

Appendices

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NORTHAMPTON
BOROUGH COUNCIL

Item No.

8

Ward: N/A

Name of Group:	LICENSING
Meeting Date:	27th September 2011
Directorate:	Public Protection
Head of Service:	Steve Elsey
Corporate Director	Julie Seddon

Report Title	Licensing Act 2003. Redressing the Balance. Recommendations following consultation.
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1. Recommendations

That the report be noted.

2. Summary

In March 2011 the Government released their recommendations for changes to the Licensing Act 2003, following consultation with interested parties, in order to redress the balance between the applicants for licences and the Responsible Authorities. This will give more powers to the Local Authority when considering applications.

The following are a brief outline of changes included in the Police Reform and Social Responsibility Bill 2010-2011: (This received Royal Assent on 15th September 2011).

Reducing the burden of proof on licensing authorities

The aim is to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems in the local area.

The wording will be amended throughout the Licensing Act 2003 to lower the evidential threshold which licensing authorities must meet when making licensing

decisions by requiring that they make decisions, which are 'appropriate' rather than necessary for the promotion of the licensing objectives. This will, for example, give licensing authorities greater power to tackle irresponsible premises.

'Appropriate' will be defined within the guidance and will still have to address the four Licensing Objectives; action will still need to be justified.

A decision that is 'appropriate' for the promotion of the licensing objectives provides some flexibility to consider the effects of the decision on the objectives. It may therefore be decided to take steps that are suitable for, rather than necessary to, the promotion of the objectives. It provides an element to deal with reluctance or resistance, to enable local communities to assert themselves properly in relation to this particular approach

Licensing Authorities - Responsible Authorities.

Licensing authorities will become responsible authorities under the Licensing Act. This will empower them to refuse, remove or review licences themselves without first having had to have received a representation from one of the other responsible authorities.

This will enable licensing authorities to take the necessary actions to tackle irresponsible premises without having to wait for representations from other responsible authorities. They will be able to collate information on individual premises and use that information to call for a review of the licence.

The Government will specify in guidance that licensing committee members shall be allocated responsibility for different roles when determining a licence application. This will ensure that the same licensing officer is not responsible for acting as a responsible authority and making a determination on an application. Any actions taken will need to be justified on the basis of the promotion of the licensing objectives.

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

Currently, as part of the licence application process, applicants are required to set out in the operating schedule accompanying their application the steps they intend to take to promote the licensing objectives. Some licensing authorities have reported that this section of the application is often poorly completed, providing licensing authorities with very little information on which to make their determination. Applicants also do not have to consider issues specific to the local area, which they may need to address, and the onus is on the licensing authority to assess the potential impact of granting the licence on the local area.

The aim of this proposal is to shift the onus onto the applicant to give greater consideration to the local area when setting out the steps they will take to promote the licensing objectives and to provide responsible authorities and the licensing authority with better information on which to make informed representations or determinations.

Lower the evidential hurdle for Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.

Cumulative Impact Policies were introduced as a tool for licensing authorities to limit the growth of licensed premises in a problem area. This is set out in the statutory guidance issued under section 182 of the Licensing Act 2003.

The statutory guidance governing Cumulative Impact Policies will be more focused on local needs and easier for licensing authorities to implement. This will reduce the evidential requirement on licensing authorities. This will give greater weight to the view of local people, as the licensing authority will not be constrained by the requirement to provide detailed additional evidence where such evidence is unavailable.

Extend Early Morning Restriction Orders so they can be applied flexibly between midnight and 6am.

An Early Morning Restriction Order is an uncommenced power within the Licensing Act 2003 that will allow licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 3am and 6am if they consider this appropriate for the promotion of the licensing objectives. This applies to premises licences, club premises certificates and temporary event notices.

The intention of these policy proposals is to extend the flexibility of Early Morning Restriction Orders to provide licensing authorities with an additional tool to shape and determine local licensing.

Give more autonomy to licensing authorities regarding closing times.

Section 182 of the statutory guidance will be amended to make it clear to local authorities that they can make decisions about the most appropriate licensing strategy for their area. Licensing authorities will be encouraged to consider using measures including fixed closing times, staggered closing times and zoning.

This change acknowledges the fact that different licensing approaches may be best for different areas and will empower licensing authorities to implement a licensing strategy that is best placed to meet the needs of their local area, based on their local knowledge.

Late night levy.

The late night levy is a power for licensing authorities to introduce a charge for premises that have a late alcohol licence. If this recommendation is adopted whether or not to implement the levy will be left entirely at the discretion of the licensing authority the decision will be based on the situation in their local area. In the areas that it is introduced the levy will be collected annually and the revenue will be split between licensing authorities and the police.

The aim is to permit licensing authorities to charge those businesses that benefit from trading alcohol in a safe late-night economy for the extra enforcement costs

that the night-time economy generates for police and local authorities.

This element is to go out for more consultation again as it is proposed that there will be exemptions from having to pay the levy. This may include those premises certificated under the Best Bar None scheme, members of Pub Watch, those already subject to a levy under the Business Improvement District scheme. There is a thought that this recommendation may be scrapped altogether.

Locally set fees under the Licensing Act 2003.

The Government has introduced an amendment to the Police Reform and Social Responsibility Bill that will allow the Secretary of State to introduce locally set licensing fees.

The policy aim is to ensure that fees recover the full costs of local licensing authorities in exercising their functions under the Licensing Act. The current fees were intended to achieve the same aim, but they have not been increased since the Act was introduced in 2005.

