

LONDON BOROUGH OF HARROW

Agenda item:

Page no:

Meeting:	GENERAL PURPOSES AND LICENSING
Date:	29TH SEPTEMBER 2003
Subject:	LICENSING ACT 2003, INTERIM REPORT
Key decision:	
Responsible Chief Officer:	CHIEF ENVIRONMENTAL HEALTH OFFICER
Relevant Portfolio Holder:	COUNCILLOR PHIL O'DELL
Status:	PART I (PUBLIC)
Ward:	WHOLE BOROUGH
Enclosures:	DRAFT LICENSING POLICY

1. Summary

- 1.1 This report provides an update on the Licensing Act 2003 and the stages in the implementation of the new duties. The legislative timescale for the approval of the Statutory Guidance to authorities has slipped. The report gives the current estimates of operative dates for the new duties.
- 1.2 The report also considers the approach to the Licensing Policy and asks the Committee to hold a special meeting to consider and approve a draft Licensing Policy to go forward to the formal consultation stage with business, residents, Police, Fire Brigade and other stakeholders to the process.

2. Recommendations (for decision by General Purposes and Licensing Committee)

- 2.1 To comment on the current content of the Draft Licensing Policy (appended to this report).
- 2.2 To approve the provisional implementation timetable for the Licensing Policy (paragraph 9.2).
- 2.3 To agree to hold a meeting of the Committee in November 2003 to agree a final draft of the Licensing Policy for consultation (paragraph 9.2).

2. Recommendations (continued)

- 2.4 To move the meeting of this Committee scheduled for the 3rd December 2003 to a date to be agreed later in early January to approve the Licensing Policy for referral to Council for approval (paragraph 9.2).
- 2.5 To approved the consultees for the draft Licensing Policy (11.3).
- 2.6 Instruct the Chief Environmental Health Officer to continue to review the proposals regarding the extent of the new powers as they become clear and report these to the Committee for decision.

REASON: In order to meet the statutory deadline to consult stakeholders, approve and publish the Licensing Policy by the end of April 2004.

3. Consultation with Ward Councillors

- 3.1 The changes affect the whole Borough. Member briefings for all parties took place earlier in the year.
- 3.2 Additional training and information for members will be provided at the appropriate time for those members involved with licensing decisions and for those members with an interest in the subject.

4. Policy Context (including Relevant Previous Decisions)

- 4.1 The report to this committee on the 5 March 2003, agreed the initial approach to the then Licensing Bill 2002.
- 4.2 The Council awaits the Regulations to accompany the Licensing Act and the final Statutory Guidance. A further report to members will be required once these are available.

5. Relevance to Corporate Priorities

- 5.1 The prevention of crime and disorder, public safety, the prevention of public nuisances and the protection of children from harm are the stated Licensing Objectives in the Act. Additionally the Department of Culture, Media and Sports (DCMS) expects that the changes to opening hours and the availability of a wide range of customer oriented premises will assist the tourism and the local economy. All these issues are central to Corporate Priorities.

6. Background Information

- 6.1 The White Paper, a 'Time for Change' was published in 2000, and put forward a range of options to address perceived problems with the licensing systems for alcohol, entertainments and night cafés. Following consultation, the Government published the Licensing Bill at the end of 2002. The Bill brought together the systems for alcohol, entertainments and night cafés in a unified system administered by local authorities, that imposes only a light touch on business.

6.2 The Licensing Act 2003 (the Act) reproduces much of the content of the Bill. The minor changes are outlined later in this report; hence the detailed listing of provisions in the Report to this committee on the 5th March 2003 is not repeated.

6.3 The Act creates new responsibilities for the following:

Businesses and other persons providing licensable activities:

- Persons running premises will require a premises licence. This licence lasts for the duration of the business, although a power does exist to grant the licence for a set period. The licence can be varied and transferred.
- Persons supervising the retail sale of alcohol will need to have a personal licence. This lasts for 10 years and is valid throughout England and Wales facilitating the movement of staff. The applicant applies to the authority where they reside at the time and that Council remains as the Licensing Authority for that individual for the duration of the licence. The licence can be renewed after 10 years.
- Clubs will have to have a club registration certificate.
- Certain small temporary events can be approved by a Temporary Event Notice, a rapid procedure that avoids the need for a full premises or personal licence.

