

# REPORT

**Cllr Brown : Cabinet Member for Environment & Transport**

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## **Licensing Act 2003**

### **Purpose of Report**

To update members following the report to Cabinet on the 23<sup>rd</sup> January 2003. The Guidance Notes accompanying the Act have now been republished and are likely to come into effect from the beginning of May 2004. In practice this will start the consultation and transfer processes.

### **1. Introduction:**

The Licensing Act 2003 marks the end of the existing outdated licensing regimes by integrating the present licensing regimes into a single, streamlined and more efficient system of licensing to be administered by local authorities. The regimes cover the licensing of alcohol, public entertainment, clubs, cinemas, late night refreshments house and theatres.

The legislation provides a clear focus on the promotion of four statutory objectives which must now be addressed when licensing functions are undertaken. They are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

The modernisation of the legislation also supports a number of other key aims and purposes. These are of vital importance and should be principle aims for all involved in licensing work. They include:

- introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
- the encouragement of more family friendly premises where younger children can be free to go with the family;
- the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;
- the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.

## **2. Licences**

The legislation introduces four new types of licence :-

- Premises Licence
- Personal Licence
- Club Premises Certificate
- Temporary Events Notice

## **3. Licensing Policy**

The Council must draw up a Licensing Policy which will set out how it intends to carry out its licensing function with regard to the licensing objectives. However whilst the legislation was enacted in July 2003 it cannot come into effect until Guidelines have been approved by both Houses of Parliament (expected May 2004). The Council cannot draw up its policy until the Guidelines have been approved. Whilst the policy must reflect local opinion, much of the content will be dictated by requirements contained in the Guidelines.

## **4. Consultation**

The Licensing Policy must be comprehensive and subject to wide consultation. There will be a six-month consultation period following the approval of the Guidelines during which time a draft policy must be published, consulted upon and finally agreed by full Council. The project management chart Gantt Chart see Appendix III - shows progress to date and an assumed commencement date in May 2004.

## **5. Transition**

Following the consultation period there will be a "First Appointed Day" and a transitional period (presently thought to be 9-months) during which applications for the new licences must be processed.

- There are provisions ("grandfather rights") for existing licences to be converted provided there is no change in the way premises are operated.
- If changes are sought e.g. to extend operating hours, there must be an operating schedule to show how the premises will be managed in accordance with the licensing objectives.

Following the transitional period there will be a "Second Appointed Day" after which the new licences come into force. In the meantime existing licences remain in force.

## **6. Licensing Committee**

The Council must set up a Licensing Committee to decide applications in accordance with the Council's Licensing Policy and the Licensing Objectives. The Council agreed to set up a Licensing Committee at its meeting on 29<sup>th</sup> March 2004 and the area committees are being asked to nominate their representatives. In practice much of the work can be delegated in accordance with the Guidelines (see Appendix 2 re suggested delegation) . There is an appeal to the Magistrates Court against refusals.

## **7. Powers and Constraints**

The Licensing Act transfers and/or amends the administration of licensing to local authorities. Whilst powers to grant, amend or refuse licences will rest with the Council the Licensing Committee is heavily reliant on "Interested Parties" i.e. persons and businesses (and their representatives) in the vicinity of the premises involved (i.e. not persons remote from the area) and "Responsible Authorities" re police, fire, planning, environmental health, health and safety and community safety.

The licensing policy is not an enforcement document but it can reflect local opinion. It is important that Community Safety Partnership is involved in the production of the policy - See chart.

<p style="text-align: center;"><b><u>Powers</u></b></p>	<p style="text-align: center;"><b><u>Constraints</u></b></p>
<p>Council may grant/refuse applications for Premises Licence</p>	<ul style="list-style-type: none"> <li>• Cannot refuse during transitional period if no changes to operation and no police objection</li> </ul>
<p>May impose conditions</p>	<ul style="list-style-type: none"> <li>• Cannot refuse application if there are changes or for new premises unless there are official "representations" from interested parties and/or "responsible authorities" - see para 7 includes reference to operating hours etc.</li> </ul>
<p>Control of nuisance/anti-social behaviour</p> <ul style="list-style-type: none"> <li>- Inside Premises</li> <li>- Outside Premises</li> </ul>	<ul style="list-style-type: none"> <li>• Only if they reflect the Licensing Objectives.</li> <li>• Cannot conflict with or duplicate other requirements</li> <li>• Cannot "zone" areas.</li> <li>• Cannot ordinarily impose hours of operation.</li> <li>• Powers to review licenses only if representations made.</li> <li>• Police have powers if premises can be identified otherwise very restricted under Licensing Act. Other legislation may apply.</li> </ul>
<p>Licensing Committee</p>	<ul style="list-style-type: none"> <li>• No substitute members allowed</li> <li>• Members of Licensing Committee cannot be involved in adoption of Licensing Policy.</li> </ul>
<p>Applications - Premises Licence</p>	<ul style="list-style-type: none"> <li>• Existing premises - must be decided within 2 months otherwise deemed granted.</li> <li>• Variations - must be decided within 2 months otherwise deemed refused - appeal to Magistrates Court.</li> </ul>
<p>Applications - Personal Licence</p>	<p>Can only refuse on representation from police.</p> <ul style="list-style-type: none"> <li>• Must be decided within 3 months otherwise deemed granted.</li> </ul>

## 8. Consultation Issues

The Licensing Policy must be subject to consultation - see Appendix I for proposed consultees. The consultations will form part of a further report to the Environment and Transport Overview and Scrutiny Panel before presentation to Cabinet and full Council.

