

MEETING: LICENSING AND REGULATORY COMMITTEE
DATE: Monday 22nd February, 2010
TIME: 6.30 pm
VENUE: Town Hall, Bootle

Member

Councillor

Bigley (Chair)
Papworth (Vice-Chair)
Blackburn
Bradshaw
Dodd
Fenton
Friel
Gustafson
Hands (Spokesperson)
Kerrigan
Mahon (Spokesperson)
Pearson
B Rimmer
D Rimmer
Sir Ron Watson

COMMITTEE OFFICER: Ian Williams
Telephone: 0151 934 2788
Fax: 0151 934 2034
E-mail: ian.williams@legal.sefton.gov.uk

If you have any special needs that may require arrangements to facilitate your attendance at this meeting, please contact the Committee Officer named above, who will endeavour to assist.

This page is intentionally left blank.

AGENDA

1. Apologies For Absence

2. Declarations Of Interest

Members and Officers are requested to give notice of any personal or prejudicial interest and the nature of that interest, relating to any item on the agenda in accordance with the relevant Code of Conduct.

3. Minutes

(Pages 7 - 14)

Minutes of the meeting held on 18 January 2010

4. South Road Waterloo – Establishment of Licensing Liquor Forum

(Pages 15 - 24)

Further to the petition submitted to the Council on 14 January 2010, the Committee is requested to consider the petition signed by 1015 residents of the borough, submitted by the Waterloo Resident's Association, in the following terms:

"We, the undersigned, bearing in mind Sefton Council's 'Duty to Involve' the community in the policy making process under the Local Government and Involvement in Health Act 2007, and having regard to the Council's policy on alcohol and health, call upon Sefton Council and the Council's Licensing Committee to accept the Secretary of States's strong recommendations' in the Guidance to the Licensing Act 2003, to

- (1) Hold a series of well publicised Open-Meetings to obtain the views fo the public concerning Licensing Policy;
- (2) Set up a standing 'Licensing Liaison Forum' involving all interested parties in which community groups and the public can be represented, and;
- (3) Grant no new alcohol licences and adjourn all current licence applications in the Waterloo (L22) area until such Open Meetings have been held and such a 'Licensing Liaison Forum' established."

5. Determinations Made Under The Licensing Act 2003: Period Covering 2 January 2010 To 5 February 2010

(Pages 25 - 36)

Report of the Environmental Protection Director

6. Determinations Made Under The Gambling Act 2005: Period Covering 2 January 2010 To 5 February 2010

(Pages 37 - 44)

Report of the Environmental Protection Director

7. **Approval of Premises For The Conduct of Civil Marriages And Civil Partnerships - Aintree Suite, Park Hotel, Dunningsbridge Road, Netherton** (Pages 45 - 48)
Report of the Legal and Democratic Services Director
8. **Common Act 2006 - Registration Of A Village Green - Hightown** (Pages 49 - 52)
Report of the Legal and Democratic Services Director
9. **Licensing Act 2003 - New Category Of "Interested Party"** (Pages 53 - 60)
Report of the Environmental Protection Director
10. **Proposed Response To DCMS Consultation - "Proposal To Exempt Small Live Music Events From The Licensing Act 2003"** (Pages 61 - 100)
Report of the Environmental Protection Director
11. **Proposed Response to DCMS Consultation - "Proposal To Amend Licensing Act 2003 (Personal Licence: Relevant Offences)"** (Pages 101 - 158)
Report of the Environmental Protection Director
12. **General Licensing - Fees And Charges 2010/2011** (Pages 159 - 170)
Report of the Environmental Protection Director
13. **Publishing Sentencing Outcomes** (Pages 171 - 186)
Report of the Environmental Protection Director
14. **Exclusion Of Press And Public**
To consider passing the following resolution:

That, under Section 100A(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item(s) of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12A to the Act. The Public Interest Test has been applied and favours exclusion of the information from the Press and Public.
15. **The Determination Of Lapsed Hackney Carriage Vehicle Licences And Allocation of Vacant Licences** (Pages 187 - 192)
Report of the Environmental Protection Director

THIS SET OF MINUTES IS NOT SUBJECT TO "CALL-IN"

LICENSING AND REGULATORY COMMITTEE

MEETING HELD AT THE TOWN HALL, SOUTHPORT ON 18 JANUARY 2010

PRESENT: Councillor Bigley (in the Chair)

Councillors Blackburn, Bradshaw, Dodd, Fenton,
Friel, Gustafson, Hands, Kerrigan, Mahon,
D Rimmer and Sir Ron Watson

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Papworth, Pearson and B Rimmer.

2. DECLARATIONS OF INTEREST

No declarations of interest were received.

3. MINUTES

RESOLVED:

That the minutes of the meeting held on 23 November 2009 be confirmed as a correct record.

4. DETERMINATIONS MADE UNDER THE LICENSING ACT 2003: PERIOD COVERING 7 NOVEMBER 2009 TO 1 JANUARY 2010

The Committee considered the report of the Environmental Protection Director updating on the applications made under the Licensing Act, 2003 which he had determined.

The report indicated that Sefton's Statement of Licensing Policy followed the recommended delegation of functions contained within the "Guidance issued under Section 182 of the Licensing Act 2003"; that in effect, this meant that where there were no relevant representations on an application for the grant of a premises licence or club premises certificate, or Police objections to an application for a personal licence, then these matters would be dealt with by Officers in order to speed matters through the system; and that the Guidance also recommended that, where powers had been delegated, the Committee would receive regular reports on decisions made so that they maintained an overview of the general licensing situation.

For the period 7 November 2009 to 1 January 2010 the Environmental Protection Director had received and determined: 70 applications for Premise Licences; 32 applications for Personal Licences; 1 application for

Agenda Item 3

LICENSING AND REGULATORY COMMITTEE- MONDAY 18TH
JANUARY, 2010

a Club Premise Certificate and 56 notifications of Temporary Event Notices.

RESOLVED:

That the report and the fact that further update reports would be submitted, as necessary, be noted.

5. DETERMINATIONS MADE UNDER THE GAMBLING ACT 2005: PERIOD COVERING 7 NOVEMBER 2009 TO 1 JANUARY 2010

The Committee considered the report of the Environmental Protection Director, updating on the applications, made under the Gambling Act 2005, which he had determined.

The report indicated that Sefton's Statement of Licensing Policy followed the recommended delegation of functions contained within the "Guidance issued under Section 25 of the Gambling Act 2005"; that in effect, this meant that where there were no relevant representations on an application for the grant of a premises licence or a permit then these matters would be dealt with by Officers in order to speed matters through the system; and that the Guidance also recommended that, where powers had been delegated, the Committee would receive regular reports on decisions made so that they maintained an overview of the general gambling situation.

For the period 7 November 2009 to 1 January 2010 the Environmental Protection Director had received and determined 2 applications for Licensed Premises Gaming Permits and 12 notifications for Licensed Premises Automatic Gaming.

RESOLVED:

That the report and the fact that further update reports would be submitted, as necessary, be noted.

6. LICENSING ACT 2003 – STATEMENT OF LICENSING POLICY 2011

The Committee considered the report of the Environmental Protection Director on the requirement under Section 5 of the Licensing Act 2003 ("the Act") to revise the current Statement of Licensing Policy if appropriate, in light of feedback following a consultation with relevant officers, organisations, partners and stakeholders and indicating a decision on the matter was required in order to approve the proposed timetable for the consultation. The consultation would be undertaken in line with the corporate consultation procedures.

RESOLVED: That

- (1) the proposed timetable outlined in Paragraph 5 of the report be noted and endorsed;
- (2) a terms of reference for the consultation be submitted to the next appropriate meeting of the Committee as per the agreed timetable set out in the report; and
- (3) the fact that further progress reports would be submitted, as necessary, be noted.

7. THE REGULATORY POSITION IN RELATION TO ULTRA VIOLET TANNING EQUIPMENT

Further to Minute No. 57(2) of the meeting held on 23 November 2009, the Committee considered the report of the Environmental Protection Director on the current regulatory regime in relation to ultra violet tanning equipment; and indicating that a decision on this matter was required to obtain approval to include sunbed salons in the Health and Safety work programme for 2010/11.

The report indicated that the harmful effects of ultraviolet radiation had been known for many years; that whilst natural sunshine remained the biggest source, the use of ultraviolet devices such as sunlamps, sunbeds and tanning booths could significantly increase exposure; and that the injuries caused by ultraviolet radiation could be both short term, e.g. sunburnt skin or conjunctivitis, and long term, e.g. premature skin ageing, cataracts and skin cancer.

The report also detailed the current regulatory position and that the Government had indicated its desire to strengthen legislation in this area as England was lagging behind the rest of the UK as devolved administrations had recently taken action; and that the HSE had recently reviewed its guidance and produced "Reducing Health Risks From the Use of Ultraviolet (UV) Tanning Equipment". This guidance summarised the current legal position and provided details of accepted good practice when operating a sunbed business. The guidance was attached as an appendix to the report.

The report concluded that the situation in Sefton was no different to other areas of England in that generic legislation existed. However, because of the growing public concern on this issue, the Health and Safety Team within the Environmental Protection Department had included a project on sunbed safety in its work programme for 2010/11. The project was designed to visit all establishments to ensure compliance with the current legislation and promote good practice amongst the trade.

Members raised a number of concerns and questions regarding the requirement for further legislation to help local authorities to enforce further measures which would protect public health.

Agenda Item 3

LICENSING AND REGULATORY COMMITTEE- MONDAY 18TH
JANUARY, 2010

RESOLVED: That

- (1) the report be noted and the proposed project to inspect sunbed outlets in the Sefton area as part of the Health and Safety Team Work Programme 2010/11 be approved; and
- (2) the Legal Director be requested to write to:
 - (a) the Local Government Association (LGA) to request that they lobby on behalf of all local authorities to ensure further legislation is brought forward to help enforce further measures to protect public health in relation to Ultra Violet Tanning Equipment; and
 - (b) the Health Secretary to enquire as to what measures they propose to ensure that further legislation is brought forward to help enforce further measures to protect public health in relation to Ultra Violet Tanning Equipment.

8. GENERAL LICENSING - FEES AND CHARGES 2010/2011

Further to Minute No 48 of the meeting of 26 November 2007, the Committee considered the report of the Environmental Protection Director on General Licensing – Fees and Charges for 2010/11, seeking approval for proposed changes to fees and charges for general licensing services in 2010/11 and indicating that a decision on the matter was required in order to approve cost recovery for the general licensing services provided by the Council. The Senior Licensing Officer indicated that it should be noted that the fees relating to the change of address for the licence holders referred to under the section entitled Family Entertainment Premises Licence in the annex attached to the report, should be £25 and not £10.50 as stated in the report.

The report indicated that the majority of fees applicable to local licensing matters were set by Central Government but any proposed increases should be in line with inflation. Details of the proposed fee changes were attached as an annex to the report.

The report also indicated that, in relation to the Gambling Act 2005 and applicable fees thereof, given that the regime had not yet been ‘fully embedded’, it was proposed not to change these fees until all premises had been inspected and risk rated by Officers.

Members raised concerns regarding the potential lack of resources could have and impact on the department’s ability to meet its targets. Therefore Members would welcome further information that may help to justify any proposed increases in gambling licence fees in order to assist the Environmental Protection Department to invest additional resources in order to achieve targets and help with the overall goal of licensing.

RESOLVED: That

- (1) the proposed fees and charges for 2010/11 as detailed in the Annex to the report be deferred until the next appropriate meeting of the Committee; and
- (2) a report outlining the expected income from Gambling Act fees for 2010/2011 and the anticipated costs arising from the Licensing Authority's costs for carrying out its functions under the Gambling Act be brought to the next appropriate meeting of the Licensing and Regulatory Committee.

9. HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE COMPLIANCE TESTING - APPOINTMENT OF ADDITIONAL FACILITY

The Committee considered the report of the Environmental Protection Director on the Hackney Carriage and Private Hire Vehicle Compliance Testing and the proposed appointment of an additional facility seeking approval following a request from the licensed trades for the appointment of an additional testing facility.

The report indicated that the Council had been authorised by the Department for Transport (DfT) Vehicle Inspectorate Agency to test vehicles under a Compliance Testing Scheme in accordance with the Motor Vehicles (Test) Regulations 1981 (as amended) since July 1998; that the authorisation required the Council to only appoint testing facilities which were Vehicle and Operator Services Agency (VOSA) approved "MOT" facilities; that the Local Government (Misc. Provisions) Act 1976 required the Council to only appoint facilities that were based within the political boundary as the Council could only require vehicles to be tested at facilities which were within the area of the Council; that the use of this compliance scheme meant that, in addition to the standard "MOT" test, the Council could specify additional items which it considered necessary to safeguard the best interests of the travelling public of Sefton.

The report also indicated that in 1998 the Council licensed a total of 1673 hackney carriages and private hire vehicles and that there were three testing facilities, Virginia Street, Southport, Hilderley's, Bootle and Beach Garage, Seaforth; that a fourth station had been added at Pine Grove in Bootle in 2002, but since the facility had moved to Hawthorne Road in 2006, the "MOT" authorisation had lapsed resulting in the three original facilities sharing the burden of dealing with all of Sefton Council's motor vehicle compliance tests since that time; and that since 1998 there had been a 74% increase in licensed vehicles to 2910 which had resulted in reports from the trade of delays up of to four days when booking vehicles in for testing.

The report concluded that at the Trade Stakeholder Meeting, on 8 December 2009, a Mr Johnson, the owner of Tyre Express Garages Services Ltd, 22 Berry Street, Bootle L20 8AT expressed a wish to submit

Agenda Item 3

LICENSING AND REGULATORY COMMITTEE- MONDAY 18TH
JANUARY, 2010

an application to test vehicles prior to licensing as he owned an authorised "MOT" testing facility and that both officers and trade representatives would support such an application without condition because of the immediate need for more testing capacity.

A copy of the application by Mr Johnson of Tyre Express Garages Services to act as a Council testing facility was attached as an annex to the report.

RESOLVED: That

- (1) the request from the Joint Trades Consultation Group for the appointment of an additional Hackney Carriage and Private Hire Compliance Testing Facility, be approved; and
- (2) the Environmental Protection Director be requested, following a review the Council's testing scheme and facilities to be carried out during 2010/11, to submit a further report regarding the matter.

10. PROPOSALS FOR TRIAL LEAFLETING SCHEME UNDER THE LICENSING ACT 2003

Further to Minute No 56 of the meeting held on 23 November 2009 the Committee considered the report of the Environmental Protection Director on the proposals for trial leafletting scheme under the Licensing Act 2003 and seeking approval of the proposals to be put in place for the 12 month trial period to leaflet residents and businesses with regard to certain applications made under the Licensing Act 2003.

The report indicated that those occupiers and owners of properties with curtilages abutting those premises applying for a Premises Licence, Club Premises Certificate, the Variation of a Premises Licence or Club Premises Certificate or any Premises subject to a review, would be notified of any such application; that any such Borough-Wide notification procedure would be adopted for a 12 month period with the results of the pilot being the subject of a further report to the Licensing and Regulatory Committee which would consider whether the scheme of notification be continued/enhanced/withdrawn, as appropriate prior to the full review of Sefton's Statement of Licensing Policy for 2011; and that the report in relation to the outcomes of the Borough-Wide pilot on notification would be submitted to the Overview and Scrutiny Committee (Regeneration and Environmental Services) for information.

The report also indicated that the Leafletting Scheme would run from 1 April 2010 and until 31 March 2011 and be Borough wide; that the timeframe covered the full licensing inspection year for 2010 / 2011 and would enable comparisons to be drawn directly with regard to any impact the Scheme may have on:

- (a) the inspection regimes (for both Licensing Act 2003 and Gambling Act 2005 premises);

- (b) the answering of and dealing with service requests; and,
- (c) the other statutory licensing work of the Section.

A copy of the proposed leaflets to be used in respect of Grant / Variation applications and Reviews were attached as Annex 1 and Annex 2 to the report.

RESOLVED: That

- (1) the proposals and the proposed commencement date of 1 April 2010 for the scheme be endorsed; and
- (2) the fact that a further report would be brought to the Committee at the end of the 12 month trial period be noted;]
- (3) the letter be amended to include locally charged numbers as well as the 0845 number for Sefton Plus Contact Centre, i.e. 0151 922 4040 and 01704533133.

11. EXCLUSION OF PRESS AND PUBLIC

RESOLVED:

That, under Section 100(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act, in relation to item no 12 paragraph 5 and in relation to item no 13 paragraph 1 and 5. The Public Interest Test had been applied and favoured exclusion of the information from public and press.

12. REVIEW OF THE EVIDENCE BASE FOR MAINTAINING OR CHANGING THE COUNCIL'S CURRENT HACKNEY CARRIAGE NUMERICAL RESTRICTION POLICY AND REVOCATION OF THE POLICY RELATING TO THE ISSUE OF HACKNEY CARRIAGE VEHICLE LICENCES OVER AND ABOVE THE PRESENT RESTRICTION

Further to Minute no 62 of the meeting held on 23 November 2009, the Committee considered the report of the Environmental Protection Director on the review of the evidence base for maintaining or changing the Council's current Hackney Carriage numerical restriction policy and revocation of the policy relating to the issue of hackney carriage vehicle licences over and above the present restriction; and indicating that a decision on the matter was required in order to approve the commissioning of a full unmet demand survey to assist the Council in reviewing or reaffirming its current Hackney Carriage licence restriction policy and advise the Committee of Counsel's advice on the current policy applicable

Agenda Item 3

LICENSING AND REGULATORY COMMITTEE- MONDAY 18TH
JANUARY, 2010

to the issue of licences over and above the present restriction of 271 licences. It was intended to commission the survey and an associated public opinion survey in January 2010 with a view to the results being available by June or July 2010.

RESOLVED: That

- (1) ***the report and the commissioning of a full Hackney Carriage unmet demand survey be noted;***
- (2) the preconditions / conditions of Licence applicable to the issue of licences over and above the present restriction be revoked;
- (3) the Environmental Protection Director be requested to develop a new policy for the issue of restricted hackney carriage vehicle licences in consultation with the Trade;
- (4) a report outlining the Terms of Reference for a public survey to be undertaken in relation to hackney carriage vehicles be submitted to the next appropriate meeting of the Committee for approval; and
- (5) a report outlining the successful tenderer, proceeding the evaluation process, be submitted to an appropriate future meeting of the Committee.

13. INVESTIGATION INTO THE POLICIES, PROCEDURES AND PRACTICES RELATING TO THE ISSUE OF HACKNEY CARRIAGE VEHICLE LICENSES

The Committee considered the report of the Environmental Protection Director on the outcome of an investigation into the policies, procedures and practices relating to the issue of Hackney Carriage Vehicle Licences, particularly the circumstances surrounding applications to renew "lapsed" Hackney Carriage Licences.

RESOLVED: That

- (1) the contents of the report be noted;
- (2) the proposed basis for determining any lapsed licences from within the existing restricted 271 hackney carriage vehicle licences that Sefton currently issues be referred to the Committee for approval; and
- (3) the development and implementation of improved processes and procedures following consultation through the Joint Hackney Carriage/Private Hire Trade Working Group be endorsed.

Agenda Item 4

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: PETITION SUBMITTED TO COUNCIL REGARDING LICENSING MATTERS

Report of: P. J. Moore
Environmental Protection Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To respond to a Petition submitted to the full Council on 14th January 2010 from Waterloo Resident's Association.

