

**Committee:** Licensing Committee

**Date:** 4 September 2013

Wards: All

Agenda item: 5

**Subject:** Licensing Act 2003

Lead officer: Chris Lee, Director for Environment and Regeneration

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

Forward Plan reference number: N/A

Contact officer: Marc Dubet, EH (Pollution & Licensing) Manager

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**Recommendations:**

1. Members to note and comment on the changes to the legislation and latest quarterly crime data summary report
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**1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 To inform members of the latest changes in legislation and provide quarterly crime data for the borough.

**2 DETAILS**

**2.1 The Licensing Act 2003 (Descriptions Of Entertainment) (Amendment) Order 2013**

On 27/06/2013 the Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 came into force.

The descriptions of entertainment in paragraph 2 of Schedule 1 of the Licensing Act 2003 are amended so that indoor sporting events and the performance of a play or dance are licensable only to the extent that applicable conditions (including conditions relating to audience limits and when those entertainment activities take place) are satisfied.

The following activities will no longer require to be licensed under the Licensing Act 2003;

1) The performance of a play or performance of dance with an audience of up to 500 between the hours of 08.00 and 23.00 hours.

2) Indoor sporting events with an audience of up to 1,000 between the hours of 08.00 and 23.00 hours.

The Order also amends the definition of a 'sporting event' so that a boxing or wrestling entertainment can no longer be authorised under that definition. The definition of a 'boxing or wrestling entertainment' has also been amended to; a contest, exhibition or display that combines boxing or wrestling with one or

more martial arts, and will not benefit from the hours and audience exemption as stated above.

## **2.2 The effect of the Live Music Act 2012 on Licence Conditions**

From 1 October 2012, live music has ceased to be regarded as regulated entertainment in venues licensed for the sale of alcohol for consumption on the premises in the following situations:

- When it is unamplified and takes place between 8am and 11pm.
- When it is amplified and takes place in the presence of an audience of 200 persons or less and is provided between 8am and 11pm.

The premises must be open for the sale of alcohol during the time that the live music is provided for the exemption/s to take effect.

The Act also removed the licensing requirement for unamplified live music taking place between 8am and 11pm in all venues.

Additionally, any condition attached to the Premises Licence relating to live music ceases to have effect in respect of the live music unless the Licensing Authority states otherwise on the licence pursuant to a Review hearing.

## **2.3 Mandatory Condition concerning Age Verification**

Since 2010, there has been a mandatory condition on all premises licences for premises licenced to sell alcohol. This condition requires the premises licence holder or club premises certificate holder to ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. The policy also requires individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Such a mandatory condition may remove the need to impose conditions relating to age verification policies on premises licenses. Further, since this condition is now mandatory, the argument at hearings that such conditions are being proposed by the applicant because they anticipate problems about underage sales would appear to be redundant.

## **2.4 Plans submitted with applications and issues raised about them In hearings.**

An issue arose recently in a hearing concerning the plan submitted with the application for a premises licence and whether that plan could be altered at a hearing. To clarify the position, the plan submitted is part of the consultation process as the applicant is required to serve it on all the responsible authorities. For this reason, the plan should not be altered after submission, since this

would, in effect, create a different plan, an action that would require a new application and a fresh consultation process.

## **2.5 Representations**

At a recent hearing, one of the interested parties raised the issue of refused representations, a number of them having been deemed invalid by the licensing team. At the hearing the sub-committee correctly stated that such comments could not be taken into consideration and also refused to adjourn the hearing as requested by the interested party raising the issue, pending an investigation about the matter.

The legal situation regarding invalidated representations is clear: Any issues raised about such matters can only be decided by a judicial review, the licensing officers with delegated authority to determine the validity or otherwise of representations having exercised that authority. It should also be noted that only valid representations are considered to be in the public domain, meaning that officers cannot comment about those deemed invalid because of data protection issues.

The licensing team are reviewing their webpages/guidance in order to offer further advice on how to make a valid representation to a premises application.

## **2.6 The withdrawal of representations at a hearing**

Under the regulations, an interested party to a hearing who wishes to withdraw any representations they have made, can do so – a) by giving written notice to the authority no later than 24 hours before the day or the first day on which the hearing is to be held; or (b) orally at the hearing.