There will be a separate procedure for consultation regarding applications for licences. Applications for new and amended licences will have to be advertised and representations may be made by interested parties which include businesses and persons living in the vicinity of the premises concerned.

It is anticipated that a scheme similar to that used for planning applications will be introduced utilizing new GIS (Geographical Information System) arrangements.

## 9. Scheme of Delegation

The licensing function will be administered by the Licensing Committee sub-committees and officers. Draft Guidance suggests a scheme of delegation as shown in Appendix 2.

## 10. Resources

Early publications intimated that the licensing function should be self-financing. Fees will be payable for initial premises licences (there will be annual fees thereafter) and for personal licences (renewable every 10 years). There may also be fees for amendments to licences etc. The fees will be set by Government and there were indications that they would range according to the Business Rate of the premises. Subsequent indications suggest a set fee.

It is anticipated that the Council will receive approximately 600 applications for premises licences and approximately 1000 applications for personal licences.

• Estimate Based on Business Rate	=	£185,000 in first year
	=	£90,000 in subsequent years
Estimate based on fixed rate	=	£125,000 in first year
	=	Unknown in subsequent years

Expenditure items include:-

Environmental Services Licensing Unit	Additional 2 x Permanent and 2 x temporary administration.  Computer/IT costs and support.  Office Accommodation
Environmental Health	Possible additional costs re consultation/public cleansing, conveniences etc.
Legal Unit	Additional staff to service committee, provide legal advice and support. Costs dependent on demand - possible 5% to 25% of applications to be referred to Licensing Committee.  Possible contingency for appeals to Magistrates Court.
Democratic Services	Staff to service committee - demand likely to be significant in first year.

General	Setting up and maintenance of Register of Licences Publications/Information  Possible foreign language interpretation charges
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A further report will be made indicating estimated costs following consultation with the Community Safety Partnership and others.

#### 11. Recommendation:

It is recommended that Cabinet both note this report and approve the proposed process for consultation.

#### 12. Background Papers:

- The Licensing Act 2003
- Draft Guidance issued by the Department of Culture, Media and Sport.

#### 13. Implications:

- **Financial:** A further report on expenditure will be made. It is understood that the Government will be setting the fees Local Authorities can charge and that the intention is that the fee structure will enable the licensing function to be self-financing.
- **Legal:** Contained in the report.
- **Human Rights:** The consultation process requires that the views of Police, The Fire Authority, Bodies representing operators and those representing businesses and residents in the area are taken into account. The competing Human Rights will be taken into account at this stage.
- **Personnel:** Additional staff will be needed but it is not possible to specify the staffing requirement at present.
- **Community Safety:** The consultation process will take into account Community Safety issues.
- **Environmental:** The proposed policy will take into account environmental implications.
- **Council's Core Values:** Providing excellent service, promoting a thriving local economy, being environmentally conscientious, being fair and equitable.
- **Wards Affected:** All

**Licensing Policy - Consultees**

- Community Safety Partnership
- Drugs and Alcohol Panel
- Issues re Children
- South Wiltshire Strategic Alliance
- Community Initiatives Unit
- Marketing Economic Development and Tourism Unit
- NHS
- Chief Officer of Police
- The Fire Authority
- Bodies Representing likely holder of premises/personal licences and club premises certificates etc.
  - Licence Victuallers Association
  - The Association of Licensed Multiple Retailers
  - Pub Watch Scheme
  - Club operators
  - Holders of specific licences eg Late Night Refreshment, theatres, cinemas etc.
- Bodies Representing business and residents
  - Councillors (District/Parish)
  - Rate Payers Association
  - Chamber of Commerce
- Bodies Representing transport operators bus/train/taxi operators

It is appreciated that not everyone or every organization can be individually consulted on the policy. It is intended to publicise the new provisions via the media and to make the draft policy available for comment via the Internet site.

Information and advice for applicants will be made separately via publications and the Internet site.

**Licence Applications - Consultees**

- "statutory" consultees include the police, fire authority.
- New and applications for amendments must be advertised and residents in the vicinity of the premises will be entitled to make representations regarding the application. "In the vicinity" is considered to be close to the premises i.e. persons living some distance away and making representations "on principle" would not be included.

## Recommended Delegation of Functions

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	