Recommendation(s)

That Members:

- (i) Give consideration to the Petition submitted by the Waterloo Resident's Association; and,
- (ii) Determine what action, if any, it wishes to take in respect of the individual requests within the Petition.

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None arising from this Report.

List of background papers relied upon in the preparation of this report

- The Licensing Act 2003.
- Guidance issued under S.182 of the Licensing Act 2003

Agenda Item 4

Background

1. On 14th January 2010 a petition was submitted to full Council by Mr Ian Hamilton-Fazey OBE on behalf of the Waterloo Resident's Association ("WRA").
2. The Council RESOLVED:

That the petition be referred without debate to the next meeting of the Licensing and Regulatory Committee to be held on 22 February 2010.
3. The petition requests that the Licensing and Regulatory Committee:
 - i) Hold a series of well-publicised Open Meetings to obtain the views of the public concerning Licensing Policy, and
 - ii) Set up a standing 'Licensing Liaison Forum' involving all interested parties in which community groups and the public can be represented, and
 - iii) Grant no new alcohol licences and adjourn all current licence applications in the Waterloo (L22) area until such Open Meetings have been held and such a 'Licensing Liaison Forum' established.
4. A copy of the covering page of the petition is to be found within the annex to this Report.
5. The Environmental Protection Director and the Senior Licensing Officer met with Mr Hamilton-Fazey and Mr Colin Harvey (Chairman and Treasurer respectively of the WRA) on 20th November 2009 to discuss a range of licensing issues including the matters within the Petition.

Community involvement in the Licensing Act 2003

6. Members will recall that the Licensing Act 2003 ("the Act") is primarily deregulatory, seeking to provide increased freedoms and flexibilities and reduced burdens for businesses, but also requiring a sharp focus on four statutory Licensing Objectives which need to be addressed when licensing functions are undertaken:
 - Prevention of crime and disorder;
 - Public safety;
 - Prevention of public nuisance; and
 - Protection of children from harm.
7. The main area of change which was introduced with the Act was in terms of increased community involvement with the licensing process, including the development of local licensing policy, making representations about applications and requesting the Licensing Authority to undertake a review of a premises licence, none of which formed part of the previous licensing regimes.
8. This increased involvement can be evidenced through the findings of research studies undertaken since implementation of the Act, including the *Scrutiny Councils' Report On the Licensing Laws* (July 2006) which found that "*residents are now far more aware of their rights with regard to licensed premises*".

Agenda Item 4

9. A study by the University of Westminster “*Expecting ‘Great Things’? The Impact of The Licensing Act 2003 on Democratic Involvement, Dispersal and Drinking Cultures*”, which looked at the impact of the Act in 5 different local authority areas and on 24 national late-night operators, found that “*The role of residents in the licensing process was not something the Government initially had emphasised. Findings presented here, however, suggest that democratisation has been a success. Particularly in terms of working with residents, operators felt that neighbours had a greater role to play in the licensing process, be that in terms of the initial applications, to ensuring compliance with licensing conditions. The local case studies confirmed this*”.

10. In July 2009, in the Government response to the House of Commons Culture, Media and Sport Committee Report on the Licensing Act 2003, under Recommendation 4, the Government stated that:

"Evidence shows that the public does indeed feel more involved in decision making. A University of Westminster Report published in July 2007 noted that: ‘The changes in licensing had had a generally positive effect on community relations in the areas examined, with residents and local councillors alike feeling that they had more of a say in the process of granting and challenging licensing decisions.’

The Government fully endorses the ability of responsible authorities - such as the police and fire authorities - and interested parties - residents and businesses in the vicinity of the premises - to submit positive comments in support of a licence application. The revised guidance issued in 2007 under section 182 of the 2003 Act made it clear that representations can be made in support of, as well as to object to, applications. This was further amplified in revisions to the Department’s guidance to interested parties in December 2007.

The Government feels that the Licensing Act 2003 already provides all those with an interest with the opportunity to comment on applications. There are strict advertising requirements both physically on the premises and in the local press and both responsible authorities and interested parties can make representations against an application. It is also possible for those that feel that they are not able to object to ask local representatives such as councillors to object on their behalf to an application if the objections are based on the licensing objectives. In addition, the current statutory Guidance clarifies that local authorities can make councillors aware of applications in their areas and that it is open to councillors to seek the views of their constituents living in the vicinity of premises making applications."

11. Members will recall that in making an application the Act places the responsibility for notification of applications on the applicant and defines the extent of notification required. Any Premises or Club who wish to be granted a licence/certificate (or who wish to vary an existing one) are required by the Act to send copies of their full application to the Authority and to the “responsible authorities”.

12. Additionally the Act requires that they:

- i) Display a prescribed Notice prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises by the public for a period of not less than 28 consecutive days;
- ii) Publish a Notice in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises on at least

Agenda Item 4

one occasion during the period of 10 working days starting on the day after the day on which the application was given to the relevant licensing authority

13. An individual Licensing Authority cannot require an applicant to undertake additional notification over and above that required by the Act.
14. The only persons who can make representations about an application are the “responsible authorities” and “interested parties”. Both of these terms are defined within the legislation and statutory guidance, but essentially “interested parties” are people who live or operate a business in the vicinity of the premises to which the application relates (or someone representing that person). Vicinity is not defined.
15. All “interested parties” and “responsible authorities” have a period of 28 days in which they can make representations to the Authority about an application. If the Authority considers that the representations are relevant it must hold a hearing to consider those representations, unless all parties agree that this is unnecessary.
16. This latter reference is a further key aspect of public involvement, in that the Act allows and the guidance encourages mediation between applicant and objector, such that the two parties come together to agree a compromise, or additional controls that will make the application acceptable and remove the need for a hearing. This is a regular feature of applications under the new regime. The *Expecting ‘Great Things’?* study, referred to earlier, quotes one late night operator in particular as stating that “*it has forced individual pubs to really engage in their community and understand what is acceptable and what is not acceptable*”.
17. At a hearing the Authority will then have choices as to how it proceeds depending upon what is necessary for the promotion of the licensing objectives. It may:
 - Decide to grant or vary the licence/certificate in the same terms as it was applied for;
 - Decide that it is necessary to refuse to issue or vary the licence/certificate;
 - Decide to grant or vary the licence/certificate, but to modify the conditions;
 - Exclude from the scope of the licence/certificate a licensable activity.
18. Any decision made by a licensing authority can be appealed, within 21 days, to the Magistrates by either the applicant, a “responsible authority”, or an “interested party”. If no relevant representations are made then the application must be granted as applied for.
19. Currently, the Licensing Unit provide the following methods of publication/notification of applications:-
 - in accordance with the Act, the Council publishes a register of all Licences it issues
 - a register of all applications awaiting determination is published on the Sefton Council website and all Councillors are notified of all Grant and Variation applications on a fortnightly basis.
20. The Licensing Register pages receive over 1500 “hits” per month and have been amongst the top 30 popular pages since it’s inception two years ago.

Agenda Item 4

21. From April 2010 the Unit will commence a trial leafleting scheme whereby those occupiers and owners of properties with curtilages abutting those premises applying for a Premises Licence, Club Premises Certificate, the Variation of a Premises Licence or Club Premises Certificate or any Premises subject to a review, will also be notified of any such application.
22. Once a Licence / Certificate has been granted residents also have a much greater scope for monitoring compliance and registering complaints about premises than ever before. Access to licensing information and to the Licensing Authority itself have been improved enormously. Under the old regime, once the licence was issued residents had no direct access to the Licensing Authority and no way of requiring that authority to re-consider a licence.
23. As stated above the Act introduced a requirement for Licensing Authorities to publish a public register of all licences issued, the availability of this register enables residents to obtain information about the activities and operating hours a premises is licensed for.
24. The Authority's Statement of Licensing Policy identifies who the responsible authorities are and an annex to the policy provides contact details for those authorities, enabling residents to enquire and register their concerns directly with those authorities and with the Licensing Authority itself.
25. In this context, the *Expecting 'Great Things'?* study referred to earlier found that: "*the Act provided more opportunities for the residents' voice to be heard*" and had resulted in "*better partnership working – especially with residents*". The study also found that "*There is some evidence that residents' groups are demonstrating an increased sophistication in monitoring licensing conditions and initiating reviews. This could be viewed both as an empowerment and as a lifting of the burden from the responsible agency's shoulders*".
26. Locally in Sefton this finding has been borne out, even prior to the commencement of the pilot leafleting scheme referred to in Paragraph 21 above, as under the existing notification arrangements public representations have been received in relation to approximately one fifth of all applications to which representations could have been made.

Licensing Policy consultation

27. Members will be aware that under the Act the Licensing Policy will be required to be reviewed during 2010 to enable it to take effect from 7th January 2011.
28. Before determining its Policy for any three year period, the Licensing Authority must consult the persons listed in Section 5(3) of the Act. Those being:
 - (a) the chief officer of police for the area;
 - (b) the fire authority for the area;
 - (c) persons/bodies representative of local holders of premises licences;
 - (d) persons/bodies representative of local holders of club premises certificates;
 - (e) persons/bodies representative of local holders of personal licences; and,
 - (f) persons/bodies representative of businesses and residents in its area.
29. A Report will be submitted to Members at their May Meeting which will outline the proposed methods to be used to consult the above named persons/bodies.

Agenda Item 4

30. Officers were intending to propose within that Report that, in respect of (f) above, Focus Groups/Forums would be held within each Area Committee area in order to obtain business and resident views with regard to the Licensing Policy.
31. At this early stage the terms of reference, composition etc. of the Focus Groups/Forums have yet to be decided but these will be reported to Members (in the Report referred to in 29 above) and will be submitted to the Sefton Public Engagement and Consultation Standards Panel for approval.

Licensing liaison forums

32. Members will recall that Section 182 of the Act provides that the Secretary of State must issue and, from time to time, may revise guidance to licensing authorities on the discharge of their functions under the Act.
33. Paragraph 1.8 of that Guidance states that nothing in the Guidance *“should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation”*.

34. Further, with regard to its legal status, the Guidance outlines that:

Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.

However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

35. Under Paragraph 1.22 of the Guidance the Secretary of State *“strongly recommends that licensing authorities form licensing liaison groups and forums that bring together all the interested parties on a regular basis to monitor developments and propose possible solutions to any problems that may arise”*.
36. At the meeting with Mr Hamilton-Fazey and Mr Harvey, in November 2009, officers indicated that licensing was not the only, and often not the best solution, to night-time economy issues.
37. The current Licensing Policy, at Paragraph 5.4, states that whilst *“recognising that licensing law is a key aspect in the general control of anti-social behaviour and forms part of the holistic management of the evening and night-time economy, in taking its decisions the Authority will take into account the fact that it is not the primary mechanism*

Agenda Item 4

for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the Licence, Certificate or Permission concerned”.

38. The National Alcohol Harm Reduction Strategy, the Sefton Alcohol Harm Reduction Strategy, the Crime and Disorder Act 1998, Planning Policy etc. all have a part to play in presenting solutions to problems within the night time economy and similarly partnership working between Police, Council and the PCT all contribute to easing resident's concerns with regard to crime and disorder surrounding licensed premises (the recent "Christmas Presence" campaign being a good example).
39. To date officers have considered Sefton's well established Area Committees to be the best Forum for residents to raise concerns relating to the night-time economy (including licensing issues) as this forum allows a holistic consideration of the issues in line with the intention of the Licensing Policy as set out above. More recently the Community Safety Area Partnership have provided an important multi-agency forum for further consideration and addressing of night-time economy issues. These were the very mechanisms used to consider and address the issue of potential cumulative impact within the Waterloo area previously raised by the WRA.
40. The benefits of a separate standing Licensing Forum could be explored as part of the Licensing Policy Consultation, although it should be noted that the time delay involved in that process is unlikely to satisfy the wishes of the WRA.

Stay on licence applications for Waterloo

41. The Act and its accompanying Statutory Instruments lay down the timeframes in which matters have to be dealt with by a licensing authority.
42. As indicated in Paragraph 12 for the grant (or variation) of a premises licence the matter cannot be determined before the end of the 28 day "notice period" (this to allow for the receipt of relevant representations from interested parties or responsible authorities).
43. After the conclusion of this 28 day period, and where no relevant representations are received, the licensing authority must issue the licence forthwith subject only to those conditions as are consistent with the operating schedule accompanying the application and any mandatory conditions which must (under Sections 19, 20 or 21 of the Act) be included on the licence.
44. Where relevant representations are received then an authority must hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary.
45. Statutory Instrument No. 44 / 2005 ("The Licensing Act 2003 (Hearings) Regulations 2005") states that in respect of a grant (or variation) hearing:
 - (i) it must be commenced within 20 working days following the 28 day notice period;
 - (ii) that notice of the hearing must be given to all parties no later than 10 working days prior to that hearing.

Agenda Item 4

46. Paragraph 11 of this Instrument states that:
- (1) *Subject to regulation 13, an authority may extend a time limit provided for in these Regulations for a specified period where it considers this to be necessary in the public interest.*
 - (2) *Where the authority has extended a time limit it must forthwith give a notice to the parties stating the period of the extension and the reasons for it.*
47. Paragraph 12 goes on that:
- (1) *Subject to regulation 13, an authority may—*
 - (a) *adjourn a hearing to a specified date, or*
 - (b) *arrange for a hearing to be held on specified additional dates, where it considers this to be necessary for its consideration of any representations or notice made by a party.*
 - (2) *Where an authority has adjourned a hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.*
 - (3) *Where an authority has arranged for a hearing to be held on a specified additional date it must forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held.*
48. In *Thomas v Newingham Licensing Justices, Meux's Brewery Co Ltd v Newington Licensing Justices* (1926) 91 JP 37 it was held that an adjournment of an application for the renewal of a licence beyond the end of the licensing year was not a refusal of the renewal. Hewart LCJ expressed the opinion that the power of adjournment should be exercised only in a case of “*real and urgent emergency*”.
49. The Guidance issued under S182 of the Act indicates, at Paragraph 9.21, that “*where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest*”. No other examples of adjournment are given.
50. The Human Rights Act 1998 incorporates the rights and freedoms set out in the European Convention on Human Rights into UK law.
51. Article 6 of the Convention (“Right to a fair trial”) requires:
- i) a fair and public hearing
 - ii) an independent and impartial tribunal
 - iii) trial within a reasonable period
 - iv) public judgment
 - v) a reasoned decision
52. It is contended, therefore, that there no basis in Law whereby the Licensing Authority can refuse to grant any new premises licence, or to adjourn any current licence application, in the Waterloo area until certain pre-conditions have been met.

WATERLOO

RESIDENTS' ASSOCIATION

PETITION TO SEFTON COUNCIL & ITS LICENSING SUB-COMMITEE

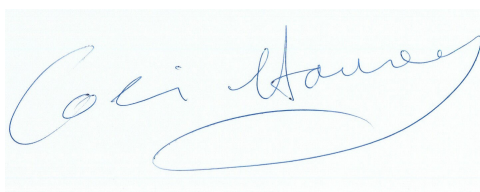
We, the undersigned, bearing in mind **Sefton Council's 'Duty to Involve'** the community in the policy making process under the **Local Government & Involvement in Local Health Act 2007**, and having regard to the Council's policy on alcohol and health, call upon Sefton Council and the Council's Licensing Committee to accept the Secretary of State's '**strong recommendations**' in the **Guidelines to the Licensing Act 2003**, to

1. Hold a series of well-publicised **Open Meetings** to obtain the views of the public concerning Licensing Policy, and
2. Set up a standing '**Licensing Liaison Forum**' involving all interested parties in which community groups and the public can be represented, and
3. Grant **no new alcohol licences** and **adjourn all current licence applications** in the Waterloo (L22) area until such **Open Meetings** have been held and such a '**Licensing Liaison Forum**' established.

We have pleasure in presenting this petition



Ian Hamilton Fazey OBE
Chairman, Waterloo Residents' Association



Colin Harvey
Treasurer, Waterloo Residents' Association

4 January 2010

Agenda Item 4

NOTES:

- **725 people had signed the petition up until 31 December 2009**
- **There will be further signing opportunities during the weekend of 9 & 10 January 2010**
- **The petition will be lodged with the Council in advance of the 14 January 2010 meeting in accordance with laid-down procedures**
- **It is sponsored by the following members of Sefton Council:-**
- **Councillor Martyn Barber**
- **Councillor Paul Cummins**
- **Councillor Anthony Hill**
- **Councillor Debi Jones**
- **Councillor Andrew Tonkiss**
- **Councillor Daren Veidman**
- **Councillor Veronica Webster**

Agenda Item 5

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: DETERMINATIONS MADE UNDER THE LICENSING ACT 2003:
PERIOD COVERING 2ND JANUARY 2010 TO 5TH FEBRUARY 2010.

Report of: P. J. Moore,
Environmental Protection Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To update Members regarding those applications, made under the Licensing Act 2003, that have been determined by Officers.

Recommendation(s)

That Members:

- i) note this Report and its contents
- ii) note that further Reports will be brought forward to up date Members as and when necessary

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None.

Agenda Item 5

Background

1. Members will recall that Sefton's Statement of Licensing Policy followed the recommended delegation of functions contained within the "Guidance Issued Under Section 182 of the Licensing Act 2003".
2. In effect this means that where there are no relevant representations to an application for the grant of a Premise Licence or Club Premise Certificate, or police objections to an application for a Personal Licence or a Temporary Event Notice, then these matters are dealt with by Officers. This ensures that decisions and functions, particularly for non-contentious applications and purely administrative functions, are taken or carried out in a speedy, efficient and cost-effective way.
3. The Guidance also recommends that, where powers have been delegated as above, Licensing Committees should receive regular reports on decisions made by Officers in order that they may maintain an overview of the general licensing situation.

Numbers determined

4. During the period 2nd January 2010 to 5th February 2010 the following number of applications have been determined:
 - Applications made under Premise Licences **21**
 - Applications made under Personal Licences **13**
 - Notification of Temporary Event Notices **19**
5. Details of determinations made under Premise Licences are attached within the Annex to this Report.

