

LICENSING MEETING – 28 FEBRUARY 2012

REPORT TITLE – POLICE REFORM & SOCIAL RESPONSIBILITY ACT 2011

REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)

WARDS AFFECTED: 'ALL WARDS'



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. PURPOSE OF REPORT

- 1.1 This report outlines amendments to be made to the Licensing Act 2003 (“the Licensing Act”) as a result of the Police Reform and Social Responsibility Act 2011 (“the Act”).
- 1.2 The purpose of the report is to inform Members of forthcoming changes and the likely impacts on both officer and Member workload . The report also provides Members an opportunity to indicate their initial views prior to a formal Committee decision later in the year.
- 1.3 Attached to the report is a table of the principle amendments contained in the Act (Appendix 1).

2. RECOMMENDATION

- 2.1 Members are asked for their initial views on the changes prior to a formal committee decision later this year.

3. BACKGROUND TO THE REPORT

- 3.1 The Act is the result of a Home Office consultation carried out in the summer of 2010 titled “Rebalancing the Licensing Act”.
- 3.2 The intention of the Act is to rebalance the Licensing Act in favour of local communities by creating a new licensing regime with local authorities and the Police better able to respond to local residents’ concerns.
- 3.3 The Licensing Act 2003 requires any person carrying on licensable activity to have authorisation to do so. Licensable activity is the sale or supply of alcohol, providing regulated entertainment, and the supply of late night refreshment.

Summary of Main Changes to the Licensing Act and Statutory Guidance

- 3.4 No commencement dates have been announced for the 2011 Act. The dates provided are indicative based on the latest information from the Home Office (as of January 2012) and may change as further details are announced.

3.5 The changes are covered in more detail in the following sections of this report but can be broadly summarised in seven categories, with other minor amendments outside of these categories, which are:

a) Licensing Policy

- Changes will be made to the statutory guidance to Licensing Authorities that reduce the evidential requirement to implement Cumulative Impact Policies.
- Changes to the guidance will also enable Licensing Authorities to create staggered closing times, create “zones” in their areas to govern closing times, and to impose fixed closing times in designated areas.
- Possible Date for the revised guidance – 6th April 2012

b) Licensing Authority as a Responsible Authority

- This change will allow the Licensing Authority to make representations to applications and review licences.
- Possible Commencement Date – 6th April 2012.

c) Responsible Authorities, Interested Parties and Decision Making

- These changes cover definitions of responsible authority and interested parties.
- The threshold of evidence needed for decisions on licence applications by licensing panel is being lowered.
- possible Commencement Date – 6th April 2012

d) Temporary Event Notices (TENs)

- These changes cover amended limits for TENs, environmental health officers being able to object, and a revised system for TENs.
- Possible Commencement Date – 6th April 2012

e) Licence Fees

- The licensing authority will be able to set fees on a cost recovery basis.
- Possible Commencement Date – October 2012.

f) Early Morning Restriction Orders (EMROs)

- EMROs enable the licensing authority to restrict the times that alcohol can be sold anywhere in the borough.
- Home Office Consultation End Date – 10th April 2012.
- Possible Commencement Date – October 2012.

g) Late Night Levy

- The late night levy is an optional additional charge that can be applied to some or all premises selling alcohol late at night. The majority of the income will be paid to the Police.
- Home Office Consultation End Date – 10th April 2012.
- Possible Commencement Date – October 2012.

4. Licensing Policy

- 4.1 The statutory guidance is to be amended with various changes that will affect what can be included in local licensing policies.

