

## CHANGES TO THE LICENSING ACT 2003

### 1 Purpose

- 1.1 The purpose of this report is to outline changes to the Licensing Act 2003 and other related changes and to give Members the opportunity to consider the next steps.

### 2 Recommendations/for decision

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| 2.1 That the Committee note the changes to the Licensing Act 2003 and consider what action to take. |
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### 3 Supporting information

#### The Coalition Government's "Rebalancing" agenda

- 3.1 On 25 April 2012 a number of important changes were made to the Licensing Act 2003 (the Act) and the regulations and statutory guidance made under the Act. The changes form part of the Coalition Government's 'rebalancing' agenda which aims to do the following:
- strengthen the licensing regime by giving local authorities, the police and communities stronger powers;
  - reduce red tape by de-regulating entertainment to an extent;
  - clamping down on under-age selling by increasing penalties for offences;
  - ensuring taxpayers should not have to foot the bill for late night drinking by allowing local authorities to set licensing fees and impose a levy;
  - reduce alcohol related crime, deaths and hospital treatment; and
  - reduce binge drinking.

#### The April 2012 changes to the Act

- 3.2 On 25 April 2012 the following changes to the Act came into force.

#### Licensing Authorities as responsible authorities

- 3.3 Licensing authorities are now responsible authorities. They can make representations on applications. They can instigate reviews and make representations on applications for review by others.
- 3.4 Existing delegations allow officers to take decisions and issue/serve notices in accordance with the Act and any regulations made under the Act. The delegations cover therefore this new right to make representations.

#### Primary Care Trusts as responsible authorities

- 3.5 PCTs can make representations on applications. They can instigate reviews and make representations on applications for review by others.
- 3.6 It is worth noting that public health is not however a licensing objective.

### **Abolition of the vicinity test (and “interested parties”)**

- 3.7 Previously a person living/working in the vicinity of the premises (and their representative bodies) and AVDC Members could make reps etc. Now, anyone will be able to object. But representations will still need to be relevant and relate to one or more of the licensing objectives and not be frivolous or vexatious (or repetitious in respect of review applications).
- 3.8 The council is now required to publish information on licence applications on its website so that others know who has applied for what.

### **“Appropriate” replaces “necessary”**

- 3.9 Previously the council could impose conditions, exclude a licensable activity, reject an application etc. if it was “necessary” for the promotion of the licensing objectives.
- 3.10 Now the council can act if it is “**appropriate**” to do so. The Act calls this “reducing the evidential burden”. The theory is that the council will have the right to intervene at a lower threshold of need. The Government was concerned that authorities were taking a “defensive” approach to regulation.
- 3.11 Determinations still have to be evidence based and it is not clear how the new test can be reconciled with the human rights tests of necessity and proportionality.

### **Temporary Event Notices (TENs)**

- 3.12 Environmental health can now object, in addition to the police, to TENs. Objections can relate to any licensing objective and not just the prevention of crime and disorder. Conditions can be added too (in some cases) and late notices can be given.
- 3.13 Conditions may be added if: the council considers it is “appropriate for the promotion of the licensing objectives”; and the conditions are on a premises licence or club premises certificate for all or part of the premises; and the conditions would not be inconsistent with the carrying out of the licensable activities under the TEN.
- 3.14 Conditions can only be added after objection. They cannot simply be proffered to avoid an objection.
- 3.15 Also, the requirement that there already be a licence with conditions means that unlicensed premises, and premises without suitable conditions, may be refused a TEN even though a condition could theoretically be added to overcome issues.
- 3.16 There will now be “standard TENs” and “late TENs”. Standard notices are given at least 10 working days before the event to the council and (if not electronic) to the police and environmental health. Late TENs are given 5-9 working days before the event to the authority and (if not electronic) to the police and environmental health.
- 3.17 Where TENs are given electronically, the council must forward them to the police and environmental health by the next working day.
- 3.18 Where there is an objection to a late TEN the council must serve a counter-notice at least 24 hours before the event. The applicant who serves a late TEN takes a risk, in that the police and environmental health may veto the event. There is no appeal against the veto.

- 3.19 The Government does not want late TENs to become the norm and have imposed the following limits. Personal licensees can give a maximum of 50 TENs or 10 late TENs in a calendar year and non-personal licensees can give 5 TENs or 2 late TENs per calendar year. For example, if a personal licensee has served 44 standard and 6 late TENs in a calendar year, no further notices may be served.
- 3.20 The maximum event period has increased from 4 to 7 days. The maximum per premises per year has increased from 15 to 21 days. This is to help touring theatres, circuses and voluntary groups.
- 3.21 The police and environmental health will have 3 working days to object to the TEN.

### **Greater penalties for persistent sale of alcohol to children**

- 3.22 The fine for the persistent sale of alcohol to children has increased from £10,000 to £20,000.
- 3.23 Closure notices for persistently selling alcohol to children has increased from up to 48 hours to 336 hours (i.e. 2 weeks).

### **Suspension for non-payment of fees**

- 3.24 If the annual fee for premises licences and club premises certificates is not paid the council must suspend the licence or certificate unless:
- i. Non-payment was due to an administrative error (on anyone's part) or
  - ii. The holder has notified the council in writing that liability for the fee or the amount of the fee is disputed; and
  - iii. The grace period of 21 days has not expired.
- 3.25 The effect of this is that suspension is mandatory after the expiry of the grace period whatever the reason for non-payment.
- 3.26 Suspension is by notice operative at least 2 working days after the notice is given.
- 3.27 The licence/certificate is re-activated on payment.
- 3.28 These new rules only apply to annual fees payable from 25 April 2012.
- 3.29 As already mentioned, existing delegations cover the service of notices and therefore can be extended to the service of suspension notices.