Premises Licences

Reference Number	015821		
Name & Address of Premises	Bistro Bar Med 7 Coronation Walk Southport PR8 1RD		
Application for	Grant		
Premise Licence Holder	Mr Gino Cuneyt Mendi		
Date of action	14/01/2010	Date Issued	14/01/2010
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Opening Hours of Premises

Monday - from 11.30 to 02.00
 Tuesday - from 11.30 to 02.00
 Wednesday - from 11.30 to 02.00
 Thursday - from 11.30 to 02.00
 Friday - from 11.30 to 02.00
 Saturday - from 11.30 to 02.00
 Sunday - from 11.30 to 00.00

Licensable Activities & Times

The sale of alcohol by retail
 Monday - from 11.30 to 02.00
 Tuesday - from 11.30 to 02.00
 Wednesday - from 11.30 to 02.00
 Thursday - from 11.30 to 02.00
 Friday - from 11.30 to 02.00
 Saturday - from 11.30 to 02.00
 Sunday - from 11.30 to 00.00

The provision of late night refreshment

Monday - from 23.00 to 02.00
 Tuesday - from 23.00 to 02.00
 Wednesday - from 23.00 to 02.00
 Thursday - from 23.00 to 02.00
 Friday - from 23.00 to 02.00
 Saturday - from 23.00 to 02.00
 Sunday - from 23.00 to 00.00

The provision of regulated entertainment - Live music

Monday - from 11.30 to 02.00
 Tuesday - from 11.30 to 02.00
 Wednesday - from 11.30 to 02.00
 Thursday - from 11.30 to 02.00
 Friday - from 11.30 to 02.00
 Saturday - from 11.30 to 02.00
 Sunday - from 11.30 to 00.00

The provision of regulated entertainment - Recorded music

Monday - from 11.30 to 02.00
 Tuesday - from 11.30 to 02.00
 Wednesday - from 11.30 to 02.00
 Thursday - from 11.30 to 02.00
 Friday - from 11.30 to 02.00
 Saturday - from 11.30 to 02.00
 Sunday - from 11.30 to 00.00

Agenda Item 5

The provision of regulated entertainment - Performances of dance

Monday - from 11.30 to 02.00

Tuesday - from 11.30 to 02.00

Wednesday - from 11.30 to 02.00

Thursday - from 11.30 to 02.00

Friday - from 11.30 to 02.00

Saturday - from 11.30 to 02.00

Sunday - from 11.30 to 00.00

The provision of regulated entertainment - entertainment of a similar description to that falling within the category of live music, recorded music, or performance of dance

Monday - from 11.30 to 02.00

Tuesday - from 11.30 to 02.00

Wednesday - from 11.30 to 02.00

Thursday - from 11.30 to 02.00

Friday - from 11.30 to 02.00

Saturday - from 11.30 to 02.00

Sunday - from 11.30 to 00.00

The provision of entertainment facilities - dancing

Monday - from 11.30 to 02.00

Tuesday - from 11.30 to 02.00

Wednesday - from 11.30 to 02.00

Thursday - from 11.30 to 02.00

Friday - from 11.30 to 02.00

Saturday - from 11.30 to 02.00

Sunday - from 11.30 to 00.00

Reference Number	003870		
Name & Address of Premises	Booker Cash & Carry Crowland Street Southport PR9 7RJ		
Application for	Minor Variation		
Premise Licence Holder	Booker Limited		
Date of action	28/01/2010	Date Issued	09/09/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Opening Hours of Premises

Hours not restricted

Licensable Activities & Times

The sale of alcohol by retail

Monday - from 08.00 to 23.00

Tuesday - from 08.00 to 23.00

Wednesday - from 08.00 to 23.00

Thursday - from 08.00 to 23.00

Friday - from 08.00 to 23.00

Saturday - from 08.00 to 23.00

Sunday - from 10.00 to 22.30

Agenda Item 5

Reference Number	014948		
Name & Address of Premises	Cantinho 14 Wesley Street Southport PR8 1BN		
Application for	Variation		
Premise Licence Holder	Mr Joao Pedro Silva Moreira		
Date of action	18/01/2010	Date Issued	26/10/2009
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Opening Hours of Premises
Monday - from 09.00 to 23.00
Tuesday - from 09.00 to 23.00
Wednesday - from 09.00 to 23.00
Thursday - from 09.00 to 23.00
Friday - from 09.00 to 23.00
Saturday - from 09.00 to 23.00
Sunday - from 09.00 to 23.00

Licensable Activities & Times

The sale of alcohol by retail

Monday - from 10.30 to 23.00

Tuesday - from 10.30 to 23.00

Wednesday - from 10.30 to 23.00

Thursday - from 10.30 to 23.00

Friday - from 10.30 to 23.00

Saturday - from 10.30 to 23.00

Sunday - from 10.30 to 23.00

Reference Number	015838		
Name & Address of Premises	Fuego's 3-5 Stanley Street Southport PR9 0BY		
Application for	Grant		
Premise Licence Holder	Mr Ryan Thomson		
Date of action	18/01/2010	Date Issued	18/01/2010
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Opening Hours of Premises
Monday - from 11.00 to 00.00
Tuesday - from 11.00 to 00.00
Wednesday - from 11.00 to 00.00
Thursday - from 11.00 to 00.00
Friday - from 11.00 to 00.00
Saturday - from 11.00 to 00.00
Sunday - from 12.00 to 23.30

Licensable Activities & Times

The sale of alcohol by retail

Monday - from 11.00 to 23.00

Tuesday - from 11.00 to 23.00

Wednesday - from 11.00 to 23.00

Thursday - from 11.00 to 23.00

Agenda Item 5

Friday - from 11.00 to 23.00

Saturday - from 11.00 to 23.00

Sunday - from 12.00 to 23.00

The provision of regulated entertainment - Recorded music

Monday - from 11.00 to 23.00

Tuesday - from 11.00 to 23.00

Wednesday - from 11.00 to 23.00

Thursday - from 11.00 to 23.00

Friday - from 11.00 to 23.00

Saturday - from 11.00 to 23.00

Sunday - from 12.00 to 23.00

Reference Number	004275		
Name & Address of Premises	Ainsdale Sports Club 772 Liverpool Road Ainsdale PR8 3QF		
Application for	Variation of DPS		
Premise Licence Holder	Mr Andrew John Tate		
Date of action	20/01/2010	Date Issued	04/10/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	014790		
Name & Address of Premises	Another Place 60 South Road Waterloo L22 5PQ		
Application for	Licence Holder Transfer & Variation of DPS		
Premise Licence Holder	Mr Christian Lawrenson & Ms Yvette Rae-Riley		
Date of action	01/02/2010	Date Issued	28/10/2009
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	004601		
Name & Address of Premises	Blue Anchor Tithebarn Road Southport PR8 6AB		
Application for	Variation of DPS		
Premise Licence Holder	Startmore Pub Company Ltd		
Date of action	04/01/2010	Date Issued	05/10/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Agenda Item 5

Reference Number	009174		
Name & Address of Premises	Circus Southport Promenade Southport PR9 0DZ		
Application for	Change of Name and/or Address		
Premise Licence Holder	Genting Casinos UK Limited		
Date of action	05/01/2010	Date Issued	01/12/2008
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	003081		
Name & Address of Premises	Debenhams Plc 535-563 Lord Street Southport PR9 0BB		
Application for	Variation of DPS		
Premise Licence Holder	Debenhams Retail PLC		
Date of action	03/02/2010	Date Issued	29/06/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	003367		
Name & Address of Premises	Doric Public House 146 Rawson Road Seaforth L21 1HR		
Application for	Variation of DPS		
Premise Licence Holder	Punch Taverns PLC		
Date of action	19/01/2010	Date Issued	18/08/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Agenda Item 5

Reference Number	003497		
Name & Address of Premises	Lang's Pasta & Grill 1-5 Lord Street Southport PR8 1RP		
Application for	Variation of DPS		
Premise Licence Holder	Ms Lisa Jayne Hames		
Date of action	20/01/2010	Date Issued	19/07/2005
Date of Expiry (if applicable)	20/01/2010	Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	003497		
Name & Address of Premises	Lang's Pasta & Grill 1-5 Lord Street Southport PR8 1RP		
Application for	Transfer		
Premise Licence Holder	Mr Paul Lang		
Date of action	20/01/2010	Date Issued	19/07/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	004009		
Name & Address of Premises	Legendary Lancashire Heroes 59 College Road Crosby L23 0RL		
Application for	Variation of DPS		
Premise Licence Holder	Ms Laura Thompson		
Date of action	06/01/2010	Date Issued	23/09/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Agenda Item 5

Reference Number	004484		
Name & Address of Premises	Madigans Lighthouse 206 Knowsley Road Bootle L20 4NU		
Application for	Variation of DPS		
Premise Licence Holder	Ms Clare Bourke		
Date of action	25/01/2010	Date Issued	12/09/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	002844		
Name & Address of Premises	Mint Southport 180 Lord Street Southport PR9 0QG		
Application for	Change of Name and/or Address		
Premise Licence Holder	Genting Casinos UK Limited		
Date of action	05/01/2010	Date Issued	03/06/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	003837		
Name & Address of Premises	Portland Hotel 27 Bedford Road Birkdale PR8 4HU		
Application for	Variation of DPS		
Premise Licence Holder	Punch Taverns PLC		
Date of action	03/02/2010	Date Issued	08/09/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Agenda Item 5

Reference Number	003129		
Name & Address of Premises	The Priory Public House 64 Sefton Road Litherland L21 7PL		
Application for	Variation of DPS		
Premise Licence Holder	Orchid Pubs & Dining Limited		
Date of action	04/01/2010	Date Issued	04/08/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	003177		
Name & Address of Premises	Red House 31 Foxhouse Lane Maghull L31 3EW		
Application for	Variation of DPS		
Premise Licence Holder	Punch Taverns PLC		
Date of action	22/01/2010	Date Issued	16/08/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	004430		
Name & Address of Premises	Seaburn Inn 194-196 Marsh Lane Bootle L20		
Application for	Licence Holder Transfer & Variation of DPS		
Premise Licence Holder	Mr Brian Oliver		
Date of action	22/01/2010	Date Issued	13/10/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Agenda Item 5

Reference Number	004739		
Name & Address of Premises	St Georges Tavern 238 Marsh Lane Bootle L20 5BW		
Application for	Transfer		
Premise Licence Holder	St George's Bootle Limited		
Date of action	05/01/2010	Date Issued	06/10/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Reference Number	004479		
Name & Address of Premises	Sullivans 221 Stanley Road Bootle L20 3DY		
Application for	Change of Name and/or Address		
Premise Licence Holder	Scottish & Newcastle Pub Company (Manage Ltd		
Date of action	20/01/2010	Date Issued	27/09/2005
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

This page is intentionally left blank

Agenda Item 6

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: DETERMINATIONS MADE UNDER THE GAMBLING ACT 2005:
PERIOD COVERING 2ND JANUARY 2010 TO 5TH FEBRUARY 2010.

Report of: P. J. Moore,
Environmental Protection Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To update Members regarding those applications, made under the Gambling Act 2005, that have been determined by Officers.

Recommendation(s)

That Members:

- i) note this Report and its contents
- ii) note that further Reports will be brought forward to up date Members as and when necessary

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None.

Agenda Item 6

Background

1. Members will recall that Sefton's Statement of Gambling Licensing Policy followed the recommended delegation of functions contained within the Gambling Commission Guidance which was issued under Section 25 of the Gambling Act 2005.
2. In effect this means that where there are no relevant representations to an application, for the grant of a Premise Licence or a Permit, then these matters are dealt with by Officers. This ensures that decisions and functions, particularly for non-contentious applications and purely administrative functions, are taken or carried out in a speedy, efficient and cost-effective way.
3. It is considered best practice that, where powers have been delegated as above, Licensing Committees should receive regular reports on decisions made by Officers in order that they may maintain an overview of the general gambling situation.

Numbers determined

4. During the period 2nd January 2010 to 5th February 2010 the following number of applications have been determined:
 - Applications made under Gambling Premise Licences **3**
 - Applications made under Licensed Premises Gaming Permits **1**
 - Notifications given for Licensed Premises Automatic Gaming **2**
5. Details of the above determinations are attached within the Annex to this Report.

Gambling Premises Licences

Licence Number	010445		
Name & Address of Premises	Mint Southport 180 Lord Street Southport PR9 0QP		
Gambling activity	Converted Casino		
Application for	Change of Circumstances		
Premise Licence Holder	Genting Casinos UK Limited		
Date of action	05/01/2010	Licence effective from	01/09/2007
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Mandatory Conditions

Mandatory: all premises

1. The summary of the terms and conditions of the premises licence issued under section 164(1)(c) of the 2005 Act shall be displayed in a prominent place within the premises.
2. The layout of the premises shall be maintained in accordance with the plan.
3. The premises shall not be used for:
 - (a) the sale of tickets in a private lottery or customer lottery, or
 - (b) the sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited.

Mandatory: Casino

- 1.(1) The principal entrance to the premises shall be from a street.
- (2) No entrance to the premises shall be from premises that are used wholly or mainly by children, by young persons, or by both.
- (3) No customer shall be able to enter the premises directly from any other premises in respect of which a licence issued under Part 8 of the Act, or a permit issued under Schedule 10, 12 or 13 to the Act, has effect.
2. A gap of at least 2 metres shall be maintained between any ordinary gaming table and any other equipment, apparatus or structure used by a person to gamble on the premises.
3. No more than 40 separate player positions may be made available for use in relation to wholly automated gaming tables at any time.
- 4.(1) The rules of each type of casino game that is available to be played on the premises shall be displayed in a prominent place within both the table gaming area and other gambling area of the premises to which customers wishing to use facilities for gambling have unrestricted access.
- (2) The condition in sub-paragraph (1) may be satisfied by:
 - (a) displaying a clear and legible sign setting out the rules; or
 - (b) making available to customers leaflets or other written material containing the rules.
5. Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to cease gambling at any gaming table, gaming machine or betting machine in order to do so.
6. A notice shall be displayed in a prominent place at every entrance to the premises stating that no person under the age of 18 years is permitted to enter the premises.
- 7.(1) This paragraph shall apply to premises which have a gambling area the floor area of which is no less than 200m.

Agenda Item 6

- (2) In determining the floor area of the gambling area, all areas in which facilities for gambling are provided on the premises shall be taken into account.
- (3) The premises shall contain a non-gambling area, the floor area of which is no less than 10% of the floor area of the gambling area.
- (4) The non-gambling area may consist of one or more areas within the premises.
- (5) Lobby areas and toilet facilities may be taken into account in calculating the non-gambling area; but the non-gambling area shall not consist exclusively of lobby areas and toilet facilities.
- (6) Facilities for gambling shall not be provided in the non-gambling area.
- (7) At any time during which facilities for gambling are being provided on the premises, each separate area comprising the non-gambling area, other than the lobby areas and toilet facilities referred to in sub-paragraph (5), shall contain recreational facilities that are available for use by customers on the premise.

Default Conditions

Default: Casino

1. No facilities for gambling shall be provided on the premises between the hours of 6am and noon on any day.

Licence Number	010569		
Name & Address of Premises	Riverside Racing 117 Deyes Lane Maghull L31 6DG		
Gambling activity	Betting (other than a track)		
Application for	Transfer		
Premise Licence Holder	Mr Joseph McNamara/Riverside Racing		
Date of action	13/01/2010	Licence effective from	01/09/2007
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Mandatory Conditions

Mandatory: all premises

1. The summary of the terms and conditions of the premises licence issued under section 164(1)(c) of the 2005 Act shall be displayed in a prominent place within the premises.
2. The layout of the premises shall be maintained in accordance with the plan.
3. The premises shall not be used for:
 - (a) the sale of tickets in a private lottery or customer lottery, or
 - (b) the sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited.

Mandatory: Betting Not Track

1. A notice stating that no person under the age of 18 years is permitted to enter the premises shall be displayed in a prominent place at every entrance to the premises.
- 2.(1) Access to the premises shall be from a street or from other premises with a betting premises licence.
(2) Without prejudice to sub-paragraph (1), there shall be no means of direct access between the premises and other premises used for the retail sale of merchandise or services.
3. Subject to anything permitted by virtue of the 2005 Act, or done in accordance with paragraphs 4, 5, 6 and 7 below, the premises shall not be used for any purpose other than for providing facilities for betting.

Agenda Item 6

4. Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to leave any gaming machine or betting machine in order to do so.

5. No apparatus for making information or other material available in the form of sounds or visual images may be used on the premises, except for apparatus used for the following purposes:

(a) communicating information about, or coverage of, sporting events, including:

(i) information relating to betting on such an event; and

(ii) any other matter or information, including an advertisement, which is incidental to such an event;

(b) communicating information relating to betting on any event (including the result of the event) in connection with which betting transactions may be or have been effected on the premises.

6. No publications, other than racing periodicals or specialist betting publications, may be sold or offered for sale on the premises.

7. No music, dancing or other entertainment shall be provided or permitted on the premises, save for entertainment provided in accordance with paragraph 5.

8.(1) No alcohol shall be permitted to be consumed on the premises at any time during which facilities for gambling are being provided on the premises.

(2) A notice stating the condition in sub-paragraph (1) shall be displayed in a prominent place at every entrance to the premises.

9. A notice setting out the terms on which customers are invited to bet on the premises shall be displayed in a prominent place on the premises to which customers have unrestricted access.

Default Conditions

Default: Betting Not Track

1. No facilities for gambling shall be provided on the premises between the hours of 10pm on one day and 7am on the next day.

Licence Number	010451		
Name & Address of Premises	Stanley Southport Promenade Southport PR9 0DZ		
Gambling activity	Converted Casino		
Application for	Change of Circumstances		
Premise Licence Holder	Genting Casinos UK Limited		
Date of action	05/01/2010	Licence effective from	01/09/2007
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Licence Issued (if applicable)			

Mandatory Conditions

Mandatory: all premises

1. The summary of the terms and conditions of the premises licence issued under section 164(1)(c) of the 2005 Act shall be displayed in a prominent place within the premises.

2. The layout of the premises shall be maintained in accordance with the plan.

3. The premises shall not be used for:

(a) the sale of tickets in a private lottery or customer lottery, or

(b) the sale of tickets in any other lottery in respect of which the sale of tickets on the premises is otherwise prohibited.

Agenda Item 6

Mandatory: Casino

- 1.(1) The principal entrance to the premises shall be from a street.
 - (2) No entrance to the premises shall be from premises that are used wholly or mainly by children, by young persons, or by both.
 - (3) No customer shall be able to enter the premises directly from any other premises in respect of which a licence issued under Part 8 of the Act, or a permit issued under Schedule 10, 12 or 13 to the Act, has effect.
2. A gap of at least 2 metres shall be maintained between any ordinary gaming table and any other equipment, apparatus or structure used by a person to gamble on the premises.
3. No more than 40 separate player positions may be made available for use in relation to wholly automated gaming tables at any time.
- 4.(1) The rules of each type of casino game that is available to be played on the premises shall be displayed in a prominent place within both the table gaming area and other gambling area of the premises to which customers wishing to use facilities for gambling have unrestricted access.
- (2) The condition in sub-paragraph (1) may be satisfied by:
- (a) displaying a clear and legible sign setting out the rules; or
 - (b) making available to customers leaflets or other written material containing the rules.
5. Any ATM made available for use on the premises shall be located in a place that requires any customer who wishes to use it to cease gambling at any gaming table, gaming machine or betting machine in order to do so.
6. A notice shall be displayed in a prominent place at every entrance to the premises stating that no person under the age of 18 years is permitted to enter the premises.
- 7.(1) This paragraph shall apply to premises which have a gambling area the floor area of which is no less than 200m.
- (2) In determining the floor area of the gambling area, all areas in which facilities for gambling are provided on the premises shall be taken into account.
- (3) The premises shall contain a non-gambling area, the floor area of which is no less than 10% of the floor area of the gambling area.
- (4) The non-gambling area may consist of one or more areas within the premises.
- (5) Lobby areas and toilet facilities may be taken into account in calculating the non-gambling area; but the non-gambling area shall not consist exclusively of lobby areas and toilet facilities.
- (6) Facilities for gambling shall not be provided in the non-gambling area.
- (7) At any time during which facilities for gambling are being provided on the premises, each separate area comprising the non-gambling area, other than the lobby areas and toilet facilities referred to in sub-paragraph (5), shall contain recreational facilities that are available for use by customers on the premise.