5. Licensing Authority as a Responsible Authority

- 5.1 The licensing authority itself is to become responsible authority. This will enable representations and review applications to be made by licensing officers on behalf of the Licensing Authority.
- 5.2 Only applications that receive relevant representations are determined by a licensing panel, so this change enables the Licensing Authority to decide what applications should be determined by a panel even when no other relevant representations made.
- 5.3 The options for licensing officers making representations include:
- (a) Making no representations.
 - (b) Making representations only where there have been enforcement issues (such as complaints or compliance problems with existing conditions).
 - (c) Making representations for any application that has policy considerations (such as applications in within the special saturation policy areas).
 - (d) Making representations for all applications on their merits.
- 5.4 Members are asked to consider and comment on this change, with a view to informing officers what Members expectations will be so that appropriate procedures can be developed.
- 5.5 Members are advised that there are resource implications both in terms of officer workload, and also Member's workload to attend additional panels and determine the possible resulting increase of applications with representations.

6. Responsible Authorities, Interested Parties and Decision Making

- 6.1 Changes are being made to several definitions in the Licensing Act that are likely to come in to force from April 2012.
- 6.2 The Primary Care Trust (PCT) will become a responsible authority. It is uncertain on what grounds the PCT could make representations for individual cases at this stage. The Home office has announced their intention is for health to be a licensing objective, but it is currently not a licensing objective and is not expected to be anytime soon.
- 6.3 The definition of interested party is being removed. There will no longer be a "vicinity" test, and any person can make a representation to any application.

The new test is to be a person “likely to be affected by the application”.

- 6.4 The requirement for Licensing Authorities to only attach ‘necessary’ conditions is being changed to ‘appropriate’ conditions when making determinations.
- 6.5 The statutory guidance will be amended to provide licensing authorities with advice on how to determine if an action is ‘appropriate’. Licensing authorities will be required to demonstrate that their actions are ‘appropriate’ to promote the licensing objectives in that the actions are suitable for the particular condition, occasion or place. This provides some flexibility to consider the effects of the decision on the promotion of the objectives. The current requirement to demonstrate that actions are ‘necessary’ requires that licensing authorities demonstrate that no lesser steps would suffice for the promotion of the licensing objectives in their area which is a greater evidential hurdle.

7. Temporary Event Notices (TENs)

- 7.1 The system for TENs is to change in several ways, and is likely to be from April 2012. Firstly, there will be two types of TENs, which will be:
 - a) Standard TENs - no later than 10 working days before the event begins, and
 - b) Late TENs - no earlier than 9 working days before the event and no later than 5 working days before the event begins
- 7.2 All four licensing objectives will be relevant to TENs, and the Environmental Health responsible authority will be able to object to TENs. This is an extension from the current position where only the Police can object if they feel the TEN would undermine the crime prevention licensing objective.
- 7.3 Where an objection is received to a Standard TEN then the existing option of a licensing panel rejecting the application/TEN remains. In addition the Licensing Authority may also impose conditions on the TEN, where those conditions are already included on a premises licence for the same premises. If the applicant does not agree for the conditions, then it will have to be determined by a Licensing Panel.
- 7.4 It is very possible that this will lead to an increase in TENs going to licensing panels, which are required to be determined within 7 working days from the last date of objection.
- 7.5 When an objection is received to a Late TEN, it is automatically rejected without the need for a licensing panel determine it.

The statutory limits on the duration of events are also being increased as follows:

- a) A single event can last up to 168 hours (7 days), which is increased from the current 96 hours (4 days).
- b) The total number of days for a single premises to be used under a TEN will be 21 days, which is increased from the current 15 days.

8 Licence Fees

- 8.1 The licensing authority will have the power to set fees on a cost-recovery basis. The costs may also include the costs of acting as other responsible authorities under the Act, e.g. the environmental health responsible authority.
- 8.2 Existing licence fees introduced in 2005 are set nationally. They did not cover Hinckley & Bosworth Borough Council's costs at that time, and there have been no increases in licence fees since.
- 8.3 The Home Office will be consulting on proposals for fees in early 2012. It is probable that the existing fee structure will be retained, and licensing authorities will be able to set the amount of each fee, but subject to a maximum cap.
- 8.4 The current fee structure for premises licences is based on the rateable value of a business, and is shown below:

Rateable Value Bands	Rateable Value	Application Fee	Annual Fee
A	0 - £4300	100	70
B	£4301 - £33000	190	180
C	£33001 - £87000	315	295
D	£87001 - £125000	450	320
E	£125001 and above	635	350

In addition, a multiplier will be applied to town centre pubs (those in Rateable Value Bands D & E), where they are used primarily in the business of selling alcohol.

