police Reform & Social Responsibilities Act 2011**

The proposed reforms of the Licensing Act 2003 are being brought in to tackle alcohol-fuelled crime and disorder, and are of significant consequence. The main changes will be:

#### **2.1 Responsible Authorities (planned to come in on 6<sup>th</sup> April 2012)**

Licensing authorities are to become responsible authorities. This means that licensing officers will be able to make representations on applications and reviews and to bring Review applications in their own right (and their impartial position on receiving applications will inevitably change).

Currently, there are two licensing officers, which creates a potential resource implication, through the need to keep a separation between the officers acting as a responsible authority and those processing the application and reporting to licensing sub committees.

Clearly, granting officers the power to act directly to uphold the licensing objectives will add to their enforcement capabilities. It must be noted, however, that it will inevitably create an extra workload. There is also the possibility of more hearings arising from representations made and reviews sought by licensing officers.

Primary Care Trusts (and Local Health Boards in Wales) are to become responsible authorities under the Licensing Act 2003. Hospital data on A & E statistics for alcohol related injuries could be used. Committees will need to consider the relevance of any evidence submitted in terms of the Licensing Objectives and whether it is 'proper' evidence as defined by the *Thwaites* case.

Administrative procedures will need to be adopted to accommodate these changes. There is also the possibility of more hearings arising from representations made by the Local Health Authority.

## **2.2 Removing the vicinity test. (planned to come in on 6<sup>th</sup> April 2012)**

The term “Interested parties” is being deleted and the ‘vicinity test’ is no longer applicable. Representations will be able to be made by responsible authorities and “other persons”, so that almost anyone will be able to make representations and reviews, no matter where they are based. This has potentially serious resource implications, as it may not be possible to refuse a representation just because, for example, it comes from a society at the other end of the country. Given that there are likely to be more valid representations, there is also the possibility of more hearings as a result.

## **2.3 Advertising requirements/publication of licence applications (planned to come in on 6<sup>th</sup> April 2012)**

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. This may not be too onerous on the council as it is likely that the regulations may state that applications must be displayed on the council’s web site. As this is already done by this council, this change is unlikely to require significant changes to be made.

## **2.4 Evidence threshold for the promotion of the Licensing Objectives (planned to come in on 6<sup>th</sup> April 2012)**

The “necessary” and “proportionate” tests in relation to the licensing objectives will now refer to the licensing authority taking such steps as are “appropriate” to promote the licensing objectives. Decisions will still need to remain “proportionate”.

This change may benefit the Licensing Authority if its decisions are challenged through appeals and judicial reviews.

## **2.5 Temporary Event Notices (planned to come in on 6<sup>th</sup> April 2012)**

Gives local authorities “minimising or preventing the risk of pollution of the environment or of harm to human health”) the ability to object to a temporary event notice. All objections (police and local authority) will be able to be made on the basis of all the licensing objectives in the Licensing Act 2003. Licensing authorities and Sub Committees will be able to impose conditions on a temporary event notice in limited circumstances, provided there is objection and the authority considers the conditions are appropriate for the promotion of the licensing objectives

Provisions will also enable premises users, in any calendar year, to hold a single event under a temporary event notice for up to 168 hours (or seven days (currently 96 hours)), use a single premises for up to 21 days (currently 12 notices to an aggregate of 15 days) and to give a limited number of temporary event notices with less notice than the existing process permits. Provisions will permit late temporary event notices to be given with a shorter notice period, being no later than five working days, but no earlier than nine working days, before the day the event period begins. Police objections will be permitted on the third working day as opposed to the current second working day.

Administrative procedures will need to be adopted to accommodate these changes, including the need for written acknowledgement for premises users. There is also the possibility of more hearings arising from representations made by the Environmental Health Department.

## **2.6 Persistent under-age sales (planned to come in on 6<sup>th</sup> April 2012)**

Provision for doubling the maximum fine for premises, which persistently sell alcohol to those under 18 to £20,000, and increasing the period of suspensions, which can be imposed on such premises.

The timescale for a closure notice for persistently selling alcohol to children has been increased from 'up to 48 hours' to 'from 48 hours and up to 336 hours' at the discretion of the officer.

These changes do not affect the Licensing Team or the Licensing Authority, as they are dealt with by the Trading Standards Service and the Police.