Default Conditions

Default: Casino

1. No facilities for gambling shall be provided on the premises between the hours of 6am and noon on any day.

Agenda Item 6

Licensed Premises Gaming Permits

Permit Number	016051		
Name & Address of Premises	Coach & Horses 164-166 Liverpool Road North Maghull L31 2HP		
Permit type	Licensed Premises Gaming Permit		
Application for	Conversion		
Permit Licence Holder	Punch Taverns PLC		
Date of action	25/01/2010	Licence effective from	25/01/2010
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Permit Issued (if applicable)			

Licensed Premises Automatic Gaming

Permit Number	015918		
Name & Address of Premises	Cue 39-41 South Road Waterloo L22 5PE		
Permit type	Licensed Premises Automatic Gaming		
Application for	Grant		
Permit Licence Holder	Mr Alan Edward Seddon		
Date of action	08/01/2010	Licence effective from	08/01/2010
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Permit Issued (if applicable)			

Permit Number	016020		
Name & Address of Premises	Seaburn Inn 194-196 Marsh Lane Bootle L20		
Permit type	Licensed Premises Automatic Gaming		
Application for	Grant		
Permit Licence Holder	Mr Brian Oliver		
Date of action	18/01/2010	Licence effective from	18/01/2010
Date of Expiry (if applicable)		Surrender Date (if applicable)	
Copy of Permit Issued (if applicable)			

This page is intentionally left blank

Agenda Item 7

Meeting: LICENSING & REGULATORY

Date of Meeting: 22nd February 2010

Title of Report: APPROVAL OF PREMISES FOR THE CONDUCT OF CIVIL MARRIAGES AND CIVIL PARTNERSHIPS

Report of: C.J. Elwood
Legal Director

Contact Officer: Paula Unsworth
(Telephone No.) 0151 934 3044

This report contains	Yes	No
CONFIDENTIAL Information/		√
EXEMPT information by virtue of paragraph(s).....of Part 1 of Schedule 12A to the Local Government Act, 1972 (If information <u>is</u> marked exempt, the Public Interest Test must be applied and favour the exclusion of the information from the press and public).		√
Is the decision on this report DELEGATED?	√	

Purpose of Report

To consider an application from Mrs Lydia Forshaw, General Manager of the Park Hotel Dunningbridge Road Netherton, for the Aintree Suite at the Park Hotel to be licensed for civil marriages and civil partnerships in addition to the Park Suite and the Restaurant which are already licensed for civil marriages and civil partnerships.

Recommendation(s)

That the application from Mrs Lydia Forshaw, General Manager of the Park Hotel, to licence the Aintree Suite, in addition to the Park Suite and the Restaurant be approved for a three year period with effect from 1st March 2010.

Corporate Objective Monitoring

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1.	Creating a Learning Community		√	
2.	Creating Safe Communities		√	
3.	Jobs and Prosperity		√	
4.	Improving Health and Well-Being		√	
5.	Environmental Sustainability		√	

Agenda Item 7

6.	Creating Inclusive Communities	√		
7.	Improving the Quality of Council Services and Strengthening local Democracy	√		
8.	Children and Young People		√	

Financial Implications

<u>CAPITAL EXPENDITURE</u>	2006/ 2007 £	2007/ 2008 £	2008/ 2009 £	2009/ 2010 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Departments consulted in the preparation of this Report

None

List of background papers relied upon in the preparation of this Report

Correspondence from Mrs Lydia Forshaw, Merseyside Police and Merseyside Fire Service.

APPENDIX 1

APPROVAL OF PREMISES FOR THE CONDUCT OF CIVIL WEDDINGS AND CIVIL PARTNERSHIPS

1. Introduction

1. An application has been received from Mrs Lydia Forshaw of The Park Hotel, Dunningsbridge Road, Netherton L30 6YN for the Aintree Suite at the Park Hotel to be licensed for the conduct of civil marriages and civil partnerships in addition to the Park Suite and the Restaurant which are already licensed.
2. The premises have been inspected and conform to all the guidelines issued to local authorities by the General Register Office.
3. The closing date for objections after the official notice was published in the local newspaper was 11th February 2010. No objections have been received.
4. Merseyside Police has considered the application and has no objections.
5. Merseyside Fire Service has considered the application and has no objections.
6. Approval of the application is sought to enable bookings for marriages and civil partnerships to be taken from 1st March 2010 for the Park Hotel.

This page is intentionally left blank

Agenda Item 8

Meeting: LICENSING AND REGULATORY COMMITTEE

Date of Meeting: 22 February 2010

Title of Report: COMMON ACT 2006 - REGISTRATION OF A VILLAGE GREEN

Report of: C.J. Elwood
Legal Director

Contact Officer: Ms. J. Beatty
(Telephone No.) 0151 934 2026

This report contains	Yes	No
CONFIDENTIAL Information/		ÿ
EXEMPT information by virtue of paragraph(s)..... of Part 1 of Schedule 12A to the Local Government Act, 1972		ÿ
Is the decision on this report DELEGATED?	ÿ	

Purpose of Report

To advise Members of an application received by the Legal Director (acting on behalf of the Council as the "Local Registration Authority") that the Licensing and Regulatory Committee support a request to the Land Charges Department, to have the Village Green at Hightown formally recognised and registered as a Village Green.

Recommendation(s)

That Members support the Committee's request.

Corporate Objective Monitoring

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1.	Creating a Learning Community		ÿ	
2.	Creating Safe Communities		ÿ	
3.	Jobs and Prosperity		ÿ	
4.	Improving Health and Well-Being		ÿ	
5.	Environmental Sustainability	ÿ		
6.	Creating Inclusive Communities		ÿ	
7.	Improving the Quality of Council Services and Strengthening local Democracy		ÿ	

Financial Implications

None as a direct result of this report.

List of background papers relied upon in the preparation of this Report

Agenda Item 8

Commons Act 2006.

Commons Registration (England) Regulations 2008 as amended by Commons Registration (England) (Amendment) Regulations 2009.

DEFRA Guidance

SEFTON M.B.C.

1.0 BACKGROUND

1.1 A formal application for the registration of land as a Village Green at Hightown was received by the Legal Director (acting on behalf of Sefton Council as the Registration Authority) on the 30 June 2009. At that time the application was refused due to the fact that the evidential requirements stipulated by the legislation was not deemed satisfactory. Further evidence was provided in October 2009 and as a result of this a formal Notice was published in the local press dated the 12 November 2009. The advertisement requested representations/objections to the application by the 31 December 2009. No objections or representations were received after the cessation of the notification period.

1.2 Acting on behalf of the Registration Authority, it is the intention of the Legal Director to formally register the Village Green at Hightown into the Commons Register held by the Land Charges Department.

2. COMMONS ACT 2006

2.1 Criteria for registration is set out at Section 15 Commons Act 2006 as:-

(1) Any person may apply to the Commons Registration Authority to register land to which this part applies as a Town or Village Green in a case where sub-section (2) (3) or (4) applies.

(2) This sub-section applies where -

(a) a significant number of the inhabitants of any locality, or of any neighbourhoods within a locality, have indulged as a right in lawful sports and pastimes on the land for a period of at least twenty years; and

(b) they continue to do so at the time of the application.

2.2 This application was made by Councillor John Gibson. In support of the formal application he provided extraneous evidence as follows:

- Extract "At Random" by Chris Scott. This showed the Village Green in use by Hightown residents on VJ day 1945.

- Photograph "My Hightown" by Joe Bulman. This showed a photograph from the 1930's illustrating that the Village Green was used for local residents to walk in and admire the flowers growing.

- Undated aerial photograph. Councillor Gibson believes that this picture is dated 1967 and shows that the area was laid out for people to walk on.

Agenda Item 8

- Letter from Mr Malcolm Walker dated 22/07/09. The letter provides details of the flag being raised on the flagstaff from 1960's onwards. This shows use of the land. The flag was frequently at half-mast due to people dying and the flag being used as a form of respect to their passing.
- Letter from Mrs Barbara Hope, undated. This letter illustrated that Mrs Hope's children and others would use the Green on a significant basis. Mrs Hope points out that a significant number of people would use the Green as part of communal festivities where, a significant number of people used it as of right to sing around the Christmas tree and watch the lights being switched on.
- Letter from Mrs Gillian Rowe dated 17/09/09. This provided details that during the 1960's and 1970's the Green was regularly used by Mrs Rowe and other families and children. Mrs Rowe also mentions the use of the Village Green for communal activities by Hightown as a community, which implies a significant user of the land. She makes a point that it has "been well used by residents and others walking through the village".
- Email from Linda Hough dated 27/07/09 supporting the application.
- Email from Mr Ian Lunt dated 21/07/09 supporting the application.
- Letter from the Chairman of the Hightown Parish Council dated 14/08/09 indicating that the Village Green had been in use by the Community as a right for carol singing, Christmas tree lighting and that the Chairman supports the registration of the land as a Common on behalf of the Parish Council.

2.3 The evidential requirements set out by Section 15 of the Commons Act 2006 (as set out above), were deemed satisfied by this submission of this evidence. Acting on behalf of the Registration Authority, the Legal Director confirms that no representations or objections were received to the formal notice published in the Formby Times and Crosby Herald on Thursday, November 12th 2009. As indicated, the notification period ceased on the 31st December 2009.

2.4 Members are therefore requested to approve formal registration of the Hightown Village Green in the Commons Register.

This page is intentionally left blank

Agenda Item 9

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: LICENSING ACT 2003 – NEW CATEGORY OF “INTERESTED PARTY”

Report of: P. J. Moore,
Environmental Protection Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To inform Members of a new category of “Interested party” inserted into the Licensing Act 2003 by the Police and Crime Act 2009.

Recommendation(s)

That Members note this Report and the changes made to the Licensing Act 2003.

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None arising from this Report.

List of background papers relied upon in the preparation of this report

- The Licensing Act 2003.
- Guidance issued under Section 182 of the Licensing Act 2003 – 28th January 2010.
- Policing and Crime Act 2009.
- Statutory Instrument 125 / 2010 “The Policing and Crime Act 2009 (Commencement No. 3) Order 2010” – 21st January 2010.
- Report to Licensing & Regulatory Committee – “Certain provisions of the Policing and Crime Bill” – 19th January 2009.

Agenda Item 9

Background

1. The Policing and Crime Act 2009 (“PCA09”) received Royal Assent on 12th November 2009.
2. Certain provisions of that Act were brought into effect by the Government on 29th January 2010, one of which was Section 33 which related to allowing members of licensing authorities to act as interested parties.
3. This Section was tabled and accepted at the Lords Report stage on 5th November 2009 and as such was not part of the proposed provisions reported to Members on 19th January 2009.

Definition of “relevant representations” and “interested parties”

4. Members will recall that the Licensing Act 2003 (“LA03”) states that “*where relevant representations are made, the Authority must hold a hearing to consider them, unless the Authority, the applicant and each person who has made such representations agree that a hearing is unnecessary*”.
5. “Relevant representations” being defined as those which:
 - (a) *are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,*
 - (b) *meet the requirements of subsection (7),*
 - (c) *if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and*
 - (d) *are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).*
6. Part of the requirements of subsection 7 are:
 - (a) *that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c).*
7. “Interested party” being defined as any of the following:
 - (a) *a person living in the vicinity of the premises,*
 - (b) *a body representing persons who live in that vicinity,*
 - (c) *a person involved in a business in that vicinity,*
 - (d) *a body representing persons involved in such businesses.*
8. With effect from 29th January 2010 the PCA09 has added to this list by inserting the following new category:
 - (e) *a member of the relevant licensing authority.*

Effect of the amendment

9. This amendment means that members of a licensing authority can now make representations or seek a review in their own right. The representations still need to be “relevant” (as per Paragraph 5 above) but the members are no longer

Agenda Item 9

required to live in the vicinity in order to make the representation or seek the review. Similarly they will no longer need to have been asked to represent someone who does.

10. The term "member of the licensing authority" refers to Councillors, and not to Officers or other employees of the Authority, similarly it does not include Parish Councillors (unless they also sit as Councillors on the Council).

Further information

11. Attached within Annex 1 to this Report is an extract from the updated Guidance issued under S182 of the LA03 relating to these matters.
12. LACORS have produced a leaflet for Member's information containing suggested "Frequently asked questions" and this is attached within Annex 2 to this Report.

Agenda Item 9

Annex 1

Extract from Guidance issued under Section 182 of the Licensing Act 2003 – 28th January 2010

- 8.5 The second group – “interested parties” – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:
- a person living in the vicinity of the premises in question;
 - a body representing persons living in that vicinity, for example, a residents’ association, or a parish or town council;
 - a person involved in a business in the vicinity of the premises in question;
 - a body representing persons involved in such businesses, for example, a trade association; and
 - a member of the relevant licensing authority, i.e. elected councillors of the licensing authority for the area in which a premises is situated (see paragraph 8.1).
- 8.6 It is expected that “a person involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.
- 8.7 Any of these individuals or groups may specifically request a representative to make a representation on their behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.
- 8.8 Further information on the role of interested parties is available in “Guidance for interested parties: applying for a review” which can be found on the DCMS website.

THE ROLE OF LOCAL COUNCILLORS

- 8.9 Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Local councillors can also, as elected members of the licensing authority, make representations in their own right if they have concerns about any premises, regardless of whether they live or run a business in the vicinity of those premises. For example, councillors may apply for a review of a licence if problems at a specific premises which justify intervention are brought to their attention.
- 8.10 Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a ‘prejudicial’ interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest). In cases where a local councillor makes a representation as an interested party, they will be considered to have a ‘prejudicial’ interest in the local authority’s decision on a resulting review and in the local authority’s representation to any appeal on this decision.
- 8.11 According to the Model Code of Conduct, councillors with a ‘prejudicial’ interest must not exercise executive functions in relation to that business and must not seek improperly to influence a decision about that business. Councillors with a prejudicial interest are allowed to attend relevant meetings to make representations, answer questions or give evidence,

Agenda Item 9

provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.

- 8.12 The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. For example, where a councillor has made representations in their capacity as an elected member of the licensing authority. In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence in any other way.
- 8.13 In addition, councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews.
- 8.14 The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.
- 8.15 Where an officer of the authority, such as a licensing officer, has information that raises concerns about a licensed premises, they are entitled to bring that information to the attention of an elected councillor. For example, in the case of underage alcohol sales, they may wish to alert the child protection portfolio holder or the chair of the licensing committee, who may then wish to consider calling for a licence review (subject to the points raised above).



Elected members as Interested Parties: FAQ

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*
- *This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.*

Please note that this list is not exhaustive and will be updated whenever new questions and scenarios are submitted to LACORS.

Q. Can all councillors in England and Wales make representations and call for reviews?

A. Nearly all councillors are now “interested parties” under the Licensing Act 2003 and can make representations in their own right in response to premises licence and club premises certificate applications in the area of the authority for which they are also members.

If your council is a licensing authority for the premises or club in question, then you are an interested party. If your council is not a licensing authority then you are not an interested party.

Q. What is the status of Parish/Town councillors?

A. Parish/town councillors are not interested parties in their own right, but can be involved as representatives of interested parties, including the parish/town council itself, instead. For example, a parish or town councillor can speak at a hearing on behalf of a parish/town council, individual resident or organisation that has made a representation.

Q. What is the status of elected mayors?

A. Elected mayors are not interested parties. This is because elected mayors are not included in the statutory definition of “member of the relevant licensing authority”. Section 39(5A) of the Local Government Act 2000 states that a reference in any enactment to a member or councillor of a local authority does not include a reference to an elected mayor. There are specific exceptions to this provision, which are listed in other regulations, and the Licensing Act 2003 is not included in those regulations.

Q. Do I need to represent the ward in which the premises is located?

A. No, you can make representations or apply for a review in relation to any premises in any ward within your council’s area.

Q. Can I make representations or call for a review even when none of my constituents has approached me formally to do so?

A. Yes. The new provisions mean that all elected members of local authorities that are licensing authorities are now “interested parties” in their own right under the Licensing Act 2003 in the area of the authority for which they are also members.

Q. Can I act as a representative at a hearing on behalf of a resident or local business or other local organisation who have asked me to speak on their behalf?

A. Yes; you can represent another interested party (or parties) who has made a representation. You are subject to the rules of conduct for councillors set out in the National Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007 (“the Model Code”) when you take part in the hearing.

Agenda Item 9

In this scenario you do not need to have made a representation in your own right, but you must ensure that you can demonstrate to the licensing authority that you have been requested to represent the interested party or parties in question.

Q. I am a member of the licensing committee. Can I make representations and call for reviews? Can I address the licensing sub-committee as an interested party at a hearing?

A. Yes, but the Model Code prohibits you from sitting as a member of the sub-committee when it considers the application that you are involved in. You should also consult the DCMS Guidance which addresses this point in detail.

Please also see LACORS leaflet “Elected Member Guidance on the Licensing Act 2003” for more information, and take advice from your council’s monitoring officer for more specific guidance.

Q Does a representation or call for review by a councillor carry more weight than those submitted by residents?

A. No. There is no provision within the Licensing Act 2003 for councillor representations or review applications to be given any priority or additional consideration by the licensing sub-committee.

Q. What concerns can I include in my representation?

A. Only “relevant representations” can be considered by the licensing authority. Representations complaining about general problems in an area or the fact that there are “too many” licensed premises in an area, for example, **are not** relevant representations. Representations should address the effect of the application on one or more of the licensing objectives, i.e.:-

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

Q. What other factors should I be aware of when making a representation?

A. A representation must not be withdrawn, frivolous or vexatious in order to qualify as a relevant representation, i.e. to be considered by the licensing sub-committee. (A representation can only be withdrawn by the person who made it.)

“Frivolous” representations are, for example, concerned with irrelevant details, or details that are not connected to the licensing objectives.

A “vexatious” representation, for example, would be where an interested party makes a representation to annoy or intimidate an applicant rather than on the basis of the licensing objectives.

A DCMS guide for interested parties making representations is available at http://www.culture.gov.uk/images/publications/Guidance_for_interested_parties.pdf.

Q. Who decides whether my representation is frivolous or vexatious?

A. The licensing authority itself makes this decision, and the Guidance issued under section 182 of the Licensing Act recommends that this decision is delegated to a licensing officer.

Q. Can I just outline my concerns about a licensed premises verbally to the licensing officer and ask that they draft my representation and obtain supporting evidence from other departments on my behalf?

A. You are again reminded of the need to comply with the Model Code. You can request information about how to apply for a review, and can ask for information about how to obtain supporting evidence that is publicly available, but you cannot request more assistance from officers than any other interested party.

Q. I have a legal enquiry relating to a review I have initiated as an interested party. Can I obtain advice from the Council’s legal officer?

A. No, for the same reasons as above, i.e. it would constitute an improper use of advantage in breach of the Model Code.

Agenda Item 9

Q. My constituents have suggested that I should discuss a licensing application that I have made a representation on with a member of the licensing sub-committee in order to point out the strength of their case. Is this problematic?

A. Yes. This would constitute an attempt to improperly influence a decision, and would therefore be a breach of the Model Code. You should not discuss your representations with members of the licensing sub-committee.

Q. I want to have a premises licence reviewed. How do I make a review application?

A. There is a standard application form, which must be completed and sent to the licensing authority, the premises licence holder and a series of statutory bodies known as “responsible authorities”. DCMS has provided detailed guidance on how to apply for a review online: <http://www.culture.gov.uk/images/publications/060918GuidanceforInterestedPartiesReviews2007.pdf>

Q. My application for a review has been heard by the licensing sub-committee and I am not happy with the outcome. Can I appeal?

A. You may appeal the decision. The time limit for lodging an appeal is 21 days from the date that you received notice of the licensing sub-committee’s decision. Appeals are made to the Magistrates’ Court for the “petty sessions” area in which the premises is situated. Further guidance is available in the DCMS leaflet “[Guidance for Interested parties - Appealing licensing decisions in the courts](#)”

Q. What happens if I incur legal costs as an interested party if I decide to appeal the decision of the licensing authority in the courts? Must my council indemnify me?