### **Licensing Policy: shelf life**

- 3.30 Policies beginning in January 2011 will now have a shelf life of 5 years. The council may review its policy during that period. A review does not affect the shelf life of the policy. The council may also replace its policy during that period. If it does so, the new policy will have a shelf life of 5 years from that date.

### **New relevant offences**

- 3.31 For the purposes of applications for personal licences, the following have been added to the list of relevant offences. Failing to co-operate with

preliminary breath test; attempting to commit a relevance offence; conspiracy to commit a relevant offence and conspiracy to defraud.

### **The April 2012 changes to statutory guidance**

- 3.32 As well as the Act itself, the Secretary of State has made changes to the statutory guidance issued under the Act. The style of the guidance has changed: it is more matter of fact and more assertive. In substance it has changed too.

### **Licence applicants to give greater consideration to the local area when making their application**

- 3.33 It is not entirely clear what this means. Applicants will be required to provide contextual information as part of the licence application form on issues such as the local area's social demographic characteristics, specific local crime and disorder issues and an awareness of the local environment.

### **Police representations to be given increased weight**

- 3.34 The statutory guidance now states that: "The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing."

### **Licensing authorities given more autonomy regarding closing times**

- 3.35 In an Explanatory Memorandum accompanying the revised guidance, it is stated that the Government's package of measures include "giving licensing authorities greater flexibility when determining licensed opening hours".
- 3.36 This is what the revised guidance says about licensing hours:

#### **"LICENSING HOURS**

13.42 With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

13.43 Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local

communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.”

- 3.37 It is worth noting that in a fact sheet explaining this particular change, the Government explain that the introduction of 24 hour alcohol licences discouraged the use of provisions contained in the Licensing Act 2003 such as staggered closing times, zoning and fixed closing times.
- 3.38 Staggered closing times means imposing different closing times for different premises to spread the closing times in an area.
- 3.39 Zoning means preventing premises from opening beyond a fixed time within certain zones in their district.
- 3.40 Fixed closing times can be used in designated areas where there are issues with crime and disorder and noise disruption.
- 3.41 According to the Government “This power is about giving licensing authorities the right to decide to take control of closing times in their area based on local evidence.”.
- 3.42 This is a marked shift in Government policy. In fact, it is even arguable that the Government has taken a diametrically opposite view to the previous Government on an aspect of the Act which was considered to be its cornerstone.

#### **The evidential hurdle for cumulative impact policies has been lowered**

- 3.43 Cumulative impact is the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. According to the Explanatory Memorandum accompanying the revised guidance the government have “reduced the evidential threshold for the application of cumulative impact policies and encouraging their application to the off- as well as the on-trade”.

#### **Future changes to the Licensing Act**

- 3.44 As well as the changes which came into force on 25 April 2012, there are other changes to the Act which have not been commenced yet.

#### **Late night levy**

- 3.45 The late night levy is a power for licensing authorities to introduce a charge for premises that have a late alcohol licence for the extra enforcement costs that the night-time economy generates.
- 3.46 The introduction of it will be entirely at the discretion of licensing authorities. If applied, it will affect all premises (both in the on-trade and the off-trade) anywhere in the district that are licensed to sell alcohol during the hours to which the levy applies (restricted to midnight and 6am).
- 3.47 The Government are going to consult on which premises may be subject to reductions in their levy charge or exempt from the levy in its entirety. For example, certain hotels with a late night licence for mini bars in rooms. But licensing authorities will not be able to exclude village pubs, for example, with

late licences. The levy will be set at a national level but premises will be split into bands based upon their rateable value to determine how much they pay. The levy will be collected annually and the revenue will be split between licensing authorities and the police.

### **Extending Early Morning Restriction Orders (EMROs)**

- 3.48 The previous Government amended the Act to allow licensing authorities to restrict sales of alcohol in the whole or a part of their area for any specified period between 3am and 6am if they consider this necessary for the promotion of the licensing objectives. This applies to premises licences, club premises certificates and TENs.
- 3.49 This power however was never commenced and is now going to be amended to allow licensing authorities to decide which hours they would like to prevent premises from selling alcohol between 12am and 6am.
- 3.50 Licensing authorities will be able to make EMROs if they consider this to be **appropriate** (previously the test was necessity) for the promotion of the licensing objectives.
- 3.51 An EMRO can be applied to the whole or part of the district.
- 3.52 It will also be possible to exempt certain types of premises (to be listed in regulations).

### **Locally set fees**

- 3.53 The Act has been amended to allow the Secretary of State to make regulations allowing licensing authorities to set fees locally based on cost recovery. The regulations (expected in October 2012) will set a national cap for each fee category leaving licensing authorities to set the level. The regulations have not been made yet and the Government have also promised to provide statutory guidance on what can and cannot be included in their costs for the purposes of calculating fees.
- 3.54 EMROs, the levy and fees all need secondary legislation and guidance. These proposals therefore will be the subject of further detailed reports to the Committee once they have been fleshed out for the Committee's detailed consideration.

### **Live entertainment**

- 3.55 The Government used the Police Reform and Social Responsibility Act 2011 to introduce the changes outlined in this report. The other key change to the Act is contained in the Live Entertainment Act 2012 which will be the subject of a separate report to this Committee at its next meeting.

## **4 Options considered**

- 4.1 None.

## **5 Reasons for Recommendation**

- 5.1 The recommendation is self-explanatory.

## **6 Resource implications**

- 6.1 None at this stage.

**7 Response to Key Aims and Objectives**

7.1 None.

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| Background Documents | Statutory Guidance issued under the Licensing Act 2003<br>and relevant Home Office fact sheets |