To reassure fee-payers that the fees will not be a 'blank cheque' for licensing authorities, a nationally set cap for each fee category will be imposed in regulations.

Making local health bodies responsible authorities.

At present, the determination of licensing decisions gives little consideration to the views of local health bodies, as they are not included as responsible authorities in the Licensing Act. This means that they are unable to make representations to the local licensing authorities regarding concerns about the impact of new licensed premises on the local NHS (primarily A&E departments and ambulance services) or more generally the safety of the public within the night-time economy.

Making health bodies responsible authorities will ensure that the safety of the public within the nighttime economy is taken into consideration for new and existing licence applications.

Persistently selling alcohol to children.

The Statutory Guidance issued under section 182 of the Licensing Act 2003 will be amended.

The aim of the change is to take tough action against those persistently selling alcohol to children. Amending the Statutory Guidance to state that all licences will be reviewed where the licence holder is found to be persistently selling alcohol to children and making the presumption will be that the licence will be revoked at review will encourage licensing authorities to make greater use of these powers.

Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police.

The proposal is to strengthen the weight that licensing authorities must give to police representations (including those voiced by the police at a hearing) and objection notices by amending the statutory guidance to require licensing authorities to accept all representations and notices and adopt all recommendations from the police, unless there is clear evidence that these are not relevant.

It is felt that it is vital that licensing authorities consider relevant representations on the impact of crime and disorder from **all** responsible authorities.

Enable licensing authorities to suspend licences due to non-payment of fees

Provision will be made for licensing authorities to suspend licences due to non-payment of fees. This will provide a much stronger incentive for businesses to pay their fee in a timely manner and save licensing authorities the time and cost of pursuing non-payment. This measure will not impact on responsible businesses that pay their licence fees on time.

There will be a grace period of 21 days for licence holders to pay their fee. The licence will be reinstated as soon as the fee is paid and the licensing authority must notify the licence holder when their licence has been reinstated.

If an administrative error has occurred or there is a dispute about liability to pay a fee, a licence cannot be suspended under this provision.

Temporary Event Notices

The key changes that will be made through the Bill:

- The right to object to a Temporary Event Notice will extend to the environmental health authority.
- The police and environmental health officers will be able to object to a Temporary Event Notice on the basis of all of the licensing objectives.
- The police and environmental health officers will be given three working days to object to a Temporary Event Notice.
- Licensing authorities will be given discretion to apply existing licence conditions to a Temporary Event Notice if there are objections from the police or environmental health authority
- Late Temporary Event Notices (i.e. those submitted less than ten working days but at least 5 days before the beginning of the event) will be allowed unless the police or environmental health officers object.
- The statutory limits will be relaxed on the duration of a single temporary event from 96 hours to 168 hours, and on the total annual availability covered by a

Temporary Event Notice in relation to single premises from 15 days to 21 days.

Who will benefit from these proposals?

- Residents - who will be given more protection from noise, crime and disorder and unsafe conditions at temporary events.
- The environmental health authority which will be able to object to temporary events.
- The police and environmental health authority - which will have longer to consider a Temporary Event Notice and place any objections.
- Touring theatres, circuses and voluntary organisations which will gain extra business and income by being able to run events for a week without a break,
- Anyone (but particularly voluntary organisations and circuses) – who will still be able to put on temporary events (subject to annual limits) if they miss the 10 day deadline.

The new limit of 168 hours will allow organisations to run events for a week without a break.

Increase the opportunities for local residents or their representative groups to be involved in licensing decisions by removing the vicinity test for interested parties.

Uncertainty will be removed amongst residents or other persons as to whether or not they are in the 'vicinity' of premises, and therefore whether they are able to make relevant representations. This will be achieved by removing the requirement to show 'vicinity'. This means that any person, body or business will be able to make a relevant representation in relation to premises, regardless of their geographic proximity.

There will also be a requirement to publish key information on licence applications on the relevant licensing authority's website. This will ensure that interested parties are aware of new (and other) licence applications and have access to the relevant information. (This is already a part of the NBC licensing process).

Representations will still need to be relevant and relate to one or more of the licensing objectives. Existing safeguards to protect against vexatious, frivolous or repetitious representations will also still be in place.

Businesses, residents and bodies will be entitled to make representations against (or for) a new or existing premises licence. However, they will need to demonstrate that their representations relate to the promotion of one or more of the licensing objectives. A representation submitted on the basis of local competition would not be relevant and may be considered 'vexatious' by the licensing authority.

The guidance will set out more clearly what is classed as a relevant, frivolous or vexatious representation. It is believed that this proposal will encourage greater community involvement in local licensing decisions.

Procedures

The introduction of new procedures will be adopted by the Licensing Department.

3A. Any Relevant Policies

Guidance issued under Section 182 of the Licensing Act 2003.
Police Reform and Social Responsibility Bill 2010-11
Northampton Borough Licensing Policy (reviewed 2011)

4. Options and Evaluation of Options

That the Committee note the report.

5. Resource Implications (including Financial Implications)

N/A

6. Consultees (Internal and External)

Internal	N/A
External	N/A

7. Compliance Issues

Finance Comments
N/A
Legal Comments
N/A
Crime and Disorder Issues
N/A
Equality Impact Assessments
N/A
Human Rights Act Implication
N/A

Other compliance issues

None

8. Background Papers

DCMS Home Office website	Guidance issued under section 182 of the Licensing Act 2003 and Police Reform and Social Responsibility Bill 2010-11	
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Name	Signature	Date	Ext.
Author	Mr P Bayliss	13/9/2011	7099
Corporate Manager	Steve Elsey		
Director	Julie Seddon		