A. LACORS has received the following advice from the Department for Communities and Local Government:

“Certainly it is a reasonable expectation that a local authority will provide indemnification to their members so that members are not left liable for costs arising from their actions taken in relation to their duties. If the member is acting on behalf of the local authority in seeking a review of an existing premises license then one would expect the local authority to meet costs. (A councillor cannot be entitled to indemnification against a costs order by the local authority unless s/he is acting with the authority of the local authority. It would be quite inappropriate for all local authorities to give a blanket indemnification of any action by a local councillor.)

If a councillor acts on his or her own initiative in some legal proceedings, there is little reason for treating them any differently as regards the costs of any litigation than how any other litigant is treated. In short, if the member was acting in a non-official capacity then the indemnity would not apply.”

Q. I have not been involved in licensing matters before. Where do I find out more information about the procedure involved?

A. LACORS has produced a [Licensing Act 2003 Councillor Handbook](#), available via the link below, which gives an overview of the Act:

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=46BEF40&id=18031>

DCMS have provided an extensive overview of the Act, “[Licensing Act 2003 Explained](#)” via its website: http://www.culture.gov.uk/what_we_do/beer_and_entertainment/4051.aspx

Agenda Item 10

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: PROPOSED RESPONSE TO DCMS CONSULTATION – “PROPOSAL TO EXEMPT SMALL LIVE MUSIC EVENTS FROM THE LICENSING ACT 2003”

Report of: P. J. Moore,
Environmental Protection Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To advise Members of a DCMS Consultation on proposals to introduce a revocable exemption for small live music events, performed for 100 people or fewer in licensed and unlicensed premises, from the requirements of the Licensing Act 2003 relating to the licensing of live music as regulated entertainment.

Recommendation(s)

That Members:

- i) Note this Report and its contents; and,
- ii) Endorse the proposed response contained in Annex 2

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None arising from this Report.

List of background papers relied upon in the preparation of this report

- The Licensing Act 2003.
- DCMS Consultation document – “Proposal to exempt small live music events from the Licensing Act 2003”

Agenda Item 10

Background

1. Members will recall that the Licensing Act 2003 (“the Act”) replaced and consolidated several different licensing regimes. Live music was licensed under the Public Entertainment Licence (“PEL”) regime, except for performances of 2 musicians or fewer (the so-called ‘2 in a bar’ rule) which were exempt.
2. The Government has acknowledged that the Act has had some positive benefits for live music, such as removing the need to have a separate permission and the requirement for routine annual renewals of licences.
3. However there have been concerns about the impact of the Act on the provision of live music and in 2005 the Government set up an independent Panel (called the Live Music Forum) to monitor and evaluate the impact of the Act on the performance of live music. The Forum found that although the Act had a ‘broadly neutral’ impact on live music, there was some evidence of over zealous enforcement and lack of clarity about the legislation which had on occasion ‘brought about an unwelcome and unwarranted impact on very small scale live music events’.
4. Research carried out by MORI for the Forum also found that 29% of smaller establishments, that had operated without a public entertainment licence but used the 2 in a bar exemption to put on live music, did not apply for live music provision when the Act came into force.
5. The Forum recommended, amongst other things, that musical activity attracting less than 100 people should be exempt from the Act.
6. The DCMS has now published a consultation document seeking views on proposals to make live music between the hours of 8am and 11pm, held inside buildings and to an audience of 100 or less, not a licensable activity. These proposals would create a “revocable exemption”, i.e. small live music events, at either licensed or unlicensed premises, would be exempt provided that they comply with the requirements above. An application can be made to the local authority to remove the exemption by a local resident or Environmental Health (similar to the existing review process). This application would be subject to a hearing and a right of Appeal for either party.
7. The last date for submission of responses is 26th March 2010 and a copy of the consultation document is included within Annex 1 to this Report.
8. A proposed response to this consultation is attached within Annex 2 to this Report.



department for
**culture, media
and sport**

Proposal to exempt small live music events from the Licensing Act 2003

Licensing Act 2003

Agenda Item 10

2

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Chapter 1: Introduction	4
Chapter 2: How to Respond.....	7
Chapter 3: Legislative Reform Orders: process.....	9
Chapter 4: Background	12
Chapter 5: Detailed Proposals	14
Chapter 6: Legislative Reform Order: Pre-conditions	17
Chapter 7: List of Questions.....	20
Annex A: List of Consultees	22
Annex B: Impact Assessment Question	25
Annex C: Draft Order	26
Annex D: BRE Code of Practice on Consultations	29
Annex E: Legislative Reform Orders – Parliamentary Consideration.....	30

Chapter 1: Introduction

Summary

The consultation document seeks your views on a proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003 (the Act) relating to the licensing of live music as regulated entertainment under the Act. It also seeks views on the Legislative Reform Order that will deliver the proposal (Annex C), and the Impact Assessment (published as a separate document and available with this consultation document at

http://www.culture.gov.uk/reference_library/consultations/6499.aspx.

The Legislative Burden

- 1.1 The activities regulated by the Licensing Act 2003 include 'the provision of regulated entertainment', defined in Schedule 1 of the Act as 'entertainment' or 'entertainment facilities' provided either for the public; exclusively for members of a club which is a 'qualifying club' under the Act; or for consideration and with a view to profit. 'Entertainment' includes a 'performance of live music' (Schedule 1(2)(1)(e) 'where it takes place in the presence of an audience and is provided for the purpose, or for purposes which includes the purpose, of entertaining that audience'.
- 1.2 Section 2 of the Act requires anyone who wishes to carry on a licensable activity to obtain an appropriate authorisation in the form of a premises licence, a club premises certificate or a temporary event notice. Any changes to a licence or club premises certificate, for example, to add live music provision, must be authorised through the full or minor variation process.
- 1.3 Section 17(5) of the Act stipulates that an application for a premises licence or a full variation must be advertised in a local newspaper and outside the premises for a certain period to give local residents and responsible authorities (the police, environmental health, etc) the opportunity to make representations against, or in favour of, the application to the licensing authority. The minimum administrative cost of making these applications is £385 plus a fee payable to the licensing authority which can vary typically from between £100 - £635 depending on the rateable value of the premises. If representations are made, section 18 of the Act requires the licensing authority to hold a hearing to consider the evidence and, if necessary, impose conditions on the licence to remove or mitigate any risks to the licensing objectives, refuse authorisation for a specific licensable activity or, in extreme cases, reject the application outright. In the case of live music, licence conditions might include, for example: closing doors and windows when music is being performed: the installation of sound-proofing measures such as rubber seals around doorways: noise limiters on amplification equipment; and restrictions on what time and how

premises. The licence holder may incur a cost in meeting some of these conditions; for example, at the top end, a noise limiter can cost around £3000. The minor variation process is intended only for changes that will not impact adversely on the licensing objectives, such as the addition of low risk, live music provision. The process is quicker and cheaper than the full variation process, but there is still a minimum, administrative cost to applicants of £50-£100 and a flat rate fee of £89. People who wish to hold live music events on an occasional basis can do so by sending a Temporary Event Notice to the licensing authority at a flat rate fee of £21.

- 1.4** In general, the regulation of live music under the Act is justified by the potential impact of some live music event on the promotion of the licensing objectives¹. For example, residents living next door to a public house in a residential terrace, may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety. However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives

The Government's proposal

- 1.5** The Government proposes to introduce a revocable exemption for small live music events performed for 100 people or fewer in licensed and unlicensed premises from the requirements of the Licensing Act 2003 relating to the licensing of live music as regulated entertainment.

Administrative savings and other benefits

- 1.6** We think that this measure will primarily benefit many small venues that wish to hold live music events, but are deterred by the licensing requirements and costs. It will also benefit musicians who may find more opportunities to perform. However, we have not estimated the administrative savings for these categories as they are not currently subject to an administrative burden. People and organisations that currently use Temporary Event Notices to put on live music on an occasional basis; and licensed venues that put on small live music events for no more than 100 people are subject to a burden that the proposal will lift. We have tentatively estimated that this administrative saving could be around £406K - £881k per year. This does not take into account some costs of putting on live music that are difficult to quantify, such as the cost of new conditions applied when new applications or variations are granted. We also estimate that there will be fee savings of around £379K - £503K. There will also be a small additional cost to and burden on licensing authorities in administering the process for excluding specific premises from the exemption. However, we anticipate that this is likely to happen in only a very small number of cases, perhaps 0.3% - 1.5% per year (averaged over ten year period). Costs on licensing authorities would therefore be minimal, around £224K- £1,211K per year across all 378 authorities. A small number of licensed premises with licence conditions relating to the exempt live music that involve ongoing costs (for example a restriction on the number of live music events per week) may wish to apply to the licensing authority to remove these conditions from the licence. However, we can assume a net saving to these premises as they will not apply if

¹ The prevention of crime and disorder, public safety; the prevention of public nuisance; and the protection of child

Agenda Item 10

6

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

the cost of a Minor Variation is likely to be greater than the cost saving from removing the condition. Estimated cost savings are set out in full in the Impact Assessment (published as a separate document and available with this consultation document at http://www.culture.gov.uk/reference_library/consultations/6499.aspx and comment is welcome (see question 14).

Who will be affected by the proposals?

1.7 The proposals will affect:

- Licensed premises such as clubs and pubs, unlicensed premises such as cafes, restaurants, scout huts, record shops, etc. and individuals that wish to stage small, live music events;
- Musicians – particularly those starting out in the business - who will benefit from the greater availability of venues;
- Licensing authorities, who will have to administer the new process.
- Responsible authorities, who will need to be aware of the new process and their right to call for the revocation of an exemption;
- The wider public and communities who will benefit from the increased opportunity to hear live music, but will also need to be aware of how they can take action if an exempt live music event leads to problems at a premises near them.

Implementing the proposals

1.8 We propose to introduce these exemptions by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRA). See Chapter 3 for more details of the LRO process. Your views are invited on the Order which is set out at Annex C.

Chapter 2: How to Respond

- 2.1 The closing date for making responses to this consultation is 26th March 2010 2009. If you would like to respond to this consultation, please email your response to licensingconsultation@culture.gov.uk

If you prefer, you may submit a hard copy by post to:

Shelley Mickleburgh
Licensing Team
Sport and Leisure Directorate
2-4, Cockspur Street
London SW1Y 5DH

- 2.2 If you have any queries about this consultation, or require additional copies, please contact the Licensing Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380.
- 2.3 However, if you have any questions or complaints about the process of consultation on this paper, please contact the DCMS enquiries team at enquiries@culture.gov.uk or by post to Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.

Disclosure

- 2.4 Normal practice will be for responses to this consultation document to be disclosed, and for respondents to be identified. While the LRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LROs. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances. You should note that:
- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymize it

Agenda Item 10

8

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

2.5 Please identify any information that you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality.

Confidentiality and Freedom of Information

2.6 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. *An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.*

Chapter 3: Legislative Reform Orders: process

Legislative Reform Orders

3.1 The Government proposes to introduce these simplification measures by means of a Legislative Reform Order under section 1 of the Legislative and Regulatory Reform Act 2006. The proposed text for amendments to be made by the draft Order is at Annex C. This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA and the terms of the Government's Code of Practice on Written Consultations. Views are invited on all aspects of the consultation paper, including the specific questions set out in this document and summarised in Chapter 7. All responses should be received by 26th March 2010.

Legislative Reform Order-making powers

- 3.2** The LRRRA confers powers on a Minister of the Crown, with the approval of Parliament, to make legislative reform orders for purposes which include (under section 1) the removal or reduction of burdens falling directly or indirectly on any person from any legislation.
- 3.3** Section 1(3) of the LRRRA defines a burden as a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- 3.4** An order may not impose, abolish or vary any tax nor may it create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits. This proposal will not do so.
- 3.5** The 2006 Act specifies, under Section 3, that an Order must satisfy six preconditions. These are whether the Order has a non-legislative solution; is proportional to the policy objective; strikes a fair balance; does not remove necessary protections; does not prevent the exercise of rights and freedoms; and is not of constitutional significance. These are discussed in Chapter 6.
- 3.6** It should be noted that even where the preconditions of Section 3 of the LRRRA are met, an LRO cannot:
- deliver 'highly controversial' proposals;
 - remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
 - confer or transfer any function of legislating on anyone other than a Minister; persons that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
 - impose, abolish or vary tax

Agenda Item 10

10

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

- create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- amend or repeal any provision of Part 1 of the LRRRA;
- amend or repeal any provision of the Human Rights Act 1998;
- remove burdens arising solely from common law.

Devolution

3.7 The LRRRA imposes certain restriction regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make an LRO under Part 1 of the LRRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.

3.8 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedures is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- Negative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made and the Committee has not vetoed the proposal.
- Affirmative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- Super-Affirmative Resolution Procedure – This is a two stage procedure during which there is opportunity for the draft LRO to be revised by the Minister:
 - Parliament is given 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.
 - After the expiry of the 60 day period (during which evidence may be sought from stakeholders and the Minister or officials by the Committees of each House), recommendations are made by the Committees, and the

Minister must lay a revised or unrevised LRO for further scrutiny (15 days for unrevised, 25 days for revised). After this second scrutiny period, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both Committees.

- 3.9** Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.
- 3.10** The Department for Culture, Media and Sport believes that the **affirmative resolution process** should apply to this LRO on the grounds that it amends the Act, and expands the scope of activities that are excluded from the ambit of the Act.
- 3.11** This consultation document contains a series of questions to which responses are invited. A list of all questions can be found at Chapter 7.
- 3.12** Comments are also invited on the draft LRO at Annex C and the Impact Assessment (published as a separate document and available with this consultation document at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)
- 3.13** The consultation document follows the format recommended by the BRE for all such proposals. The criteria applicable to all UK consultations under the BRE Code of Practice on Consultation are at Annex D.
- 3.14** Under Section 3(2) of the LRRRA, the Minister of the Crown must be satisfied that certain preconditions have been met before presenting to Parliament a proposal to make a legislative reform order. For this reason, we would particularly welcome your views on whether and how the proposal in this consultation meets the following preconditions:
- (a) the policy objective intended to be secured by the order could not be satisfactorily secured by non-legislative means;
 - (b) the effect of the provision is proportionate to the policy objective;
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 - (d) the provision does not remove any necessary protection;
 - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; and
 - (f) the provision is not of constitutional significance.
- 3.15** These preconditions are addressed in Chapter 6.

Chapter 4: Background

Impact of the Act on live music

4.1 The Licensing Act 2003 replaced and consolidated several different licensing regimes. Live music was licensed under the Public Entertainment Licence (PEL) regime, except for performances of 2 musicians or fewer ('2 in a bar') which were exempt. In many ways, the Act had some positive benefits for live music, such as removing the need to have a separate permission and the requirement for routine annual renewals of licences. However, there were concerns about the impact of the Act on live music and in 2005, shortly after the Act came into force, the Government set up an independent Panel - the Live Music Forum - to monitor and evaluate the impact of the Act on the performance of live music. The Forum was chaired by Feargal Sharkey and included members from key bodies across the music industry and non-commercial sectors, together with local and national government, the Arts Council England and the hospitality trade. The Forum found that although the Act had a 'broadly neutral' impact on live music, there was some evidence of over zealous enforcement and lack of clarity about the legislation which had on occasion 'brought about an unwelcome and unwarranted impact on very small scale live music events (see http://www.culture.gov.uk/reference_library/publications/3650.aspx). Research carried out by MORI for the Forum also found that 29% of smaller establishments that had operated without a public entertainment licence, but used the 2 in a bar exemption to put on live music, did not apply for live music provision when the Act came into force. The Forum recommended, amongst other things, that musical activity attracting less than 100 people should be exempt from the Act.

Pre-consultation on exemptions

4.2 In 2008, the Government had early discussions with stakeholders on proposals to exempt live music performances for 100 people or fewer in unlicensed premises and 200 people or fewer in licensed premises. Both exemptions were to be restricted to performances inside a building between the hours of 11pm and 11 am and would not be revocable. It was proposed that any problems arising from the exempt live music could be dealt with through penalties available under other legislation, such as on the spot fines for noise under environmental health legislation.

4.3 These proposals were well received by the Musician's Union and other live music representatives, but were strongly opposed by licensing authorities and the police on the grounds that:

- there was no statistical evidence that the Act was restricting live music. The Local Authority Coordinators of Regulatory Services (LACORs) believed that very few

applications for live music provision were refused. The Government's Licensing Statistics Bulletin 2008 showed that the number of authorisations for live music had

- risen by 7% during 2007/8 and although this did not reflect the number of live music events staged in practice, it was nevertheless an indicator that live music was thriving.
- the proposed exemptions would remove essential rights and protections from local residents and businesses, exposing them to an increased risk of noise nuisance, crime and disorder, etc. Licensing authorities' powers under the Act to impose licence conditions such as closing doors and windows, sound insulation, etc. helped to prevent these problems occurring.
- penalties available under other legislation were largely reactive and other enforcement agencies were not resourced to deal with the problems that were likely to arise if these events were exempted from the Act.

- 4.4** In view of these very serious objections, the Government decided to defer consideration of live music exemptions for one year and to pursue other measures to assist live music including the new Minor Variations process which would allow applicants to add low risk, live music provision more cheaply and quickly than the full variation procedure. The Musicians Union, LACORs, the BBPA and DCMS formed a working party to consider ways of promoting and encouraging take up of the Minor Variations process and the existing exemption for incidental live music. It was agreed that these measures should be given time to bed down – and their impact on live music assessed – before returning to the issue of exemptions.

Recent developments

- 4.5** The Minor Variations process came into force in August 2009 and there is early evidence to suggest that it is increasingly being used to add or vary low risk live music provision. The Live Music Working Party has met several times and will be publishing a new leaflet on incidental live music and other material encouraging the use of Minor Variations to add/vary live music provision in December. However, live music groups and campaigners have continued to express concerns about the impact of the Act on small live music venues. The House of Commons Culture, Media and Sport Committee, in its 6th report of sessions, also found some anecdotal evidence that live music in smaller venues was decreasing and recommended an exemption for venues with a capacity of 200 or fewer from the Act.
- 4.6** The Government takes these concerns seriously and, with this in mind, has returned again to the subject of exemptions. However, it also takes seriously the concerns of local authorities, residents and the police and for this reason has amended its earlier proposal as described in the following chapter to exempt only events performed for audiences of no more than 100 people and to include a power to revoke an exemption at a specific premises if there are problems arising from the live music events.

Chapter 5: Detailed Proposals

Conditions of exemption

5.1 The Government proposes to exempt from the Act small live music events in licensed and unlicensed premises subject to the following conditions:

a) The performance takes place wholly inside a building. There is evidence that live music events held outdoors, in temporary structures such as tents or on boats, vehicles, etc are more likely to generate noise nuisance than indoor events. The Government therefore recommends that the exemption should be restricted to performances that take place wholly inside a permanent building.

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.

b) The audience does not exceed 100 people and is accommodated entirely inside the building where the performance is taking place. It was clear from the Government's earlier pre-consultation on exemptions for live music for 200 or fewer people, that licensing authorities, residents and the police had serious concerns about exempting this size of venue. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. The Government is aware that there are different views on this issue, and that the CMS Committee recommended an exemption for events for audiences of no more than 200, however on balance it considers that restricting the exemption to audiences of no more 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

It also recommends that the audience should be accommodated entirely inside the building where the performance is taking place to prevent a situation whereby, for example, patio doors might be opened to allow people on a pub terrace to see the performance, allowing noise to escape.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.

c) **The performance does not take place between 11pm and 8am.** Noise from live music events is much more likely to disturb nearby residents etc. late at night and in the early hours of the morning, particularly (but not exclusively) on weekdays. The Government therefore recommends that exempt performances should not take place between 11pm and 8am.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.

d) **The performance does not take place in a premises which is subject to an 'exclusion' decision** (see paragraph 5.2 below). The Government's proposal includes a revocation process to exclude specific premises from the exemption if problems arise in connection with exempt live music performances.