## **2.7 Non-payment of Annual Fee (planned to come in on 6<sup>th</sup> April 2012)**

Gives licensing authorities power to suspend a premises licence or club premises certificate for non-payment of an annual fee (currently there is no sanction other than non payment becoming a civil debt).

Administrative procedures will need to be adopted to accommodate these changes.

## **2.8 Personal licences (planned to come in on 6<sup>th</sup> April 2012)**

Amendments are to be made to the relevant offences that are relevant to Personal Licence applications

There is the possibility of more hearings arising from objections made by the Police and the increased number of offences that are deemed relevant.

## **2.9 Early Morning Restriction Orders (planned to come in 1st October 2012)**

Allows licensing authorities to decide the terminal hour for licensed premises in sections of the borough between the hours of midnight and 6am. Different restrictions can be imposed on different days of the week. LA's must advertise any proposed order and hold a hearing to consider representations. There are no statutory appeal rights. There will be prescribed exemptions such as theatres, cinemas and community centres. Currently there is a public consultation on secondary legislation for this.

As this matters is still in the consultation phase, it is not possible to comment on it at this time.

## **2.10 Setting of Fees (planned to come in October 2012/13 )**

Regulations may also be made which allow the licensing authority to charge fees based on their costs of dealing with licensing work, which could include full cost recovery. This will be set by the government, which may involve a national cap. Currently there is a public consultation on secondary legislation for this.

As this matters is still in the consultation phase, it is not possible to comment on it at this time.

## **2.11 Late Night Levy (planned to come in 1st October 2012)**

Licensing authorities will be able to introduce a levy to cover the parts of or the whole of their borough which will be payable by premises which supply alcohol as a part of the late night economy, based on costs of policing and other arrangements for the reduction or prevention of crime and disorder, in connection with the supply of alcohol between midnight and 6 am. Licensing authorities will

be able to impose the levy on such premises whose licences give authorisation for the sale or supply of alcohol for a period of any duration between midnight and 6am. There will be possible exemptions, which the LA can choose from a list e.g. restaurants, theatres, and country pubs. At least 70% of the net funds generated by the levy will be paid to the police and crime commissioner, although it will be up to the police to decide where the funds are directed. It is intended to also pay such funds to bodies which operate measures to address the effect of alcohol related crime and disorder. It is expected that the rate of the levy will be set by Regulations. Currently there is a public consultation on secondary legislation for this.

As this matters is still in the consultation phase, it is not possible to comment on it at this time.

## **2.12 Licensing Policy Statement (planned to come in on 6<sup>th</sup> April 2012)**

Policies will have to be reviewed every 5 years rather than every 3 years (currently).

This change will benefit the authority in reducing the frequency of reviews required by the Act. However, it will still be possible for the policy to be reviewed as and when required, provided the authority publishes its new policy before adopting any change.

## **2.13 Section 182 Guidance: Revisions (first revision planned 6<sup>th</sup> April 2012)**

To cover provisions in the Act:

- “Appropriate” test for promoting the licensing objectives.
- LA’s to accept all reasonable representations from the Police
- Applicants for new /variation of Licences will need greater consideration to local area.
- Lower evidential test for cumulative impact policies.
- Expressly state scope for cumulative impact policies to apply to off trade.
- Allow LA’s to use measures such as fixed closing times, staggered closing times and zoning.

These changes need to be considered separately as follows:

- The “appropriate” test will make it easier to the Licensing Authority to reach and, if necessary, to defend its decisions.
- The acceptance of all reasonable representations from the police will reduce the amount of evidence they need to present at hearings.
- The requirements for applicants to show greater consideration to the local area is designed to encourage more measured and informed applications, which, if successful, could lead to fewer representations from residents and local businesses.
- Lowering the evidential test for cumulative impact policies will enable to council to increase its existing cumulative impact zones and to apply new ones. It will also make it easier to defend such actions, if legally challenged.

- As Merton's cumulative impact policy already applies to the off trade, this change will have little impact, besides making any decisions based on this provision to be legally challenged.
- Allowing such measures as fixed or staggered closing times and zoning may allow the council to adapt its licensing policy to apply such measures to all new applications. However, further guidance on this subject is necessary before it can be determined whether this is the case.

## **2.14 Alcohol pricing**

Mandatory conditions will set a minimum price for alcohol sales. No date has yet been provided for this provision to come in.

As this matter is still in the consultation phase, it is not possible to comment on it at this time.