Local authorities have to:

- Produce a Licensing Policy to provide a basis for the decisions of the authority by the end of April 2004.
- Devise the Licensing Policy in accordance with Statutory Guidance issued by Parliament, and consult widely with prescribed stakeholders including the Police, representatives of business and residents, prior to approval.
- Establish systems for the processing of applications for personal and premises licences, club registration certificates and temporary event notices.
- Establish a Licensing Committee of between 10 and 15 members. Although the Committee can consider matters other than licensing the principal purpose of the Committee will be to decide on the grant, or refusal of applications. The functions of the Committee can be delegated to a Sub-Committee of three members and in cases where there are no representations (formerly called objections) it is expected that the approval of applications be delegated to officers.
- Produce and keep up to date a Licensing Register, containing details of applications to the authority and the decisions made. This should be available on the Council's web site as well as in printed form.

7. **Amendments in the Act**

7.1 There were few amendments of major consequence to the Bill. Exemptions from the need for licensing for religious services, for education related activities at schools and similar premises, received wide media coverage in the spring. Also as a response to lobbying, certain exemptions from licence conditions were made for live music in small premises, although a licence will still be required. To avoid a last minute delay to the Act, Parliament gave special treatment to the performance of morris dancing by exempting it and the music for its performance, from the need for a licence.

7.2 A new procedure for the notification of freeholders and similar persons of changes to the Licensing Register was introduced. In return for an annual fee authorities will have to ensure that such persons who have registered their interest receive notifications. It is not

yet clear how much use will make of this system, neither is there an indication of the fee that may be payable.

- 7.3 A significant implication of the Act is the change to permits for gaming machines issued by the Licensing Justices. As members will be aware this authority issues permits for those premises not licensed for the supply of alcohol. The Licensing Justices are currently responsible for the issue of such permits in premises licensed for the supply of alcohol and this will transfer to local authorities.
- 7.4 At present change to gaming machines is likely to take place in February 2005, when the Act is expected to come into full operation. Officers are currently assessing the work involved in this new duty, together with the implications for the Council's existing resolutions linked to the issue of permits. For additional information on the resolutions, a recent report was made to the Licensing Panel at its meeting on the 28th August 2003 (agenda item number 9). Officers will report in due course when the position is clear.

8. **The implementation timetable**

- 8.1 The Department of Culture, Media and Sport (DCMS) has recently sketched out a revised timetable. The Act will be implemented in stages through a series of commencement orders. The anticipated dates stated are therefore subject to change.
- 8.2 The initial commencement order in July, concerned referenda in Welsh districts, with no local effect in Harrow. The second order will impose a duty on all authorities to produce, consult and approve a Licensing Policy in six months, by the end of April 2004. This order is expected once the Statutory Guidance has been approved in October, or possibly November.
- 8.3 The third commencement order (defining the first appointed day in the Act), in about May 2004, will permit existing licence holders to start applying to the local authority for both premises and personal licences. Additionally if the existing licensee wishes to extend or change their premises licence, they can apply for a variation at the same time.
- 8.4 Existing clubs will be able to apply for the new Club Registration Certificate, and also for variations in a similar way to premises licences. This part of the transitional period will last for six months and finish towards the end of 2004. Surveys by some other London Boroughs have indicated that perhaps 75% of premises selling alcohol will be seeking a change in their licence.
- 8.5 The Licensing Act 2003 is expected to come into full effect in February 2005, with the fourth and final commencement order (the second appointed day). Until this point the existing systems of liquor, public entertainments and night cafés continue in force. After this date the premises licences, personal licences and club registration certificates issued by the authority in the period since May 2004 will come into force. The system of Temporary Event Notices will also come into operation, and the responsibility for the issue of gaming machine permits in premises licensed for the sale of alcohol, will come to the authority. It would appear that the Licensing Justices would cease to exist from this time.