Exclusion/revocation process

5.2 In view of the concerns of LAs, the police and residents about the potential impact of an exemption on local residents, etc, the Government proposes to allow residents and local businesses (interested parties) and responsible authorities such as the police to apply to the licensing authority for an exemption at a specific premises to be 'excluded' from the exemption (i.e. revoked). This process will be similar to the current process for reviewing premises licences and club premises certificates, except that:

- it will apply to licensed and unlicensed premises;
- the evidence submitted in support of the application must focus on the impact of the live music event (s) on the promotion of the licensing objectives;
- the licensing authority will be responsible for placing a notice on premises to advertise the application
- licensing authorities will only have two options following a hearing: to allow the exemption to continue; or to exclude (revoke) it;
- an exclusion decision will take effect immediately, even if there is an appeal;
- Exclusions in licensed premises will be noted on the licence or club premises certificate; exclusions in unlicensed premises will be entered in a new section in the Licensing Register.

Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.

Licence conditions relating to the performance of exempted live music

- 5.3** Unlicensed premises that wish to stage live music events that qualify for the exemption will not need to make any kind of application to the licensing authority; the exemption will automatically apply. However, licensed premises that already stage live music and qualify for the exemption may still have conditions attached to their licence in connection with their live music provision. For example, they may be restricted to a certain number of performances per week, or be required to install and maintain sound proofing equipment. These premises will be able to apply to vary their licences to remove relevant conditions through the Minor Variations process, in so far as those conditions are inconsistent with the new exemption. The Government recognises that this will involve a one off cost to licensees, but considers that some level of scrutiny by the licensing authority is necessary to ensure that conditions that relate to other licensable activities at the premises are not removed. It is not always clear why a certain condition has been applied to the licence and licensing authorities will wish to satisfy themselves that necessary conditions relating to other licensable activities remain in place. It may also be the case that a premises with a number of rooms may stage live music events for an audience of no more than 100 in one room and for a bigger audience in another room. In these circumstances, the licensing authority is likely to consider that the licence conditions relating to live music should still apply, unless they relate specifically to the smaller room. In practice licensees are unlikely to apply to remove a licence condition unless the likely saving outweighs the cost of the application.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.

Chapter 6: Legislative Reform Order: Pre-conditions

Precondition (a): non-legislative solutions

- 6.1 The legal requirements relating to regulated entertainment are set out in the 2003 Act. The proposed changes to the Act cannot be made through secondary legislation (other than legislative reform orders).
- 6.2 Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police (and other RAs) need have no regard to it.
- 6.3 The Government is satisfied that this proposal cannot be achieved by means of:
- any voluntary agreements between central government, licensing authorities and the police;
 - changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
 - changes to the regulations made by the Secretary of State under their powers in the 2003 Act.
- 6.4 The Government is therefore satisfied that this proposal cannot be achieved by non-legislative means.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why

Precondition (b): the effect of the provision is proportionate to the policy objective

- 6.5 The policy objective is to remove unnecessary burdens on small live music events. The proposal exemption will deliver this and no more by restricting the exemption to performances of live music for audiences of no more than 100 people. Anecdotal evidence suggests that these venues are unlikely to give rise to problems which may affect the promotion of the licensing objectives and therefore suffer a disproportionate burden from the requirements of the licensing regime.

Agenda Item 10

18

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No. If No, please explain why.

Precondition (c): the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

6.6 The public interest lies in: ensuring that live music can flourish, to the benefit of the wider community; providing more small venues where musicians, particularly young musicians who need to hone their skills in front of smaller audiences, can perform; and in ensuring that small venues can diversify their offer and generate income by putting on low risk live music. Any person who is adversely affected by an exempt live music performance will be able to apply to the licensing authority to have the exemption reviewed and if necessary, excluded. An exclusion decision will take effect as soon as it is made (even if there is an appeal), ensuring that residents and others are not exposed to further noise nuisance or other problems. The Government therefore considers that this proposal strikes a fair balance.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.

Precondition (d) the provision does not remove any necessary protection

6.7 The requirements of the Act in relation to live music are intended to ensure that local residents, businesses etc are protected from potential noise nuisance, crime and disorder, etc. that may arise from live music events. The restrictions on size of audience/venue, and the timing of events should ensure that these issues do not arise, but if, exceptionally, there are problems at a specific premises, any interested person or responsible authority may apply for an exclusion. Existing sanctions available under other enforcement regimes, such as noise protection orders and the powers available to the police in relation to crime and disorder would continue to apply to the exempt premises. The Government does not therefore consider that this proposal would remove any unnecessary protections.

Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why

Precondition (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

6.8 Residents and responsible authorities currently have the right to call for a review of any premises licence or club premises certificate if there are problems at a specific premises which affect the licensing objectives. They will continue to exercise this right in relation to exempt live music through the exclusion process. The restrictions on the exemption and existing sanctions under other enforcement regime will preserve

freedoms from noise nuisance, crime and disorder, etc that any person might reasonably expect to continue to exercise.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.

Precondition (f): constitutional significance

6.9 The proposal is considered to have no constitutional significance.

Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

Chapter 7: List of Questions

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.

Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No? If No, please explain why.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.

Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.

Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No. If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

Question 15: Do you think that this draft Order accurately reflects the proposed change?

Annex A: List of Consultees

Respondents are invited to contact us with the names of any other stakeholders groups not on this list who they feel might be able to contribute.

Action in Rural Sussex
Action with Communities in Rural England
Alcohol Concern
Arts Council in England
Arts Council of Wales
Association of Chief Police Officers
Association of Circus Proprietors of Great Britain
Association of Convenience Stores
Association of Directors of Social Services
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of Show and Agricultural Organisations
Bar Entertainment and Dance Association
BII
British Beer & Pub Association
British Board of Film Classification
British Holiday and Home Parks Association
British Hospitality and Restaurant Association
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Campaign for Real Ale
Central Council for Physical Recreation
Charity Commission
Chartered Institute of Environmental Health
Chief Fire Officers' Association
Children's Society

Chinese Takeaway Association UK
 Cinema Exhibitors Association
 Circus Arts Forum
 Civic Trust
 Commission for Rural Communities
 Committee of Registered Clubs Associations
 Community Matters
 (DEFRA) Rural Communities Buildings Network
 English Heritage
 Enterprise Directorate, Department for Business, Enterprise and Regulatory Reform
 Federation of Licensed Victuallers
 Federation of Licensed Victuallers (Wales)
 Federation of Private Residents' Association
 Federation of Small Businesses
 Federation of Wholesale Distributors
 Fire and Rescue Authorities in England
 Fire and Rescue Services in Wales
 Greater London Authority
 Guild of Bangladeshi Restaurateurs
 Guild of Master Victuallers
 Historic Houses Association
 Independent Street Arts Network
 Insolvency Service
 Institute of Licensing
 Interfaith Network
 Justices Clerk Society
 Licensing Act Active Residents Network
 Licensing Authorities in England and Wales
 Local Authorities Co-ordinators of Regulatory Services
 Local Government Association
 London Councils
 Magistrates Association
 Maritime and Coastguard Agency
 Musicians Union
 National Association of Kebab Shops
 National Association of Local Councils
 National Campaign for the Arts
 National Farmers' Ret

Agenda Item 10

24

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

National Federation of Fish Friers
National Federation of Retail Newsagents
National Neighbourhood Watch Association
National Operatic and Dramatic Association
National Organisation of Residents Associations
National Village Halls Forum
One Voice Wales
Open all Hours
Passenger Boat Association
Patersons Licensing Acts
Police Federation
Police Superintendents' Association
Rural Shops Alliance
Society of Local Council Clerks
Society of London Theatre and Theatrical Management Association
Tourism for All
Trading Standards Institute
United Kingdom Film Council
United Kingdom Warehousing Association
Voluntary Arts Network
Welsh Assembly
Welsh Council for Voluntary Action
Welsh Local Government Association
Welsh Music Foundation
Wine Spirits Trade Association

Annex B: Impact Assessment Question

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at

http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No.

If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

Annex C: Draft Order

Question 15: Do you think that this draft Order accurately reflects the proposed change?

In Schedule 1: (a) After paragraph 7 insert-

“Live music in certain small venues

7A (1) The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act if the conditions in sub-paragraph (2) are satisfied in respect of the performance.

(2) The conditions are that-

(a) the performance takes place wholly inside a building;

(b) the performance takes place in the presence of an audience of not more than 100 persons, all of whom are accommodated wholly inside the building where the performance takes place;

(c) no part of the performance takes place between 11pm and 8am;

(d) the performance does not take place on premises in respect of which an exclusion decision under Part 2A of this Schedule has effect.”

(b) After Part 2 add-

“PART 2A

Live music in small venues: exclusion decisions

12A (1) The relevant licensing authority in relation to any premises must make an exclusion decision in respect of those premises, if the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that-

(a) an interested party or responsible authority has applied to the authority in accordance with this Part for an exclusion decision to be made in respect of the premises;

(b) the authority has held a hearing to consider the application; and

(c) the licensing authority are satisfied that the making of such a decision is necessary for the promotion of the licensing objectives.

(3) An exclusion decision made pursuant to sub-paragraph (1) has effect as soon as it is made.

(4) The Secretary of State may, by regulations under this paragraph-

(a) prescribe the form and manner in which an application under sub-paragraph (2)(a) is to be made, and the information and documents (if any) that must accompany it;

- (b) require the applicant to give a notice containing details of the application to such persons as may be prescribed within such period as may be prescribed;
- (c) require [the applicant][the authority] to advertise the application within such period as may be prescribed, and to invite representations about it to be made to the authority by interested parties, responsible authorities and such other persons as may be prescribed;
- (d) prescribe the period during which such representations may be made;
- (e) require any notice under sub-paragraph (b) or advertisement under sub-paragraph (c) to specify that period;
- (f) require that a record of each premises in respect of which an exclusion decision has effect be included in the relevant licensing authority's register kept under section 8.

(5) In this paragraph-

(a) "interested party" in relation to any premises means-

- (i) a person living in the vicinity of the premises,
- (ii) a body representing persons who live in that vicinity,
- (iii) a person involved in a business in that vicinity,
- (iv) a body representing persons involved in such businesses.

(b) "responsible authority" means-

- (i) any of the authorities referred to in section 13(4)(a) to (e) or (g), or
- (ii) a person prescribed for the purposes of this sub-paragraph."

(c) After paragraph 18 add-

"Live music in certain small venues: "building"

18A In paragraph 7A, a "building" does not include-

- (a) a temporary structure,
- (b) a structure without a roof, or without walls that form an enclosed space,
- (c) a vehicle, vessel or movable structure."

In Schedule 5, after paragraph 18 insert-

"Live music in certain small venues: exclusion decisions

18A (1) This paragraph applies where an application for an exclusion decision in respect of premises is decided under paragraph 12A of Schedule 1.

(2) An appeal may be made against that decision by-

- (a) the applicant for the decision,
- (b) a responsible authority within the meaning of paragraph 12A(5)(b),
- (b) if a premises licence has effect in respect of the premises, the holder of that licence;
- (c) if a club premises certificate has effect in respect of the premises, the club which holds that certificate;
- (d) if neither a premises licence nor a club premises certificate has effect in respect of the premises, the owner or occupier of the premises or such other persons as may be prescribed;

Agenda Item 10

28

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

- (e) an interested party within the meaning of paragraph 12A(5)(a) who made relevant representations in relation to the application.
- (3) In sub-paragraph (2) “relevant representations” means representations which are relevant to one or more of the licensing objectives.
- (4) An appeal under this paragraph must be made to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated.
- (5) An appeal under this paragraph must be commenced by a notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.
- (6) On an appeal under sub-paragraph (2)(a), (b) or (e) the premises licence holder, club premises certificate holder, owner, occupier or other prescribed person (as the case may be) is to be the respondent in addition to the licensing authority.”

Annex D: BRE Code of Practice on Consultations

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at:

<http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria

1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any questions or complaints about the process of consultation on this paper, please contact Tony Dyer, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH tony.dyer@culture.gsi.gov.uk

Annex E: Legislative Reform Orders – Parliamentary Consideration

Introduction

1. This proposed exemption will require changes to primary legislation in order to give effect to it. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on this proposal as a measure that might be carried forward by a LRO.

Legislative Reform Proposals

2. The starting point for LRO proposals is thorough and effective consultation with interested parties, as reflected by this consultation and previous discussion with stakeholders. In undertaking this consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) explain under which power or powers in the LRRRA the provisions contained in the order are being made;

ii) introduce and give reasons for the provisions in the Order;

iii) explain why the Minister considers that:

- there is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- the effect of the provisions are proportionate to the policy objective;
- the provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- the provisions do not remove any necessary protection;
- the provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- the provisions in the proposal are not constitutionally significant; and
- where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

v) identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE's website at:

<http://www.berr.gov.uk/whatwedo/bre/>

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

(a) appear to make an inappropriate use of delegated legislation;

(b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;

(l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order **Page 91** (Joint Committee)) as are

Agenda Item 10

32

Department for Culture, Media and Sport

Legislative Reform Order: Proposal to exempt small live music events from the Licensing Act 2003

relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

Regulatory Reform Committee (in the Commons):

http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm

Delegated Powers and Regulatory Reform Committee (in the Lords):

http://www.parliament.uk/parliamentary_committees/dpr.cfm

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the address set out in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
DPDC@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2830/2833/2837
Fax: 020 7219 2509
regrefcom@parliament.uk

Non-disclosure of responses

17. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Better Regulation Executive
Department for Business, Innovation and Skills

This page is intentionally left blank

1. **Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.**

We agree with the proposal that any exemption should apply wholly to the inside of a permanent building. In our experience this will assist with any possible noise breakout from performances which could disturb residents.

2. **Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.**

Again we agree with this proposal. The low numbers should assist with the quick and quiet dispersal of persons following the performance thus ensuring residents are not disturbed.

3. **Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.**

We agree with the proposal that the exempt performance should be wholly contained within any building where the performance is taking place. As per our response for Question 1. this will obviously assist with any possible noise breakout from performances (otherwise, for example, patio doors might be opened to allow people in a pub garden to see the performance thus allowing noise to escape).

4. **Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.**

We agree that any exempt performances should be restricted to the hours outlined. This Authority tends to receive more noise complaints the later an event goes on (and particularly over weekend periods) and therefore any restriction in hours will assist in controlling the potential for complaints to be received regarding late night noise.

5. **Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.**

We strongly agree that there should be a process of re-dress, for responsible authorities or interested parties, for those instances where premises (either licensed or unlicensed) are shown to be causing a noise nuisance.

However we are disappointed to note that, as with other previous measures introduced to remove unnecessary burdens for businesses, there is to be no extra funding for Local Authorities to deal with the convening and conduct of hearings, the display of notices etc arising from the new process.

Agenda Item 10

6. **Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.**

The review process is well known and we agree that it is therefore sensible that any “exclusion process” should follow that template.

However, as mentioned above, we are disappointed to note that there is to be no extra funding for Local Authorities to deal with this new “exclusion process”.

7. **Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.**

We agree with the reasoning that some level of scrutiny by the licensing authority is necessary to ensure that conditions that relate to other licensable activities at the premises are not removed (particularly in cases where it is judged that certain conditions are still required).

8. **Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why**

Yes.

9. **Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No? If No, please explain why.**

The Policy objective is stated as being to “remove unnecessary burdens on small live music events”. The exclusion process gives assurance to residents, and the Licensing Authority, that should problems be encountered then they have some recourse.

10. **Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.**

Yes, for the reasons outlined in 9. above.

11. **Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why.**

Yes, for the reasons outlined in 9. above.

12. **Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.**

An exclusion decision will take effect as soon as it is made (even if there is an appeal) thus ensuring that residents and others are not exposed to further noise nuisance or other problems.

13. Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

Yes

14. Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No. If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

We have no comments to make on this matter.

15. Do you think that this draft Order accurately reflects the proposed change?

Yes.

This page is intentionally left blank

Agenda Item 11

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: PROPOSED RESPONSE TO DCMS CONSULTATION – “PROPOSAL TO AMEND LICENSING ACT 2003 (PERSONAL LICENCE: RELEVANT OFFENCES)”

Report of: P. J. Moore,
Environmental Protection Director

Contact Officer: K.T. Coady,
Senior Licensing Officer
0151 934 2946

This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To advise Members of a DCMS Consultation on proposals to amend the Licensing Act 2003 to include new relevant offences for personal licence holders.

Recommendation(s)

That Members:

- i) Note this Report and its contents; and,
- ii) Endorse the proposed response contained in Annex 3

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None arising from this Report.

List of background papers relied upon in the preparation of this report

- The Licensing Act 2003.
- DCMS Consultation document – “Proposal to amend Licensing Act 2003 (Personal Licence: relevant offences)”

Agenda Item 11

Background

1. Members will recall that, under the Licensing Act 2003 (“the Act”), a personal licence authorises an individual to sell alcohol or to authorise the sale of alcohol in accordance with a premises licence. Every premises which sells alcohol is required to (subject to certain limited exemptions) have a designated premises supervisor (“DPS”) who holds a valid personal licence. A premises may have more than one personal licence holder but may only have one DPS (the requirement to have a DPS does not apply to certain community type premises which has applied for and obtained the alternative licence conditions).
2. The Licensing Authority must grant an application for a personal licence if:
 - The applicant is aged 18 or over;
 - The applicant possesses a licensing qualification accredited by the Secretary of State or is a person as prescribed by the Secretary of State by regulations;
 - The applicant has not forfeited a personal licence held by them in the 5 years ending with the day the application was made;
 - The applicant has paid the appropriate fee to the licensing authority; and
 - The police have not given an objection notice about the grant of a personal licence following notification of any unspent relevant offence or foreign offence. (N.B. we may still grant the application following such an objection notice if we do not consider it necessary to reject the application on crime prevention grounds.)
3. A relevant offence means an offence currently listed in Schedule 4 of the Act.
4. On 11th November 2008, the Licensing Sub-Committee had before them an objection notice, from Merseyside Police, in respect of a personal licence applicant who had in the Police’s opinion a serious unspent conviction. However it became apparent to the Police that the Conviction was omitted from the list of relevant offences and as a consequence the Police had no choice but to withdraw their objection.
5. The Sub-Committee were unhappy with this omission and as a consequence a letter was forwarded to the Home Office, the DCMS, local MP’s and LACORS on the matter. A copy of this correspondence is to be found within Annex 1 to this Report.
6. The DCMS has now published a consultation document seeking views on proposals to amend the Act to update the list of offences that are treated as relevant offences for the purposes of obtaining and holding a personal licence under Part 6 of the Act.
7. The last date for submission of responses is 12th March 2010 and a copy of the consultation document is included within Annex 2 to this Report.
8. A proposed response to this consultation is attached within Annex 3 to this Report.

Legal & Administrative Department

Town Hall
Lord Street
Southport
PR8 1DA

FIRST CLASS

The Home Office
Direct Communications Unit
2 Marsham Street
London
SW1P 4DF

Date: 17 November 2008
Our Ref: SC/AO
Your Ref:

Please contact: Mrs S Cain
Contact Number: 0151 934 2288
Fax No: 0151 934 2277
e-mail: suzette.cain@legal.sefton.gov.uk

Dear Sir,

APPLICATION FOR GRANT OF A PERSONAL LICENCE SECTION 120 - LICENSING ACT 2003

I write to you for and on behalf of the Licensing Sub Committee of Sefton Metropolitan Borough Council.

