

Committee: LICENSING COMMITTEE

Date: 12th June 2012

Wards: ALL

Subject: Changes in the licensing legislation and their effects

Lead officer: Marc Dubet, EH Licensing & Pollution Manager

Lead member: Cllr Nick Draper, Cabinet Member for Community & Culture

Forward Plan reference number: N/A

Contact officer: Marc Dubet

Recommendations:

A. That members note and comment upon changes that affect the licensing authority.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

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

2 POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011

2.1 Responsible Authorities

Licensing authorities are now responsible authorities. This means that licensing officers are able to make representations on applications and reviews and to bring Review applications in their own right.

Home office guidance has advised that licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations and bring reviews to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to do so where they are reasonably able to do so.

Primary Care Trusts (and Local Health Boards in Wales) are now 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 any evidence submitted.

2.2 Removing the vicinity test.

The term "Interested parties" has been deleted and the 'vicinity test' is no longer applicable.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

Applications now have to be advertised on the Council website in a prescribed manner. This has no resource implication as we have been doing this for some time.

2.4 Evidence threshold for the promotion of the Licensing Objectives

The committees have always proceeded on the basis of their decision needing to be “necessary” and “proportionate”. These tests in relation to the licensing objectives 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

Gives the local authority section that covers “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 (a TEN). 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 an objection, there are conditions covering the activity on the Licensing Act premises licence and the authority considers the conditions from the premises licence are appropriate for the promotion of the licensing objectives.

Provisions 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 (which has been increased from 96 hours)), and use a single premise for up to 21 days (which has been increased from 12 notices to an aggregate of 15 days). The reforms create Standard TENs (10 working days notice) and Late TENs (allowing less notice than the existing TENs of no later than five working days, but no earlier than nine working days, before the day the event period begins). The time given for Police and Environmental Health objections to be made is extended to 3 working days.

2.6 Persistent under-age sales

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.

2.7 Non-payment of Annual Fee

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). Selling alcohol whilst the Premises Licence or Club Premises Certificate are suspended may well result in a prosecution for unauthorised licensable activities or an application for a Review.

2.8. Personal licences

Amendments have been made to the relevant offences that are relevant to Personal Licence applications. The relevant offences now include attempts to commit relevant offences, common law conspiracy to defraud, and failing to co-operate with a preliminary test under the Road Traffic Act 1988.

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

2.9 Licensing Policy Statement

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

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.

2.10 Section 182 Guidance: Revisions

To cover provisions in the Act:

- LA's to accept all reasonable representations from the Police
- Applicants for new /variation of Licences will need to give greater consideration to the local area. However, it must be remembered that the Licensing Act 2003 itself does not require the applicant to state what measures they will take to promote the licensing objectives on the relevant application forms.
- Lower evidential test for cumulative impact policies.
- Expressly state scope for cumulative impact policies to apply to the on or off trade.

- The provisions to allow LA's to use measures such as fixed closing times, staggered closing times and zoning have not been included in the guidance, but are expected to form part of a revision expected later on this year.

These changes need to be considered separately as follows:

- The acceptance of all reasonable representations from the police will reduce the amount of evidence they need to present at hearings, although some evidence will be required so the Committee is persuaded that there is no clear evidence that their recommendations are not relevant".
- The guidance requires applicants to show greater consideration to the local area and 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 the council to increase its existing cumulative impact policy zones and to apply new ones. It should 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 harder to be legally challenged.

2.11 Review of the Gambling Policy 2009

- 2.12** There is a statutory requirement under the Gambling Act 2005 that the Council should review its statement of gambling policy every 3 years. The Policy needs to be reviewed by 31st January 2013. Therefore it will need to be submitted at the next licensing committee in October and then agreed by Full Council in November. The licensing authority will need to carry out a consultation on this policy review.

3 ALTERNATIVE OPTIONS

- 3.1. None for the purpose of this report

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purpose of this report, but will be soon consulting on the review of the Gambling Policy, which needs to be done every 3 years.

5 TIMETABLE

- 5.1. 3 month consultation recommended for review of Gambling Policy

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. 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.

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. None for the purpose of this report

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. 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

9 CRIME AND DISORDER IMPLICATIONS.

9.1. 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 1988. 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.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. 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

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- None for report

12 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 (April 2012)

The Police Reform and Social Responsibility Act 2011