
PREPARING TO IMPLEMENT THE LICENSING ACT 2003

Responsible Cabinet Member(s) - Councillor Chris McEwan, Community Protection Portfolio

Responsible Director(s) - John Buxton, Director of Development and Environment

Purpose of Report

1. To advise the Council of its new role as Licensing Authority under the Licensing Act 2003 and to present a Draft Licensing Policy Statement and Consultation Strategy for approval.

Outcome of Consultation

2. Approval of the draft Policy and proposed Consultation Strategy will allow formal consultation to proceed. **Appendix 2** sets out a Consultation Strategy.

Information and Analysis

3. The Act received Assent on 10 July 2003 amalgamating the six existing licensing regimes into a single integrated scheme for licensing premises which sell or supply alcohol, provide regulated entertainments to the public or provide refreshment late at night.
4. There are four statutory objectives and these are:
 - (a) The prevention of crime and disorder.
 - (b) Public safety.
 - (c) The prevention of public nuisance.
 - (d) The protection of children from harm.
5. The Government's key aims that they expect to be principal aims for all involved in licensing work, are:
 - (a) The introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations.
 - (b) Greater choice for consumers, including tourists about where, when and how they spend their leisure time.
 - (c) The encouragement of more family friendly premises where younger children can be free to go with the family.
 - (d) The further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities.

- (e) The regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night time economy can bring.
 - (f) The necessary protection of local residents whose lives can be blighted by disturbance and anti social behaviour associated with the behaviour of some people visiting places of entertainment.
6. The Council will be a Licensing Authority responsible for administering the proposed licensing system. There are an estimated 468 premises licenses and more than 600 personal licenses to be administered and enforced.
 7. It is the Government's intention that all of the Council's costs delivering the service will be covered by the income from licence fees.
 8. It is not possible to set the budget for this new licensing service until the Government publication of the regulations that will prescribe what the Council, as a licensing authority, must do and the fees to be charged.
 9. The Department of Media, Culture and Sport (DMCS) proposed timetable for implementation is:
 - (a) 7 July 2004.
Guidance issued – Licensing Authorities can now begin preparing policy statements having regard to Secretary of State's guidance.
 - (b) August 2004.
DCMS will release, for public consultation, the draft regulations dealing with transitional arrangement, hearings before Local Authority Licensing Committees, personal licences (including application forms), applications for premises licenses and club premises certificates (including application forms, notices, requirements for plans etc) and fees (not published to date).
 - (c) 7 January 2005 – Licensing Authority must publish Licensing Policy Statement.
 - (d) 7 February 2005 - First appointed day.
Licensing Authorities can begin processing applications for conversions to premises licences, club premises certificates, simultaneous variations and new licenses/certificates and fast track applications for personal licenses.
 - (e) November 2005 - Second appointed day.
The new licensing regime begins.
 10. A Licensing Officer Group (including representatives from Legal Services, Public Protection and Democratic Services) was established in 2003 but little real progress was made until the Section 182 Guidance and Regulations were published.
 11. Meetings have taken place between Council Officers, the Police to discuss the Licensing Act and the practicalities of implementation.
 12. The Council must prepare and publish a Licensing Policy Statement and then formally review every three years. During the three year period, the policy must be kept under review and the Council may make such revisions to it as it considers appropriate, for instance in the

light of feedback from the local community on whether the statutory objectives are being met.

13. The Council's Licensing Policy Statement must promote the four licensing objectives and be consistent with provisions of the 2003 Act. The Council must also have regard to the Guidance issued by the Secretary of State under Section 182 of the Act. (Departure from the Guidance by the Council could give rise to an appeal or judicial review). A Draft Policy is attached as **Appendix 1**.
14. Before determining its policy for any three year period, the Licensing Authority has a duty under Section 4 of the Act to consult:
 - (a) The Chief Officer of Police for the area.
 - (b) The Fire Authority for the area.
 - (c) Persons/bodies representative of local holders of premises licenses, club premises certificates, personal licenses and businesses and residents in its area.
15. Although it may be difficult to identify persons of bodies representative for all parts of industry affected by the provision of the 2003 Act, a Licensing Authority is expected to make reasonable efforts to identify the persons or bodies concerned. The view of all these persons/bodies listed should be given appropriate weight when the policy is determined. **Appendix 2** contains details of consultation, the process and suggested list of consultees and methods of consultation.