The Authority has recently received an application for the grant of a personal licence from an applicant who has an unspent conviction for conspiring to offer to supply a controlled Class A drug, contrary to Section 1 of the Criminal Law Act 1977. The applicant was sentenced to six years imprisonment (on appeal).

Despite being satisfied that granting a licence to an applicant with such a conviction would undermine the crime prevention objective, the Police are unable to object to the application, as the offence does not fall within the relevant offences listed within Schedule 4 of the Licensing Act 2003.

The Licensing Sub Committee wish to bring this anomaly to your attention. It is difficult to accept that it was the intention of the legislators to allow persons convicted of conspiracy offences to fall outside of the Act.

I should be grateful to receive your comments so that I may advise the Committee further.

Yours faithfully

LEGAL DIRECTOR



Minicom: 0151 934 4657



Lexcel
THE LAW SOCIETY

Caroline Elwood, LL.B. (Hons.) Dip.L.G., Solicitor
Legal Director



INVESTOR IN PEOPLE

This page is intentionally left blank



department for
**culture, media
and sport**

Proposal to amend Licensing Act 2003 (Personal Licence: relevant offences)

Licensing Act 2003

15 December 2009

improving
the quality
of life for all

Agenda Item 11

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Chapter 1: GENERAL INFORMATION.....2
Chapter 2: PERSONAL LICENCES AND CURRENT RELEVANT OFFENCES 6
Chapter 3: DETAILED PROPOSALS8
Chapter 4: SUMMARY OF QUESTIONS 17
ANNEX A: SCHEDULE 4 OF THE ACT 19
ANNEX B: OFFENCES PROPOSED TO BE ADDED 23
ANNEX C: IMPACT ASSESSMENT 32
ANNEX D: GOVERNMENT CODE OF PRACTICE ON CONSULTATION 48

Chapter 1: GENERAL INFORMATION

Executive Summary

- 1.1 This Consultation Document seeks your views on a proposal to amend the Licensing Act 2003 (“the Act”) to update the list of offences that are treated as relevant offences for the purposes of obtaining and holding a personal licence under Part 6 of the Act.
- 1.2 The Act came into force on 24th November 2005, bringing eight licensing regimes into one. It was a significant change in the way a number of activities were licensed and covers the regulation of the sale and supply of alcohol, public entertainment, theatre, cinema, late night refreshment and late night cafés. In general, the new licensing system appears to be functioning smoothly and has delivered a number of positive outcomes. However, the Government continues to monitor the Act and to listen to the experiences of those it affects.
- 1.3 Our enforcement partners have brought to our attention that there are some offences not currently included in the list of ‘Personal licence: relevant offences’ (“relevant offences”) in Schedule 4 to the Act which they believe should be included. The relevant offences relate to the application for a grant or renewal, and the forfeiture or suspension, of a personal licence. Enforcement authorities believe that there are a number of offences (“new offences”) that should be added to the relevant offences to enable the new offences to be capable of being considered as part of the process for obtaining and holding a personal licence.
- 1.4 The list of relevant offences has already been subject to amendment on two occasions. One amendment was technical (effectively removing a presentational inconsistency) and one amendment was substantive, to revise the list of sexual offences which are relevant offences (in part to bring the Act into line with new criminal justice legislation).
- 1.5 We have met with enforcement authorities including the Association of Chief Police Officers (ACPO), Police Federation, Police Superintendents’ Association of England and Wales, Magistrates’ Association and Local Authorities Coordinators of Regulatory Services (LACORS) to discuss the proposed new offences which they believe are appropriate for inclusion in the Act. These discussions have informed the list of proposed new offences which form the basis of this consultation. The Government now wishes to consult more widely in order to gauge whether the new offences are considered to be appropriate and whether any of the existing relevant offences should be removed.

- 1.6** This consultation seeks your views on:
- a) whether any relevant offences should be removed (see paragraphs 3.20-23 and for all existing relevant offences see Annex A).
 - b) whether the proposed new offences should be added to the relevant offences (see paragraphs 3.6-19 and Annex B)
 - c) two further offences the government is minded to include on the list of relevant offences (see paragraphs 3.24-26)
 - d) two areas for future consideration (see paragraphs 3.27-28)

We have not explicitly included a 'no change' option, but if the responses that we receive favour leaving the relevant offences as they currently stand, this option will be considered.

- 1.7** Broadly, we are consulting on whether to include failure to cooperate with a preliminary test when driving and those offences of conspiracy or attempt which are capable of being committed in connection with the existing relevant offences. For example, theft is an existing relevant offence and we are proposing to add the offences of conspiracy and attempt to commit theft. We also considered adding other offences as new offences but took the view that these were either too wide in scope or that they were not congruent with the nature or gravity of the relevant offences.

- 1.8** We consider that the proposed additions are not contentious but rather strive to ensure a consistent approach to the relevant offences. We have received considerable support for these proposals and are now seeking the opinions of a wider spectrum of those who may be affected.

Scope of consultation

- 1.9** The geographical scope of this consultation is England and Wales as it concerns the Licensing Act 2003, which applies to England and Wales.
- 1.10** This is a public consultation. We particularly seek views from those involved with the granting of personal licences such as licensing authorities, enforcement agencies, prospective and existing personal licence holders and those that work in or manage premises with a licence to sell or supply alcohol. However, we also welcome views from others and all responses will be carefully considered.
- 1.11** The consultation period will run for 12 weeks from 15 December 2009 to 12 March 2010.
- 1.12** Please respond before the closing date. There is a summary of the questions in chapter 4. Please send responses to licensingconsultation@culture.gsi.gov.uk. If you do not have access to e mail, please respond to:

Agenda Item 11

Nigel Wakelin
Licensing Team
Sport and Leisure Directorate
2-4 Cockspur Street
London SW1Y 5DH

- 1.13** As this is a largely technical issue with specialist interests following detailed discussions with enforcement agencies and local authority representatives, this will be a purely written exercise. Please contact the Licensing Policy team if you require any other format e.g. Braille, Large Font or Audio.
- 1.14** For enquiries about the handling of this consultation please contact the DCMS Public Engagement and Recognition Unit (PERU) at the above address or email using the form at www.culture.gov.uk/contact_us heading your communication "Consultation on proposal to amend list of relevant offences in Licensing Act 2003".
- 1.15** Copies of responses will be published after the consultation closing date on the Department's website: www.culture.gov.uk
- 1.16** Following consideration of the responses to the consultation, if it is decided to go ahead with amending the relevant offences, the Secretary of State may lay an Order before each House of Parliament. In accordance with section 197(3) of the Act, this Order will be subject to the negative resolution procedure.
- 1.17** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 ("FOIA"), the Data Protection Act 1998 ("DPA") and the Environmental Information Regulations 2004.
- 1.18** If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.19** The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Agenda Item 11

1.20 The consultation is guided by the Government's Code of Practice on Consultation which is available at: <http://www.berr.gov.uk/whatwedo/bre/code/page46954.html>

Chapter 2: PERSONAL LICENCES AND CURRENT RELEVANT OFFENCES

Granting Personal Licences

2.1 A personal licence authorises an individual to sell alcohol or to authorise the sale of alcohol in accordance with a premises licence. Every premises which sells alcohol is required to (subject to limited exemptions) have a designated premises supervisor (DPS) who holds a valid personal licence, although the DPS is not required to be on the premises at all times. A premises may also have more than one personal licence holder but only one DPS. The requirement to have a DPS does not apply to a community premises which has applied for and obtained the alternative licence condition under sections 25A or 41D of the Act.

2.2 A licensing authority must grant an application for a personal licence if:

- The applicant is aged 18 or over;
- The applicant possesses a licensing qualification accredited by the Secretary of State or is a person as prescribed by the Secretary of State by regulations;
- The applicant has not forfeited a personal licence held by them in the 5 years ending with the day the application was made;
- The applicant has paid the appropriate fee to the licensing authority; and
- The police have not given an objection notice about the grant of a personal licence following notification of any unspent relevant offence or foreign offence. (N.B. the licensing authority may still grant the application following such an objection notice if they do not consider it necessary to reject the application on crime prevention grounds.)

Current Relevant Offences

2.3 Relevant offence means an offence currently listed in Schedule 4 of the 2003 Act. A conviction that is spent for the purposes of the Rehabilitation of Offenders Act 1974 must be disregarded. If it appears that an applicant for the grant of a personal licence meets the requirements set out in paragraph 2.2 to be granted a personal licence detailed above, save that the applicant has a conviction for a relevant or foreign offence, the chief officer of police is given the opportunity to object to the application on the grounds that its grant would undermine the crime

prevention objective. If the chief officer of police does so object, the licensing authority must hold a hearing to determine the application. Similarly, if an applicant is applying to renew a personal licence and has a conviction for a relevant or foreign offence, the chief officer of police has the same opportunity to make objections and trigger a hearing by the licensing authority.

- 2.4** An unspent conviction does not necessarily preclude a person from being granted or renewing a personal licence, but their application will be scrutinised by the chief of police. In addition, where a court convicts a personal licence holder for a relevant offence, it has power under the Act to declare the licence suspended for a period of up to three months or to declare it forfeit.
- 2.5** The relevant offences can broadly be described as comprising either serious offences which are accepted as attracting societal disapproval (e.g. murder, serious assault, rape and other serious sex offences, drugs offences and theft), or relate directly to the types of activities in which those operating licensed premises will be, or have been, involved (e.g. consumer offences involving alcohol, unlawful broadcasting, unlawful gambling, unlicensed security provision, VAT evasion). For all existing relevant offences, see Annex A.

Chapter 3: DETAILED PROPOSALS

- 3.1** This section will set out a list of the proposed new offences. It will explain the scope of each offence, why it is being considered and ask whether it should be included. You can find a summary of the questions in Chapter 4.
- 3.2** We believe that schedule 4 should be kept as concise as possible. For this reason we have subjected the offences that we have considered to the following three tests:
1. Is the offence relevant to carrying out the duties required of a personal licence holder?
 2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
 3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?
- 3.3** In order to try and keep the list as concise as possible, we are also welcoming views and evidence of whether any existing relevant offences should be removed.
- 3.4** There are a number of additional offences that have been suggested by stakeholders and which the Government is minded to include, although it is not entirely clear how far they meet the requirements of the three tests, but may warrant inclusion as relevant offences. We would therefore like views on whether these offences should be included as relevant offences now, or at some point in the future when further evidence is available. There are also two further areas for consideration which we would welcome your views on.
- 3.5** For the proposed new offences, please see Annex B.

Failure to co-operate with a preliminary test

- 3.6** The existing list of relevant offences includes three offences under the Road Traffic Act 1988. In essence, these relate to either causing death by careless driving or driving whilst under the influence of alcohol or drugs. However, a noticeable omission is the offence of failing to co-operate with a requirement to provide a preliminary test (whether in relation to alcohol, impairment or drugs). Under section 6 of the Road Traffic Act 1988, a constable may require a person to co-operate with a preliminary test if, for example, a constable reasonably suspects

that the person is driving or has been driving when they have alcohol or a drug in their body, are under the influence of alcohol or a drug, or are impaired. A person commits an offence if without reasonable excuse they fail to co-operate with a preliminary test. A preliminary test includes any of the tests described in sections 6A to 6C of the Road Traffic Act 1988, which include a preliminary breath test (section 6A), a preliminary impairment test (section 6B) and a preliminary drug test (section 6C). We propose that the offence of failing to co-operate with a preliminary test is added to the relevant offences.

- 3.7 We believe that the addition of this offence removes this anomaly and introduces consistency into the existing regime.

Question

1. Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.

Conspiracy Offences

- 3.8 Many offences also have a related offence of conspiracy to commit that offence.
- 3.9 The crime of conspiracy is the agreement by two or more people to carry out a criminal act. The criminal act with which we are concerned is one or more of the relevant offences. Even if nothing is done beyond the agreement, the offence of conspiracy is complete. The agreement is key to the offence. This cannot be a mere mental operation; it must involve spoken or written words or other overt acts. If the defendant repents and withdraws immediately after the agreement has been concluded, they are still guilty of the offence. There must be an agreement to commit the criminal offence, but the motives of the conspirators are irrelevant.
- 3.10 Conspiracy arises in both statute and common law (common law is essentially the law developed by the courts). The Criminal Law Act 1977 creates and defines the offence of statutory conspiracy. It is not limited to agreements to commit a statutory crime (agreements to commit the common law offence of murder are charged under this offence). Under the common law, it is an offence to agree (a) to defraud, whether or not the fraud amounts to a crime, or (b) to do an act which tends to corrupt public morals or outrage public decency, whether or not the act amounts to a crime. The proposed new offences will not include this latter offence of conspiracy as it does not fall within the range of relevant offences. An agreement to commit a crime involving fraud or dishonesty is both a statutory conspiracy and a conspiracy to defraud.
- 3.11 The Government proposes that the related offences of conspiracy in respect of the existing relevant offences should be added to the list of relevant offences and

Agenda Item 11

therefore capable of being considered by the police in relation to applications for personal licences.

- 3.12** For the list of proposed offences of conspiracy offences which would be added, please see Annex B. We would add that each and every existing relevant offence does not have a corresponding offence of conspiracy as it is not possible to conspire to commit certain existing relevant offences. For example, there is a relevant offence of false trade description of goods in circumstances where the goods in question are or include alcohol under section 1 of the Trade Descriptions Act 1968. It is not possible to conspire to commit this offence. It should be clear from Annex B which relevant offences do have a corresponding offence of conspiracy.

Question

2. Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.

Attempt Offences

- 3.13** As with offences of conspiracy considered above, many offences also have a related offence of attempting to commit an offence. A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 if they do an act which is more than preparatory to the commission of the offence with the intention of committing an offence.
- 3.14** In each case it is a question of fact whether the accused has gone sufficiently far towards the full offence to have committed the act which is a key part of the attempt. If the accused has passed the preparatory stage, the offence of attempt has been committed and it is no defence that they then withdrew from committing the completed offence.
- 3.15** The Government proposes that the attempt offences in relation to the existing relevant offences should also be added to the list of relevant offences. We believe that the relevant offences are such that a conviction of attempting to commit any one of these offences should also be capable of being considered by the police in relation to applications for personal licences.
- 3.16** For the list of potential attempt offences that would be added, please see Annex B. We would add that each and every relevant offence does not have a corresponding offence of attempt as it is not possible to attempt to commit certain relevant offences. For example, there is a relevant offence of causing death by careless driving while under the influence of drink or drugs under section 3A of the Road Traffic Act 1988, but it is not possible to attempt to commit this offence. It should be clear from Annex B which relevant offences do have a corresponding offence of attempt.

Question

3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences? Please explain your answer.

4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.

Relevant Offences from Acts that the 2003 Act replaced.

3.17 There are a number of Acts that the 2003 Act wholly or partly repealed on 24 November 2005. However, as a person could have committed such an offence before the date of repeal and could therefore have held an unspent conviction for one or more of these offences, these were included in the existing list of relevant offences. These include the following Acts:

- London Government Act 1963
- Licensing Act 1964
- Private Places of Entertainment (Licensing) Act 1967
- Theatres Act 1968
- Late Night Refreshment Houses Act 1969
- Local Government (Miscellaneous Provisions) Act 1982
- Licensing (Occasional Permissions) Act 1983
- Cinemas Act 1985
- London Local Authorities Act 1990

3.18 A person could also have been convicted of a conspiracy or attempt to commit one of these relevant offences. As a result, we have considered including them in the list of new offences. However, we do not believe that any of the relevant offences under these Acts attracted a prison sentence exceeding six months, which means that any such convictions are all capable of becoming 'spent'. Whilst the rehabilitation period would vary from case to case depending on the nature and/or extent of the sentence and it would be possible that there are some convictions for these relevant offences which remain unspent, we have not been given any examples of an unspent conviction for any of these offences. We have therefore decided not to include new offences of attempt and conspiracy related to the relevant offences that were repealed by the 2003 Act.

3.19 We would welcome views on whether you think that this is an appropriate decision to have taken. We would also welcome any evidence of unspent convictions for the offences concerned.

Agenda Item 11

Questions

5. Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?

6. Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act.

Removal of Offences

3.20 We are also consulting on whether there are any offences currently included in the list of relevant offences that you feel should be removed. A list of the existing relevant offences is at Annex A.

3.21 All relevant offences should be judged against the general benchmark 'Should the police be capable of considering whether a person who has been convicted of the offence in question be granted a personal licence or might that not be appropriate because, for example it could undermine the crime prevention objective?' In order to help establish this, we would also encourage you to consider them against the three tests identified in paragraph 3.2. These are:

1. Is the offence relevant to carrying out the duties required of a personal licence holder?
2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?

3.22 There may also be relevant offences that you feel should not be included because the number of prosecutions for the particular offence is so low that their inclusion is not necessary.

3.23 It is our opinion that the list of relevant offences should be as concise as possible. Whilst we need to make sure that it contains all necessary protection to the public, we also believe that in order to develop a good working understanding of the offences, it should not contain any superfluous or unnecessary offences. We feel that it is important that police time is not wasted in considering offences that are either irrelevant to the duties of a personal licence holder or are of a minor nature which does not impact on the personal licence holder's duties. We would also not wish to deter people from applying for a personal licence unnecessarily. For these reasons, we would be particularly interested in hearing the views of the enforcement agencies.

Questions

7. Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?

Additional Offences

- 3.24** In addition to consulting on whether there are any offences in the relevant offences that you feel should be removed from the list, the Government is minded to include a further two offences, drunk and disorderly behaviour in a public place and possession of a controlled drug. Although we are mindful that the list of relevant offences should be as concise as possible, we feel there may be reason to include these offences even though it is not entirely clear at the present time that they pass the three tests.
- 3.25** A conviction for drunk and disorderly behaviour under section 91 of the Criminal Justice Act 1967 may indicate an irresponsible attitude towards alcohol. This offence will often be dealt with through the issue of a £80 penalty notice (which is not recorded as a conviction) which may suggest that it does not carry the same level of seriousness as existing relevant offences. However, it can be argued that, in more serious instances, there may be a prosecution and conviction which would then allow the police to consider the suitability of the offender to act as a personal licence holder. But it is also the case that a conviction may have resulted from an individual exercising their right to have the case heard in court (as opposed to accepting a penalty notice) rather than be an indication of the seriousness of the offence.
- 3.26** The existing relevant offences already recognise that licensed premises can be associated with drug dealing. Although the Government is proposing to add the offences of conspiracy and attempt to produce and/or supply a controlled drug to the list of relevant offences, it has been suggested that an unspent conviction for possession of a controlled drug under the Misuse of Drugs Act 1971, might also be a legitimate reason for the police to consider the suitability of a prospective personal licence holder, for example, if that individual is known to associate with drug dealers. As one of the three tests concerns the severity of the offence, the Government is particularly interested in views on whether possession of all classes of a controlled drug should be considered a relevant offence.

Questions

8. Should an unspent conviction for drunk and disorderly behaviour in a public place be included in the list of relevant offences? Please include the reasons for your view.

Agenda Item 11

9. Should an unspent conviction for the possession of a controlled drug be included in the list of relevant offences and, if so, which classes of a controlled drug should be included. Please include the reasons for your view.