When all parties withdraw their representations at a hearing, the situation can become problematic, especially when, as was the case in a recent hearing, one of those parties appears to be undecided and unwilling to withdraw their representation until further conditions are met, thereby involving the sub-committee in the negotiations.

Regulation 9 of the Licensing Act 2003 (Hearings) Regulations 2005 states that where the applicant and all persons who have made relevant representations to the licensing authority give notice that they consider a hearing to be unnecessary the authority may dispense with the hearing. If however this agreement is reached very close to the date arranged for the hearing, or if the representation is not withdrawn then the application may still be placed before the panel/committee. In such circumstances the parties would effectively ask the panel/committee to endorse their agreement rather than have a formal hearing.

Therefore it would appear to be the case that where all representations have been withdrawn, the sub-committee should consider dispensing with the hearing, the absence of any representations negating the purpose for its having being convened. However, in circumstances where someone refuses to withdraw their representation outright, it could be argued that the hearing should continue. Similarly, the sub-committee may wish to hold a hearing in any event, if the representations are not withdrawn prior to the hearing date.

To avoid possible complications and challenges, it is suggested that, where the licensing sub-committee is informed that a settlement may have been reached

on the day of the hearing, they adjourn for this to be confirmed by the licensing officer. In this way, any reluctance by any party to withdraw can be brought to their attention and the hearing continued. If, however, all parties agree to withdraw, the hearing could, if the sub-committee consider it appropriate, be officially ended on that basis, without sub-committee members becoming drawn into the negotiation process.

## **2.7 Appeals**

The Licensing Team have been formally notified of one appeal against the licensing authority's decision at a sub-committee hearing, namely an application for a new betting office premises licence by Corals which was refused. Legal services are dealing with this matter and, as yet, no negotiated settlement has been reached. It is scheduled to be heard at the magistrate's court in September. The review of the Ladbrokes premises in Morden by the Police has been temporarily withdrawn, pending the outcome of the court case at the Old Bailey.

We have also been advised of a formal appeal being made to the court regarding the case of Retail 24, a review hearing at which the licence was suspended for a week, the DPS removed and additional conditions added to the licence.

## **2.8 The Scrap Metal Dealers Act 2013**

The Scrap Metal Dealers Act 2013 (the Act), was passed on 28 February 2013 and is due to come in to force in October this year. The new Act replaces the Scrap Metal Dealers Act 1964 and parts of the Vehicles (Crime) Act 2001 that deal with Motor Salvage Operators. The Act has revised the regulatory regimes for scrap metal dealing and vehicle dismantling. Local Authorities will continue to act as the regulator required to licence operators, but the new act will give the authorities more powers including the power to refuse a licence and powers to revoke licences if the dealer is considered unsuitable. In addition and Police have been given powers to enter and inspect premises.

The aim of the Act is to revise the regulatory regime for scrap metal dealing and vehicle dismantling and to give the Police and Local Authorities more powers to refuse and revoke licences as well as greater rights for local authorities of entry and inspection.

The Act brings in two types of licences either a site licence or a collectors' licence. A person can only hold one licence in a Local Authority's area but can hold a licence in more than one local authority.

The licensing team will be responsible for dealing with the provisions of the Act, and a further update will be given when more details about the processes involved are known.

## **2.9 Crime Data Summary report from Safer Merton (March to May 2013)**

This data is contained within Appendix A to this report, which is exempt from publication as paragraph 10.4 (3) of Part 4B of the Constitution applies.

## **3 ALTERNATIVE OPTIONS**

None for the purposes of this report.

**4 CONSULTATION UNDERTAKEN OR PROPOSED**

None for the purposes of this report.

**5 TIMETABLE**

None for the purposes of this report.

**6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

None for the purposes of this report.

**7 LEGAL AND STATUTORY IMPLICATIONS**

None for the purposes of this report.

**8 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.

**9 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 1988. 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**

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 Council's 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**

- Appendix A to this report is exempt from publication as paragraph 10.4 (3) of Part 4B of the Constitution applies.

**12 BACKGROUND PAPERS**

None for the purposes of this report

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