9. **Licensing Policy**

- 9.1 The development of the Licensing Policy is the initial duty expected of licensing authorities. It establishes the basis for applications under the Act, and the way these are

determined by an authority. Hence the Policy must be complete and approved prior to the commencement of applications to a licensing authority. The Policy is for a three year period and has to be kept under review during this period. In drawing together its Licensing Policy the authority has to:

- Comply with the requirements of the Licensing Act.
- Have regard to the Statutory Guidance issued to authorities by the Secretary of State under Section 182 of the Act.
- Consider responses made to the Draft Policy as a part of the consultation.

At the time of this report the Statutory Guidance is still in draft form and authorities have been advised by LACORS to await the issue of the final version of the Guidance before commencing consultation on the Policy. To issue the policy early would lay the document open to future challenge by those who might see themselves adversely affected by it. Additionally LACORS is currently working on guidance for licensing authorities and consulting with the DCMS on the content of policies.

9.2 Thus while a draft policy has been prepared, formal consultation should not commence for the present. The current draft of the Licensing Policy is appended to this report for comment by Members. In planning the consultation timetable for the policy, any time scales are approximate. However the following are the proposed stages:

October or early November 2003	Member consideration of the draft Licensing Policy and approval by General Purposes and Licensing Committee. Followed by the printing of the Consultation Policy. It is therefore recommended to hold an additional meeting of this Committee in November and postpone the meeting of the 3 rd December to early January 2004.
28 October 2003	Launch of the consultation process with business, residents and media. A date has had to be set for this, the Policy should be available for the launch, but can be distributed following the launch.
November to December 2003	Consultation with business and residents. LACORS suggests allowing a 28 day period for responses.
December to January 2004	Evaluation of the responses to the consultation and amendment of the Draft Licensing Policy.
Early January	GP and L meeting to review the Policy for recommendation to Council. It is recommended to move the meeting of the 3 rd December 2003 to accommodate this process.
22 January 2004 or later.	Consideration of the Draft Policy for approval at the first practicable meeting of full Council.

9.3 As licensing is defined in legislation as a Non-Executive function, the Policy will have to be formally approved by Council. The time scale is short, there being little flexibility between the estimated date of issue of the Guidance and the next available Council meeting on the 22nd January 2004. The Council meeting in February has as its principal business the approval of the budget and Council Tax for 2004/5. The following Council meeting at the end of April would leave no time for the introduction of any amendments

prior to the anticipated start date for the conversion of existing licences from May 2004. Any changes in the legislative timetable will result in changes to the above.

10. **Determination of applications**

- 10.1 Government expects that licence applications will be decided promptly. In the Act there are periods set down for the processing of licences. During the transitional period between May 2004 and October 2004 if a personal licence takes longer than 3 months to process (including any hearing) it is automatically granted. For a premises licence, or a club registration certificate the application is automatically granted after a time period of 2 months. However, where an application to vary an existing licence is made during the transitional period, if this is not granted in 2 months, the application is deemed to be refused.
- 10.2 These limits have a number of implications for those involved in the licensing process:
- The inspection of any premises and the processing of any paperwork will have to be completed rapidly.
 - If an applicant's premises do not comply with public safety requirements, the application may have to be refused. At present the applicant is often given the opportunity to undertake works prior to the grant of the licence.
 - Representations (objections) against the application received later than the allowed period cannot be included.
 - Licensing Committees or Sub-Committees would have to meet at short notice to consider applications. As a matter of routine, the Government expects such meetings to be held during the working day.
- 10.3 In the new systems licensing authorities have less discretion than in the current systems for public entertainments and night café licensing. For example only the Police can object to an applicant for a personal licence, and the Council is not able to determine its own procedures for the hearing of applications; it is expected that these will be set down in regulations.
- 10.4 Authorities also have to consider the practical arrangements for the determination of applications. It is proposed that this Committee is the Licensing Committee for the purposes of the Act and the Licensing Panel is delegated powers to determine applications, as at present. The DCMS expects that where there are no objections, then officers will grant these applications. The Licensing Policy will set out the delegations to the Licensing Committee, to the Licensing Panel and to officers. The draft proposals are in the Licensing Policy appended to this report. Members may wish to comment on the proposals.
- 10.5 Regular daytime meetings of a Licensing Panel will place the available elected Members under some pressure. Consideration must be given to the need for a pool of trained members who are willing and able to undertake these duties. The Borough Solicitor will be reporting to this Committee when plans are further advanced. The procedures and delegations in the Authority's Constitution may need amendment to accommodate the changes.
- 10.6 The training of Licensing Panel members will be important to ensure a consistent approach to the application of the legislation and the Council's Licensing Policy. Current plans anticipate a number of training sessions for members in the period after the

