

**CHILTERN DISTRICT COUNCIL
LICENSING AND REGULATION COMMITTEE – 18 OCTOBER 2012**

Background Papers, if any, are specified at the end of the Report

**AMENDMENTS TO THE LICENSING ACT 2003, AS AMENDED,
ARISING FROM THE POLICE REFORM AND SOCIAL
RESPONSIBILITY ACT 2011**

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RECOMMENDATIONS

It is recommended that the Committee note the changes of the Licensing Act 2003 arising out of the Police Reform and Responsibilities Act 2011

Background

- 1 The main amendments to the 2003 Act arising from the Police Reform and Social Responsibility Act 2011 are detailed below.
- 2 The 2003 Act sets out a number of organisations/persons that are, for the purposes of the legislation, nominated as 'responsible authorities'. The duties/powers of responsible authorities include authority to make representations in respect of licensing applications and also call for reviews of licences that are in force if problems arise. The Head of Health and Housing has delegated authority as a responsible authority both where the Council has responsibilities for health and safety and pollution prevention and the Head of Sustainable Development has delegated authority as a responsible authority in respect of planning.
- 3 The 2011 Act creates two new responsible authorities, the Licensing Authority itself and Primary Care Trusts in whose area premises and club premises licensed under the 2003 Act are situated. This means that Licensing Authorities and Primary Care Trusts are able to make representations regarding applications and to call for the review of a licence. The delegation of powers to make representations and apply for review of licences is the subject of another report.
- 4 In the 2003 Act only 'Interested Parties' (other than responsible authorities) could make representations against a licence application or apply for the review of a licence. To be considered an 'Interested Party' a person must either have lived in the vicinity of the premises in question, be a body representing persons who lived in that vicinity, be a person involved in a business in that vicinity or be a body representing persons involved in such business. The 2011 Act removed the vicinity test and replaced the term "Interested Party" with the phrase "other persons". This means in practice that a much wider range of people are able to make representations in respect of applications and to apply to

review licence regardless of whether or not they would be affected by the provision of licensable activities themselves.

- 5 In determining applications a Licensing Authority was required to demonstrate with supporting evidence that its decisions were “necessary” for the promotion of the four licensing objectives in its area. The 2011 Act reduced this burden from having to prove that its actions were “necessary” to giving licensing authorities the power to consider more widely what actions are most “appropriate” to promoting the four licensing objectives. However, licensing authority decisions still need to be based on evidence and linked to the four licensing objectives. Similarly, when licensing authorities imposed conditions upon licences previously these conditions must have been “necessary” whereas they will only need to be “appropriate”. This change gives licensing authorities greater scope and freedom to condition licences.
- 6 Temporary Event Notices (TENs) permit the sale of alcohol and provision of entertainment at small scale events (less than 500 attendees), without the need to have a premises licence in place. Previously, only the Police could object and only object on grounds of crime and disorder. However, under the 2011 Act the Police and the local authority with responsibility for minimising or preventing the risk of pollution of the environment or harm to human health can object on the grounds of all four of the licensing objectives. This new responsibility would fall to the Head of Health and Housing.
- 7 Under the 2011 Act new powers to impose conditions on TENs are introduced. Conditions can only be imposed as a result of receiving an objection notice either from the Police or from the local authority (Head of Health and Housing) and only in cases where the premises or part thereof is already subject to a premises licence or club premises certificate.
- 8 The 2011 Act introduced the concept of “late temporary event notices”. Previously ten clear working days notice of events had to be given. Under the new provisions this period is reduced and TENs can be submitted as late as five working days before an event. However there is a limit on how many of these “late temporary event notices” can be given in any calendar year: being ten for personal licence holders and two for non-personal licence holders.
- 9 The time period for which TENs are applicable has also been extended. Previously an event could last for a maximum of 96 hours (4 days); this is now extended to 168 hours (7 days). In addition a premises could be used for 15 days per year under a TEN; this is now extended to 21 days per year.
- 10 The maximum fine for persistently selling alcohol to children is increased from £10,000 to £20,000. The period for which a premises may be closed as a result of persistently selling alcohol to children is

increased from a maximum of 48 hours (2 days) to a minimum of 48 hours and a maximum of 336 hours (14 days).

- 11 When premises licences and club premises certificates are issued they last for the life of the business and do not need to be renewed. A yearly fee is payable in respect of all licences and certificates in force. Local Authorities, have had to invest significant time and effort in collecting these fees, which could only be recovered through normal debt recovery procedures. The 2011 Act introduced powers to suspend premises licences and club premises certificates where the annual fee is not paid. Any such suspension ceases to have effect on the day the outstanding fees are received by the authority. This new power is welcomed as a large part of the time and effort that has been necessary in the past to collect licence fees will no longer be necessary.
- 12 At present fees chargeable in connection with applications under the 2003 Act are set by statute and local authorities have no powers to amend or set fees. The 2011 Act changes this to allow licensing authorities to set their own fees, in order to ensure cost recovery. However, it is proposed that this will be the subject of further regulations made by the Secretary of State and at present the time scale for this is unclear.
- 13 The requirement to produce/review licensing policy statements at least every three years is amended to require policies to be reviewed at least every five years and to continue to keep its Licensing Policy under review during this five year period. The Council's current Licensing Policy is currently subject to consultation to take account of these legislative changes.
- 14 Early Morning Restriction Orders and the Late Night Levy (in place of Alcohol Disorder Zones which are repealed under the 2011 Act, no such areas having been designated by any authority) are included within the 2011 Act, The Late Night Levy gives Local Authorities the power to charge a levy to those premises which are open after midnight and before 06.00. This will cover all premises within the licensing authority area. It is for each Local Authority to determine whether they want to introduce the Late Night Levy and what the levy period will be. 70% of the money raised has to be paid to the Local Police Authority whilst the 30% retained by the Local Authority being applied for use in connection with arrangements for the reduction of prevention of crime and disorder, the promotion of public safety, the prevention of public nuisance and the cleaning of highways.
- 15 Early Morning Restriction Orders enable licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 12 midnight and 6 am, if they consider this appropriate for the promotion of the licensing objectives. Both powers will be subject to an evidential test and therefore, once the legislation and

guidance is brought in, discussions will be held with Thames Valley Police with regard to their introduction. This will be subject to a future report.

Background Papers:
