

Cheltenham Borough Council

Licensing Committee – 3 September 2004

Social and Community Overview and Scrutiny Committee – 13 September 2004

Licensing Act 2003: Licensing Policy Statement – Consultation Draft

Report of the Assistant Director Public Protection

1. Executive Summary and recommendation

1.1 The issue

- 1.1.1 The Licensing Act 2003 received Royal Assent on 10 July 2003. The Act introduces a unified system of regulation for premises (including registered clubs) by the transfer of responsibility for liquor licences to local authorities. Licensable activities (liquor sale and supply, public entertainment, theatre, cinema, late night refreshment) will be regulated through two new types of licence: the premises licence and the personal licence (club premises certificates for qualifying clubs). Councils are required to publish a Licensing Policy Statement and review it every three years. Adoption of the policy is the responsibility of the full Council.
- 1.1.2 Tessa Jowell the Secretary of State in the Department for Culture Media and Sport issued the statutory guidance on the Act on July 7 2004 and announced that the 'first appointed day', by when Councils must have prepared, consulted upon and adopted their Licensing Policy Statement, will be 7 February 2005

1.2 I therefore recommend that:

- 1.2.1 **subject to any comments made by the Licensing Committee, the Social and Community Overview and Scrutiny Committee resolves to:**
- **approve the draft Licensing Policy Statement, appended to this report, as a consultation draft;**
 - **agree that consultation responses should be considered in the first instance by the night time economy community strategic liaison group;**
 - **instruct the Assistant Director Public Protection to report back with a post consultation draft policy statement prior to this Committee making its recommendations to Council.**

1.3 Summary of implications

1.3.1 **Financial** Additional budget provision of £100,000 was approved for 2004-2005 towards implementation of the Act.

1.3.2 **Legal** The council will have to comply with the requirements of the Act that are detailed in this report. There are a number of rights of appeal set out in the Act.

1.3.3 **Human Resources** Providing sufficient financial resources are available to fund all temporary positions, there should be no specific HR implications, other than normal recruitment practices. There will be a need to ensure that any fixed term contract is not regularly extended or renewed so as to unintentionally make any such post holder(s) permanent employees of the council.

Note from Assistant Director Public Protection:

Two temporary licensing officers have been appointed on twelve month contracts to assist with the implementation of the legislation. A view will be taken on the permanency or otherwise of these posts towards the end of the contract terms. The budgetary provision also allows for additional legal support towards implementation.

1.3.4 **Equal opportunities, social justice and anti-poverty** All applications under the Licensing Act 2003 will be dealt with in line with the council's regulations made in accordance with the requirements of the Act and formulated in accordance with the council's Equal Opportunity Policy and the Licensing Committee's Probity Guide.

Fixed term employees have the right not to be treated less favourably than comparable permanent employees unless the different treatment can be justified.

1.3.5 **Environmental** The licensing objectives will work towards improving the quality of the environment in the vicinity of licensed premises.

1.4 Links to Business Plan and Corporate Objectives

1.4.1 Reducing crime and disorder and the fear of crime in our communities is a top corporate priority. By engaging the Crime and Disorder Reduction Partnership, local businesses, residents and key partner agencies in the formulation of the Licensing Policy Statement, we will ensure that it is well thought out and solutions reached that take full account of crime and disorder implications.

1.4.2 The Licensing Policy Statement will be a key document to underpin the recently approved Night Time Economy Strategy and will work towards fulfilling our obligations under Section 17 of the Crime and Disorder Act 1998.

1.5 Statement on Risk

- 1.5.1 Uncertainties about licensing income levels with the adoption of national charging rates are identified at corporate, group and divisional level with a risk score of 16.
 - 1.5.2 Service capacity to sustain new licensing duties is identified as a divisional risk with a score of 9. This risk has, however, been mitigated with the inclusion of an additional £100,000 in the current financial year.
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2. Background

- 2.1 At its meeting on 30 September 2003 Cabinet requested the Social and Community Overview and Scrutiny Committee to oversee the production of the council's Licensing Policy Statement (Minute 6 refers). This approach was endorsed by Council on 6 October 2003.
- 2.2 The Licensing Act 2003 provides for a single integrated regime for the licensing of pubs, late-night cafes and takeaways, music and dancing, theatres, cinemas and registered members' clubs, to be administered by local authorities.
- 2.3 The new system is underpinned by four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and, the protection of children from harm. The Council and applicants / licensees are charged with upholding and promoting these objectives. The Government strongly advocates that licensing authorities, in promoting the objectives, should work in partnership with the police, local businesses, performers, local people and those involved in child protection – *'co-operation and partnership remain the best means of promoting the licensing objectives'*.
- 2.4 The Act, associated guidance and, as yet unpublished, regulations will stipulate how applications are to be made and considered. All existing licensees may retain their current licence terms and conditions under the grandfather rights provisions. However, where changes are sought the application must include a risk assessment based operating schedule where applicants must detail their operations and the steps that they intend to take to uphold the licensing objectives. All applications will be determined under officer delegated powers unless representations (based on the licensing objectives) have been made by an interested party (local resident or business or their representative body) or a responsible authority (police, fire, health and safety, planning, environmental health, child protection authorities, or for vessels navigation etc authorities). In all cases where representations have been made the application will be referred for determination to the Licensing Committee or a sub committee.
- 2.5 In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to carry on licensable activities at the premises. The licence will be granted on those terms unless, following representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives.

3. Licensable activities

3.1 Activities requiring a licence are:

- the supply of alcohol;
- the provision of regulated entertainment;
- providing facilities to allow regulated entertainment to take place;
- providing late night refreshment.

3.2 Regulated entertainment, amongst other things, consists of:

- a performance of a play;
- a film exhibition;
- an indoor sporting event;
- a boxing or wrestling entertainment;
- a performance of live music.

There are a number of exemptions from the need to obtain a licence. Provision exists for the list of regulated entertainment to be modified by the Secretary of State with the first review expected within six to twelve months after the Act comes fully into force.

3.3 Late night refreshments consists of:

- providing hot food and drink either on or from any premises to be immediately consumed between 11.00 p.m. and 5.00 a.m. either on or off the premises.

'Hot food' is further defined and again exemptions exist.

4. Types of licence

4.1 The new system of licensing involves: personal licences, premises' licences, club premises' certificates and temporary event notices. 'Grandfather' rights exist for all existing licensees and licensed premises.

4.1.1 Personal licences:

authorise individuals to sell or supply alcohol, or authorise the sale or supply of alcohol, for consumption on or off premises for which a premises' licence is in force. To qualify for a personal licence an individual must be aged 18 or over, possess a recognised qualification and demonstrate, via a CRB disclosure, that s/he has not been convicted of 'a relevant offence' which are detailed in the Act's fourth schedule.

Personal licences last for ten years and are renewable.

4.1.2 Premises' licences:

authorise the use of premises for licensable activities. A licence will detail operating conditions designed to regulate the use of the premises for licensable activities in line with the licensing objectives. A premises' licence has effect until the licence is revoked or surrendered, but otherwise is not time limited unless the applicant requests a licence for a limited period. Representations may be made about an application for the grant of a premises' licence; for example by local residents and businesses, the police, the fire authority and environmental health. Representations must relate to the licensing objectives and may be deemed to be vexatious or frivolous if they do not. Once a premises licence (or club certificate) has been granted the above parties may seek a review of it and of the conditions attaching to it before the Licensing Committee.

4.1.3 Club premises' certificates:

provide authorisation for qualifying clubs to use club premises for qualifying club activities. The qualifying club activities are a subset of the licensable activities. They are the supply of alcohol by or on behalf of a club to a member of the club, the sale by retail of alcohol by or on behalf of a club to a guest of a member for consumption on the premises and the provision of regulated entertainment by or on behalf of a club for its members and guests. As with premises' licences, the right to make representations on the application for a club premises' certificate is given to a range of persons and bodies.

4.2 Temporary event notices:

4.2.1 The Act establishes new arrangements for the carrying on of licensable activities at temporary events provided they are no longer than 96 hours and for less than 500 people. These arrangements replace systems of 'occasional permissions' and 'occasional licences' and involve a temporary event notice (TEN) which gives the licensing authority no less than 10 working days notice of the event. There are limits on the numbers of TENs: fifty per year for holders of personal licences and five per year for non holders; no more than twelve at the same premises with at least twenty four hours between events at the same premises and a total duration of no more than fifteen days.

4.2.2 The licensing authority can serve a 'counter notice' where these limits are exceeded and the police have the right to lodge objections which are based on the crime prevention objective and can thereby trigger a counter notice. Where a counter notice is served a hearing must be arranged by the licensing authority. To reflect the temporary nature of the events the TEN procedures do not place organisers under the same obligations as apply where licensable activities take place at premises on a more regular basis.

5. Licensing policy statement

5.1 Part 2 of the Act includes the requirement for licensing authorities to produce a statement of licensing policy and review it every three years. Whilst the Act provides for the Licensing Committee to have extensive delegated powers only the full Council can approve the policy or revisions to it and this must be preceded by extensive consultation. Section 5(3) requires licensing authorities to consult with:

- The chief officer of police
- The fire authority

- Representatives of holders of premises licences, personal licences and of club registration certificates.
- Representatives of local residents and of local businesses

The draft statement includes proposals for consultation, please see Section 2 'General Principles', paragraph 2.2.

- 5.2 The Gloucestershire licensing authorities and the police and fire and rescue services have been working in partnership in preparation for the implementation of the new system. A common policy statement template has been agreed and this has been used in preparing the pre consultation draft that is enclosed with this report. The authorities, through the Gloucestershire Licensing Officers Group (GLOG) that was established by the Gloucestershire Chief EHOs Group have also agreed to harmonise all administrative procedures so that throughout the county applicants and licensees will meet comparable systems.
- 5.3 This work has been ongoing since early 2003 and thanks to the full co-operation and help of the magistrates courts service it was possible to establish a county licensing forum and in December 2003 a briefing note was sent with the courts' licensing renewal notices to all 6000 liquor licensees in the county. In the Borough officers have provided regular updates to both the Cheltenham Innkeepers Association and to Nightsafe and all late night refreshment premises were sent a briefing note with information about the reforms. The process has been slowed because DCMS were not able to publish regulations and guidance in line with the original timetable. However after announcements in early July 2004 officers were able to undertake further work on the draft policy statement and I recommend it to members as a sound starting point for consultation with stakeholders.
- 5.4 The draft has been prepared to reflect the statutory guidance but may require further amendment once draft regulations are published. The essential policy thrust is that the Act presents the town with opportunities which should be seized whilst the concerns / threats that have been recognised at national level and locally through the night time economy strategy should be managed and minimised. The Act will not solve all of the problems of binge drinking, anti-social behaviour and yob culture and the current government initiatives relating to these problems allied to industry calls for local minimum drinks price agreements are highly significant.
- 5.5 I am recommending that the night time economy community strategic liaison group be asked to consider all responses to the draft policy prior to a further report to this committee in advance of a report to full Council. The policy must be approved and adopted by Council before 7 February 2005, the first appointed day, and thereafter licence applications will be received over the next nine months ahead of 7 November 2005, the (likely) second appointed day, when the new system will be fully operational and premises will trade in line with their applications and operating schedules.

6. Conclusion

- 6.1 While the Licensing Act brings increased responsibilities to the authority together with associated workloads and anticipated extra costs it is to be generally welcomed. For the first time, all relevant licences are brought together within one unified system under the control of the authority enabling the continuation and extension of its work on the night time economy. In this respect the licensing policy statement will contribute to linking and integrating other strategies and plans relating to crime reduction, planning, transportation, economic development, tourism and culture.

Background Papers

DCMS guidance issued under s182 of the Licensing Act 2003

National Pubwatch Good Practice Guide

Information and advice from LACORS website

DCMS/Home Office/Crime Reduction websites

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Accountability

Councillor Lloyd Surgenor

Councillor Pat Thornton

Joint Deputies for Public and Environmental Protection

Scrutiny Function

Social and Community Overview and Scrutiny Committee

A copy of the consultation checklist is held in democratic Services and is available on request