formulation of the Licensing Policy, leading up to May 2004. The Member Development Panel will be consulted in making further arrangements.

10.7 Decisions by the authority are open to appeal to the Magistrates Court. An applicant who is refused all, or part of an application may appeal. Those persons who made representations against an application, where the authority subsequently granted the application, may also lodge appeals. At present objectors have no right of appeal against the decision of the authority. In all these cases if the Council lost an appeal, an award of costs may be made against the authority.

11. **Consultation**

11.1 Consultation on the new proposals is an ongoing process given the transitional approach of the Government to the new duties and the formal procedures for the Licensing Policy. Consultation as part of the application process for a licence will be set down in the awaited regulations. The regulations will be the subject of a future report to Members.

11.2 The Act requires the consultation on the Licensing Policy to include:

- The chief officer of police for the area
- The fire authority for the area.
- Such persons as the Licensing Authority considers to be representative of holders of:
 - Premises Licences
 - Club Premises Certificates
 - Personal Licences
- Such other persons as the Licensing Authority consider being representative of business and residents in its area.

11.3 To meet these requirements it is proposed to consult the following:

- The chief officer of police and the fire authority for Harrow.
- Partner organisations including: Harrow Licensing Justices, Harrow Primary Care Trust, Central & North West London Mental Health Trust.
- The occupiers of all premises likely to require licensing.
- Business representatives including the Chambers of Commerce, Harrow Town Centre Forum, Harrow in Business
- Residents' representatives including Residents' Associations,
- Members of Parliament, Ward Councillors, plus those groups and persons who responded to the Council's initial awareness raising publicity in May 2003.
- Internal to the Council including; Social Services, Planning, Transportation, Crime and Disorder, Drug Action Team, Youth Offending Team.

11.4 Members are asked to consider the proposed consultees, consider amendments and approve the list as the basis for consultation under the Act.

12. **Finance Observations**

12.1 The funding for the initial three years (2003/04, 2004/5 and 2005/6) of the new statutory duty, was approved as unavoidable growth at Cabinet on the 18th February 2003. The ongoing revenue costs will be offset by licensing fees and charges. However, these fees and charges will be set centrally by the Government and details are still awaited. A

further report on the financial implications of the duties will therefore be made, once this information is available.

13. **Legal Observations**

13.1 The legal implications are set out in the body of the Report. It should be noted that section 4(3) of the Licensing Act 2003 provides that in carrying out its licensing functions a licensing authority must have regard to its statement of licensing policy published under section 5 of the Act.

14. **Conclusion**

14.1 It is indicated by the DCMS that the Licensing Act is expected to liberalise the regulatory regimes for the licensable activities so as to promote business, tourism and sensible (non-binge) drinking. However in the event of problems at premises there are powers available to the Police, Licensing Authorities and the Courts to intervene.

14.2 The Licensing Policy will be a key element in the way the Council as Licensing Authority is able to reflect local needs in determining licence applications.

15. **Background Papers**

15.1 Licensing Bill, available on the Stationery Office web site at:

<http://www.legislation.hmso.gov.uk/acts/acts2003/20030017.htm>

15.2 Explanatory Notes to the Licensing Bill, available at:

<http://www.legislation.hmso.gov.uk/acts/en/2003en17.htm>

15.3 Draft Statutory Guidance, available at:

http://www.culture.gov.uk/alcohol_and_entertainment/default.htm

16. **Author**

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