Licensing Panels

16. The Licensing Committee can, under the Act, establish a subsidiary body, which will be politically balanced, comprising three Members of its Committee to hear applications for premises.
17. It is suggested that because of the number of premises and short time scale to process all applications (9 months), that individual applications must be processed within 2 months, Licensing Panels of three Members (two Labour Members and one Conservative/Liberal Democrat Member) be drawn from the eleven Members of the Licensing Committee. The Panels will operate in accordance with Access to Information Procedure Rules in the Council's Constitution.
18. As the Regulations will not permit Members to hear applications where premises to be licensed are in their Ward, it is suggested that the Panel of three Members be established from the membership of the Licensing Committee each time there is a requirement for the Panel to be constituted.
19. The Licensing Panel will therefore appoint a Chair for the Panel each time it meets, for that meeting only.
20. The impact of the Act will have to be continually re-assessed in terms of availability of Members and the additional demands which will take place on Members' time and if any applications are subject to representations, hearings could be lengthy – with implications for staffing and accommodation. It is intended to provide the service via existing staff and to fill in with temporary staff and review provision after the initial 'rush'.

Cumulative Impact

21. There is a statement within the Policy dealing with the issue of cumulative impact by assuming that there are no areas affected. However an alternative statement has been prepared should an area or areas be identified and this is attached as **Appendix 3**.

Training

22. A number of training sessions have been undertaken for Members of the Licensing Committee on the Licensing Act but it will be necessary for further training to be undertaken with Members on the role they will have when sitting on and chairing a Licensing Panel. This training will be arranged later in the year in preparation for the commencement of hearings.

Constitution Amendments

23. Several amendments (as detailed in a report to Cabinet on the Licensing Bill in July 2003), will be required to the Council's Constitution to implement the Licensing Act. These relate to :
- (a) the current delegated powers to Licensing Committee (amendments to reflect changes in the Act);
 - (b) responsibility for Local Choice Functions (a new insertion in relation to the establishment of a Licensing Panel and its delegated powers); and
 - (c) amendments to the Scheme of Delegation to Officers (to reflect changes in the Licensing Act and Anti-Social Behaviour Act 2003).
24. These changes will be submitted to Council for consideration early in 2005.

Delivery of Service

25. Because of the uncertain and protracted nature of the Act, Officers have been cautious in setting up structures and systems until full details are available and with no budget and income available until 2005. The draft Regulations are still to be published for consultation.
26. The first 12 – 18 months will be an intensive time and after this staffing will be reviewed to ensure the service can be delivered because every licence will have to be processed effectively within the framework prescribed in the legislation.
27. There will be impact on other Council Services, a post of Legal Solicitor (Childcare and Licensing) has been created to provide advice/guidance to officers and to panels. Workload will include potential legal issues of possible judicial review of Licensing Policy and challenges to individual decisions in relation to licences.
28. Democratic Services will be required to Service the Panels.
29. The current Licensing Section within Development and Environment has been reorganised to provide dedicated management for the licensing and parking functions. Temporary staffing responsible to the Assistant Director will be recruited to deal with the initial high volume of

work.

30. Environmental Health will be consulted for all applications and all applications will have to be assessed and commented on, operating schedules scrutinised and inspection of premises before and after Licensing.

Conditions That May Be Attached to Licences

31. Conditions may be attached to licences to achieve the licensing objectives. The Secretary of State has suggested in guidance a pool of possible licence conditions that Licensing Authorities may wish to use. These are attached as **Appendix 4**.

Financial Implications

32. The Government has not yet published its national fee structure so financial implications cannot be determined with any certainty.
33. A trading account has been established ensuring all costs associated with the implementation of the costs are correctly identified and allocated. Once the new regime starts any fees received will be front loaded. A premises Licence last indefinitely once given (subject to review) after which a yearly maintenance fee will be receivable at half the cost of the licence. A personal licence will cover a ten year period with no significant additional income expected during the term of the licence.
34. If premises want to change their method and times of operation they may require a new or varied planning application which will require resources.
35. Direct costs associated with the Act has been minimised by employing the necessary additional staff as late as possible. Despite this it must be acknowledged that the Act could impose additional financial resource pressure.

Legal Implications

35. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

36. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. The draft Licensing Policy contains proposals which will have an effect on alcohol related crime and disorder and prevention of crime and disorder is one of four statutory objectives.

Council Policy Framework

37. This report will provide the basis for the policy framework in implementation of the Licensing Act 2003.

Recommendation

38. It is recommended that the draft Licensing Policy be approved for the purposes of statutory consultation.

Reasons

39. The recommendations are supported by the following reasons:

- (a) To develop and publish a Licensing Policy in compliance with the Licensing Act 2003 and Guidance issued by the Secretary of State.
- (b) To state the consultation process to be followed to develop the Policy.

John Buxton
Director of Development and Environment

Background Papers

Licensing Act 2003 (C. 17)

Guidance issued under Section 182 of the Licensing Act 2003 - DCMS

Appendices

- 1 Draft Policy
- 2 Details of Consultation, the Process and Suggested List of Consultees and Methods of Consultation.
- 3 Statement (Cumulative Impact)
- 4 Pool of Possible Licence Conditions

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