## **2.15 Possible Implications arising from the Police Reform & Social Responsibilities Act 2011 (General Overview)**

As previously stated, the proposed changes will affect the type and amount of work undertaken by licensing officers.

Clearly, the changes are likely to generate greater workloads, notably from the fact that the Licensing Authority will become a responsible authority. When the changes come into effect, officers will need to consider applications, not only in terms of their correctness, but also in terms of whether or not they undermine or support the licensing objectives. As previously stated, this will require full separation of functions. Clearly, any officer who has acted as responsible authority, having as a consequence considered an application in relation to the licensing objectives, cannot attend a hearing about that application as the licensing officer required to give impartial advice.

Additional workload will also be created through the need to research and implement new procedures. With their specialist knowledge of licensing legislation and procedures, the two licensing officers are best placed to undertake this research and to liaise with their colleagues in the administration unit regarding the changes needed, some of which will be extensive. Part of the process will involve licensing officers providing training, as they have done in the past. This will be key in enabling admin officers to give advice to callers when required.

There will also be the need to advise stakeholders about the changes, notably those involved in the licensing trade. Clearly, many of the larger outlets, particularly chains of pubs, will provide their own training. However, smaller operators are likely to remain oblivious to the changes, unless advised by licensing officers. Clearly the use of the council's licensing website will be key to providing such advice, but it is also likely that some operators will require direct contact.

In conclusion, the two licensing officers will not only have to adapt their working practices to incorporate the role of responsible authority, but will also play a key role in overseeing the changes to ensure the council complies fully and promptly with the proposed changes.

## **2.16. Amendments to the Gambling Act 2005**

DCMS has published two consultations seeking views on proposals to use powers under the Legislative and Regulatory Reform Act 2006 (LRRRA) to amend the Gambling Act 2005 by means of a Legislative Reform Order (LRO) to:

- remove restrictions on the employment of people under the age of 18 years at a track with a betting premises licence;
- remove restrictions on the availability of entitlements to gaming machines at premises selling alcohol at airports.

These restrictions serve no regulatory purpose and have arisen purely as unintended consequences stemming from the implementation of the Gambling Act 2005.

In the case of a track (defined as “a horse-race course, dog track or other premises on any part of which a race or other sporting event takes place or is intended to take place”) it is proposed to create an exemption allowing them to employ under-18s in non-gambling roles. It is important to note, however, that restrictions on the employment of under-18s in gambling roles will be retained.

In the case of premises selling alcohol at airports it is proposed to allow such premises to take advantage of the same gaming machine entitlements that are available to other alcohol licenced premises elsewhere in the UK.

Given the nature of the proposals, any changes made to the Gambling Act under these provisions are unlikely to directly affect the Licensing Team or Licensing Authority.

### **3. Alternative Options**

None for the purpose of this report

### **4. Consultation undertaken or proposed**

None for the purpose of this report

### **5. Financial, resource and property implications**

Clearly, the proposed new changes will inevitably create an extra workload for the existing two licensing officers. There is also the possibility of more hearings arising from representations made and reviews sought by licensing officers. Additional staff resources may have to be considered.

### **6. Legal and statutory implications**

None for the purpose of this report

### **7. Human rights, equalities and community cohesion implications**

These are statutory functions and are applied globally. An equalities impact assessment of the attached policy and other related functions of the Service are undertaken on a regular basis.

### **8. Crime and Disorder implications**

The Service has a statutory duty to contribute to the reduction of crime and disorder in Merton under section 17 of the Crime and Disorder Act 1998.

Furthermore the prevention of crime and disorder is also one of the objectives of the Council's Statement of Licensing Policy. In determining applications it will be the policy of the Service to consider the adequacy of measures proposed to deal with related crime and where appropriate it will attach conditions to permissions and licences to deter and prevent crime and disorder both inside and within the vicinity of the premises.

## **9. Risk management and health and safety implications**

All risk and health and safety implications have been considered in arriving at the final package of Service Plan measures. Risk ratings are determined for specific activities, including the delivery of outcomes, measures and targets in the Plan, and are included within the Councils corporate risk management strategy. Identified risks and actions to minimise them are assessed on an annual basis.

## **10. Appendices**

None.

## **11. Background papers**

The following documents have been relied upon in compiling this report and the policy but do not form part of this report

The Licensing Act 2003 (As amended)

The DCMS Guidance to Licensing Authorities issued under S182 (October 2010)

The Police Reform and Social Responsibility Act 2011.