Rateable Value Band	Application Fee	Annual Fee
D	£900 (£450x2)	£640 (£320x2)
E	£1905 (£635x3)	£1050 (£350x3)

- 8.5 A full assessment of costs and necessary fee changes will be carried out when further details become known on what costs may be recovered, and confirmation is given about what fee structure will be used.
- 8.6 Members are advised that many of the new provisions will have increased cost implications for Hinckley & Bosworth Borough Council. Most of these will probably be commenced and implemented before fees can be set on a cost recovery basis.
- 8.7 A further change is to be introduced that will allow the licensing authority to suspend a premises licence for non-payment of the annual fee, which we welcome.

9. Early Morning Restriction Orders (EMRO)

- 9.1 The Licensing Authority will be able to make an EMRO(s) specifying that alcohol may not be sold either in the whole Borough or parts of the Borough during the early morning on specified days (which could be every day of the week). The EMRO must not begin earlier than midnight or end later than 6am and may be for a limited or unlimited period.

An EMRO will have effect on all premises licences, club certificates and TEN's in the area, whether granted before or after the order(s) come into effect.

- 9.2 The Licensing Authority may only bring in an order if it considers it 'appropriate' for the promotion of the licensing objectives. The Act sets out the consultation process and procedures to be followed by the Licensing Authority prior to bringing in an order.
- 9.3 It is important for members to note that an order will only stop the supply of alcohol and not the provision of regulated entertainment or late night refreshment.

10. Late Night Levy (The Levy)

- 10.1 The levy will allow licensing authorities to raise a contribution from late-opening alcohol retailers towards policing the late night economy. It will be a local power that licensing authorities can choose whether to adopt for their areas. The licensing authority will also choose the period during which the levy applies, between midnight and 6am on each night. Non-exempt premises licensed to supply alcohol in this period will be required to pay the levy.
- 10.2 Licensing authorities will decide whether any (and, if so, which) of the categories of exemptions and reductions will apply to the levy. The government is also keen to promote local and business-led initiatives. Many businesses successfully work together in schemes like Pubwatch, Best Bar None and Business Improvement Districts (BIDs).

4. FINANCIAL IMPLICATIONS [CB]

- 4.1 Two of the proposed changes if brought in would have financial implications; licence fees being set on a cost recovery basis and a late night levy. If licence fees were set to recover the costs incurred this would prove beneficial for the Authority as currently the service is budgeted to cost £43k for the year 2012/13.
- 4.2 More information would be required to provide an estimate of any income that may be received if a late night levy was introduced. Factors to be considered would be what exemptions might be in place and whether licence holders change their opening hours in order to avoid paying the levy.

5. LEGAL IMPLICATIONS [MR]

5.1 Contained within the body of the report.

6. CORPORATE PLAN IMPLICATIONS

6.1 Safer & Healthier Borough: to help ensure that people are provided with a safer and welcoming night time economy.

7. CONSULTATION

7.1 The report at this stage is for information purposes. A consultation will be carried out on the late night levy, EMRO's and licensing authority fees when secondary legislation is produced.

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Compliance with Central Government Policy.	Ensure new legislation is correctly adopted and implemented.	MB

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 There should be no equality issues arising from the licensing legislation being updated as full equality impact assessments have been undertaken by the Home Office prior to the legislation becoming law in 2011.

9.2 There will be no direct rural implications from any part of the Police Reform & Social Responsibility Act 2011.

10. CORPORATE IMPLICATIONS

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications

- Human Resources implications
 - Planning Implications
 - Voluntary Sector
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Background papers: Home Office – Dealing with the problems of Late Night Drinking
Police Reform & Social Responsibility Act 2011

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