Areas for further consideration

- 3.27** The Government has recently introduced new arrangements to deal with persistent sales of tobacco to under 18s and is considering whether such sales should be considered as a relevant offence. As this is a relatively new measure, will look at this again in the near future once its use and impact becomes clearer.
- 3.28** There are also offences under the Food Safety Act that are being considered as a part of the Government's work on a code of practice for the retail of alcohol. These offences are not yet part of legislation. Should they become statutory offences, Government is minded to consider whether these offences meet the three tests laid out above and to consider whether they are therefore appropriate to be included as 'relevant offences' under Schedule 4 of the Act

Question

10. Do you have any views on whether persistent sales of tobacco to under 18s and offences under the Food Safety Act should be reflected in the relevant offences?

Impact Assessment

- 3.29** An Impact Assessment accompanies this consultation at Annex C. For a more detailed explanation of the costs and benefits, please see this. We believe that the amendments proposed will have a marginal cost to businesses.
- 3.30** We have not been able to calculate the number of people that the new amendments will affect. This is largely because, other than failure to cooperate with a preliminary breath test, it has not been possible to obtain the data for how many people are convicted of the new offences.
- 3.31** In the case of the offence of failing to cooperate with a preliminary test, we were able to obtain data for the number of people convicted for failing to cooperate with a preliminary breath test. We could then calculate how many of these people are likely to apply for a personal licence. We then used this to base an estimate of the number of people likely to apply for a personal licence with a conviction for failing to cooperate with a preliminary impairment test or a preliminary drugs test. This supported our belief that a very small number of people would be affected.

For details of our findings, please see the Impact Assessment that accompanies this consultation at Annex C.

- 3.32** In respect of the proposed addition of the related offences of conspiracy and attempt, it has not been possible obtain statistics for offences of conspiracy other than conspiracy to murder because this is the only offence of conspiracy for which separate statistics are available; the figures for the number of convictions of other offences of conspiracy is not separated out from the related substantive offence. Basing an estimate on the incidence of conspiracy to murder alone would not provide us with an accurate indication of the incidence of the new offences as a whole, as the numbers of convictions for these is likely to vary significantly from offence to offence. The Ministry of Justice, which is responsible for compiling these statistics, has also advised that trying to collate data about the number of convictions for the new offences would take a disproportionate amount of time and effort in view of the small numbers of people likely to be affected.
- 3.33** Furthermore, having this data would not make it possible to calculate accurately how many of these people are likely to apply for a personal licence. It should also be taken into account that having an unspent conviction for a relevant offence does not preclude a person from being granted a personal licence, but instead means that the police will consider the application in light of such a conviction.
- 3.34** We do however estimate that the number of people affected by these proposals will be very small. Between April 2006 and March 2008, an average of 388 applications for a personal licence were refused per annum, representing 0.7% of all personal licence applications. The Government does not estimate that this would be significantly increased by the proposed changes. The changes will only affect those who would like to apply for or renew a personal licence and who have an unspent conviction for one or more of the proposed new offences.
- 3.35** There will be an application cost for those people that apply for a personal licence and are refused as a result of a new offence, which we estimate to be £284 per application (for a full break-down of this cost, please see the Impact Assessment at Annex C). It is however possible that some people with an unspent conviction for the new offences may be deterred from applying for a personal licence.
- 3.36** There is also a potential loss of earnings cost for those that are prevented or deterred from obtaining a personal licence based on the assumption that a person could command higher wages as a personal licence holder. However, these proposals would not preclude them from working in licensed premises and would not affect them in other employment fields. We therefore feel that the effect of this will be very small.

Benefits

- 3.37** The benefits of the proposal will be social rather than directly financial. The offences proposed are designed to enable greater scrutiny of people who have an unspent conviction of the offences proposed in order to help ensure that they uphold and promote the licensing objectives. This will allow the police to advise the licensing authority to refuse applications for a personal licence from persons

Agenda Item 11

that they consider unfit to fulfill the duties and responsibilities of a personal licence holder. This will help to ensure that licensed premises are responsibly run.

- 3.38** There could also be indirect benefits as if a licensed premises is responsibly run, the likelihood that it will have problems which could lead to a licence review and possibly to conditions being added to its premises licence is reduced. This would avoid a potentially costly and burdensome process.

Questions

11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?

12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?

13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?

Chapter 4: SUMMARY OF QUESTIONS

1. Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.
2. Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.
3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences? Please explain your answer.
4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.
5. Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?
6. Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act?
7. Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?

Agenda Item 11

8. Should an unspent conviction for Drunk and Disorderly be included in the list of relevant offences? Please include the reasons for your view.

9. Should an unspent conviction for Possession of Controlled Drugs be included in the list of relevant offences and, if so, which classes of controlled substances should be included. Please include the reasons for your view.

10. Do you have any views on whether persistent sales of tobacco to under 18s and offences under the food safety act should be reflected in the relevant offences?

11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?

12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?

13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?

ANNEX A: SCHEDULE 4 OF THE ACT

SCHEDULE 4

Section 113

PERSONAL LICENCE: RELEVANT OFFENCES

- 1 An offence under this Act.
- 2 An offence under any of the following enactments—
 - (a) Schedule 12 to the London Government Act 1963 (c 33) (public entertainment licensing);
 - (b) the Licensing Act 1964 (c 26);
 - (c) the Private Places of Entertainment (Licensing) Act 1967 (c 19);
 - (d) section 13 of the Theatres Act 1968 (c 54);
 - (e) the Late Night Refreshment Houses Act 1969 (c 53);
 - (f) section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982 (c 30);
 - (g) the Licensing (Occasional Permissions) Act 1983 (c 24);
 - (h) the Cinemas Act 1985 (c 13);
 - (i) the London Local Authorities Act 1990 (c vii).
- 3 An offence under the Firearms Act 1968 (c 27).
- 4 An offence under section 1 of the Trade Descriptions Act 1968 (c 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.
- 5 An offence under any of the following provisions of the Theft Act 1968 (c 60)—
 - (a) section 1 (theft);
 - (b) section 8 (robbery);
 - (c) section 9 (burglary);
 - (d) section 10 (aggravated burglary);

Agenda Item 11

- (e) section 11 (removal of articles from places open to the public);
 - (f) section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;
 - (g) section 13 (abstracting of electricity);
 - (h) section 15 (obtaining property by deception);
 - (i) section 15A (obtaining a money transfer by deception);
 - (j) section 16 (obtaining pecuniary advantage by deception);
 - (k) section 17 (false accounting);
 - (l) section 19 (false statements by company directors etc);
 - (m) section 20 (suppression, etc of documents);
 - (n) section 21 (blackmail);
 - (o) section 22 (handling stolen goods);
 - (p) section 24A (dishonestly retaining a wrongful credit);
 - (q) section 25 (going equipped for stealing etc).
- 6** An offence under section 7(2) of the Gaming Act 1968 (c 65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).
- 7** An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c 38)—
- (a) section 4(2) (production of a controlled drug);
 - (b) section 4(3) (supply of a controlled drug);
 - (c) section 5(3) (possession of a controlled drug with intent to supply);
 - (d) section 8 (permitting activities to take place on premises).
- 8** An offence under either of the following provisions of the Theft Act 1978 (c 31)—
- (a) section 1 (obtaining services by deception);
 - (b) section 2 (evasion of liability by deception).
- 9** An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c 2)—
- (a) section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc);
 - (b) section 170B (taking preparatory steps for evasion of duty).

- 10** An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c 7)—
 - (a) section 8G (possession and sale of unmarked tobacco);
 - (b) section 8H (use of premises for sale of unmarked tobacco).
- 11** An offence under the Forgery and Counterfeiting Act 1981 (c 45) (other than an offence under section 18 or 19 of that Act).
- 12** An offence under the Firearms (Amendment) Act 1988 (c 45).
- 13** An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c 48)—
 - (a) section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);
 - (b) section 107(3) (infringement of copyright by public performance of work etc);
 - (c) section 198(2) (broadcast etc of recording of performance made without sufficient consent);
 - (d) section 297(1) (fraudulent reception of transmission);
 - (e) section 297A(1) (supply etc of unauthorised decoder).
- 14** An offence under any of the following provisions of the Road Traffic Act 1988 (c 52)—
 - (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
 - (b) section 4 (driving etc a vehicle when under the influence of drink or drugs);
 - (c) section 5 (driving etc a vehicle with alcohol concentration above prescribed limit).
- 15** An offence under either of the following provisions of the Food Safety Act 1990 (c 16) in circumstances where the food in question is or includes alcohol—
 - (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
 - (b) section 15 (falsely describing or presenting food or drink).
- 16** An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c 26) (unauthorised use of trade mark, etc in relation to goods) in circumstances where the goods in question are or include alcohol.
- 17** An offence under the Firearms (Amendment) Act 1997 (c 5).
- 18** A sexual offence, being an offence—

Agenda Item 11

- (a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));
 - (b) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);
 - (c) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).
- 19** A violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, including an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).
- 20** An offence under section 3 of the Private Security Industry Act 2001 (c 12) (engaging in certain activities relating to security without a licence).
- 21** An offence under section 46 of the Gambling Act 2005 if the child or young person was invited, caused or permitted to gamble on premises in respect of which a premises licence under this Act had effect.
- 22** An offence under the Fraud Act 2006.
- 22** An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.
- 23** An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.

ANNEX B: OFFENCES PROPOSED TO BE ADDED

Failure to co-operate with a preliminary test

Road Traffic Act 1988 – Section 6(6).

A person commits an offence if without reasonable excuse he fails to co-operate with one or more of the preliminary tests described in sections 6A to 6C of the Road traffic Act 1988 in the circumstances set out in section 6(2) to (5) of that Act.

- These tests are:
- A – Preliminary breath test
 - B – Preliminary impairment test
 - C – Preliminary drug test

Attempt and conspiracy offences

The table below sets out potential new offences as a result of adding attempt and conspiracy to the list of relevant offences

Sch.4 s.	Offence	Attempt*	Conspiracy*
3	Firearms Act 1968	3 Business and other transactions with firearms and ammunition 5 Weapons subject to general prohibition 6 Power to prohibit movement of arms and ammunition	*with text where explicit 3 Business and other transactions with firearms and ammunition 5 Weapons subject to general prohibition 6 Power to prohibit movement of arms and ammunition
		17 Use of firearm to resist arrest (1) It is an offence for a person to make or attempt to make any use whatsoever of a firearm or imitation firearm with intent to resist or prevent the lawful arrest or detention of	

Agenda Item 11

		himself or another person.	
		21 Possession of firearms by persons previously convicted of crime (inc supply)	
		24 Supplying firearms to minors	24 Supplying firearms to minors
		25 Supplying firearm to person drunk or insane	25 Supplying firearm to person drunk or insane
		46 Power of search with warrant	
5	Theft Act 1968	1 Basic definition of theft	1 Basic definition of theft
		8 Robbery	8 Robbery
		9 Burglary	9 Burglary
		10 Aggravated burglary	10 Aggravated burglary
		11 Removal of articles from places open to the public	11 Removal of articles from places open to the public
		12A Aggravated vehicle-taking	12A Aggravated vehicle-taking
		13 Abstracting of electricity	13 Abstracting of electricity
		15 Obtaining property by deception	15 Obtaining property by deception
		15A Obtaining a money transfer by deception	15A Obtaining a money transfer by deception
		16 Obtaining pecuniary advantage by deception	16 Obtaining pecuniary advantage by deception
		20 Suppression, etc of documents	20 Suppression, etc of documents
		21 Blackmail	21 Blackmail
		22 Handling stolen goods	
7	Misuse of Drugs Act 1971	4(2) Production of a controlled drug	4(2) Production of a controlled drug
		4(3) Supply of a controlled drug	4(3) Supply of a controlled drug

8	Theft Act 1978	1 Obtaining services by deception 2 Evasion of liability by deception	1 Obtaining services by deception 2 Evasion of liability by deception
9	Customs and Excise Management Act 1979	170 Fraudulent evasion of duty	
10	Tobacco Products Duty Act 1979	8G Possession and sale of unmarked tobacco	8G Possession and sale of unmarked tobacco
11	Forgery and Counterfeiting Act 1981	1 The offence of using a false instrument 2 The offence of using a copy of a false instrument 3 The offence of using a false instrument 4 The offence of using a copy of a false instrument	1 The offence of forgery 2 The offence of copying a false instrument 3 The offence of using a false instrument 4 The offence of using a copy of a false instrument
		14 Offences of counterfeiting notes and coins	14 Offences of counterfeiting notes and coins
		15 Offences of passing etc. counterfeit notes and coins	15 Offences of passing etc. counterfeit notes and coins
		17 Offences involving the making or custody or control of counterfeiting materials and implements	17 Offences involving the making or custody or control of counterfeiting materials and implements
		20 Prohibition of importation of counterfeit notes and coins	20 Prohibition of importation of counterfeit notes and coins
		21 Prohibition of exportation of counterfeit notes and coins	21 Prohibition of exportation of counterfeit notes and coins
12	Firearms (Amendment) Act 1988	5 Restriction on sale of ammunition for smooth-bore guns 6 Shortening of barrels 15 Rifle and pistol clubs	5 Restriction on sale of ammunition for smooth-bore guns 6 Shortening of barrels 15 Rifle and pistol clubs
		Sch 4 Offences and enforcement (1) (museum causing person to fail to comply with condition for licence)	

Agenda Item 11

13	Copyright, Designs and Patents Act 1988			107(1)(d)(iii) Public exhibition in the course of a business of article infringing copyright 107(1)(d)(iii) Public exhibition in the course of a business of article infringing copyright 198(2) Broadcast etc of recording of performance made without sufficient consent 297(1) Fraudulent reception of transmission 297A(1) Supply etc of unauthorised decoder
15	Food Safety Act 1990	14 Selling food or drink not of the nature, substance or quality demanded	297(1) Fraudulent reception of transmission	14 Selling food or drink not of the nature, substance or quality demanded
16	Trade Marks Act 1994	92(1) Unauthorised use of trade mark, etc in relation to goods (in circumstances where the goods in question are or include alcohol)		92(1) Unauthorised use of trade mark, etc in relation to goods (in circumstances where the goods in question are or include alcohol)
18	Criminal Justice Act 2003 (Sexual Offences Act 1956)	66 An offence under section 1 of the Sexual Offences Act 1956 (rape) 67 An offence under section 2 of that Act (procurement of woman by threats) 68 An offence under section 3 of that Act (procurement of woman by false pretences) 69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse) 70 An offence under section 5 of that Act (intercourse with girl under thirteen) 71 An offence under section 6 of that Act (intercourse with girl under 16) 72 An offence under section 7 of that Act (intercourse with a defective)	66 An offence under section 1 of the Sexual Offences Act 1956 (rape) 67 An offence under section 2 of that Act (procurement of woman by threats) 68 An offence under section 3 of that Act (procurement of woman by false pretences) 69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse)	66 An offence under section 1 of the Sexual Offences Act 1956 (rape) 67 An offence under section 2 of that Act (procurement of woman by threats) 68 An offence under section 3 of that Act (procurement of woman by false pretences) 69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse)

			73 An offence under section 9 of that Act (procurement of a defective)
		73 An offence under section 9 of that Act (procurement of a defective)	
		74 An offence under section 10 of that Act (incest by a man)	
		75 An offence under section 11 of that Act (incest by a woman)	
		79 An offence under section 17 of that Act (abduction of woman by force or for the sake of her property)	79 An offence under section 17 of that Act (abduction of woman by force or for the sake of her property)
		80 An offence under section 19 of that Act (abduction of unmarried girl under eighteen from parent or guardian)	80 An offence under section 19 of that Act (abduction of unmarried girl under eighteen from parent or guardian)
		81 An offence under section 20 of that Act (abduction of unmarried girl under sixteen from parent or guardian)	81 An offence under section 20 of that Act (abduction of unmarried girl under sixteen from parent or guardian)
		82 An offence under section 21 of that Act (abduction of defective from parent or guardian)	82 An offence under section 21 of that Act (abduction of defective from parent or guardian)
		83 An offence under section 22 of that Act (causing prostitution of women)	
		84 An offence under section 23 of that Act (procurement of girl under twenty-one)	84 An offence under section 23 of that Act (procurement of girl under twenty-one)
		89 An offence under section 28 of that Act (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under sixteen)	
		90 An offence under section 29 of that Act (causing or encouraging prostitution of defective)	
			92 An offence under section 33 of that Act (keeping a brothel)
	Criminal Justice Act 2003 (Mental Health Act 1959)	92 An offence under section 128 of the Mental Health Act 1959 (sexual intercourse with patients)	

Agenda Item 11

	Criminal Justice Act 2003 (Theft Act 1968)	97 An offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape	
	Criminal Justice Act 2003 (Criminal Law Act 1977)	98 An offence under section 54 of the Criminal Law Act 1977 (inciting girl under sixteen to have incestuous sexual intercourse)	
	Criminal Justice Act 2003 (Protection of Children Act 1978)	99 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children)	
	Criminal Justice Act 2003 (Sexual Offences Act 2003)	102 An offence under section 1 of the Sexual Offences Act 2003 (rape)	
		103 An offence under section 2 of that Act (assault by penetration)	
		106 An offence under section 5 of that Act (rape of a child under 13)	
		107 An offence under section 6 of that Act (assault of a child under 13 by penetration)	
		109 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity)	
		110 An offence under section 9 of that Act (sexual activity with a child)	
		111 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity)	
			112 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child)
		113 An offence under section 12 of that Act (causing a child to watch a sexual act)	
		114 An offence under section 13 of that Act (child sex offences committed by children or young persons)	114 An offence under section 13 of that Act (child sex offences committed by children or young persons)
		116 An offence under section 15 of that Act (meeting a child following sexual grooming etc.)	
		117 An offence under section 16 of that Act (abuse of	117 An offence under section 16 of that Act (abuse of

	position of trust: sexual activity with a child)	position of trust: sexual activity with a child)
	120 An offence under section 19 of that Act (abuse of position of trust: causing a child to watch a sexual act)	
	121 An offence under section 25 of that Act (sexual activity with a child family member)	
	123 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice)	
		125 An offence under section 32 of that Act (engaging in sexual activity in the presence of a person with a mental disorder impeding choice)
	126 An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act)	126 An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act)
	128 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception)	
	130 An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)	130 An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)
	131 An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder)	
	132 An offence under section 39 of that Act (care workers: causing or inciting sexual activity)	
	134 An offence under section 41 of that Act (care workers: causing a person with a mental disorder to watch a sexual act)	
		135 An offence under section 47 of that Act (paying for sexual services of a child)

Agenda Item 11

					137 An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography)
				139 An offence under section 52 of that Act (causing or inciting prostitution for gain)	
				141 An offence under section 57 of that Act (trafficking into the UK for sexual exploitation)	141 An offence under section 57 of that Act (trafficking into the UK for sexual exploitation)
				142 An offence under section 58 of that Act (trafficking within the UK for sexual exploitation)	142 An offence under section 58 of that Act (trafficking within the UK for sexual exploitation)
				143 An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation)	143 An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation)
				144 An offence under section 61 of that Act (administering a substance with intent)	144 An offence under section 61 of that Act (administering a substance with intent)
				145 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence)	145 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence)
				147 An offence under section 64 of that Act (sex with an adult relative: penetration)	
				151 An offence under section 69 of that Act (intercourse with an animal)	
				152 An offence under section 70 of that Act (sexual penetration of a corpse)	
				153 An offence of— (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule, (b) conspiring to commit an offence so specified, or (c) attempting to commit an offence so specified.	153 An offence of— (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule, (b) conspiring to commit an offence so specified, or (c) attempting to commit an offence so specified.
19	Violent offences			The attempt to commit any offence leading, intended to lead or likely to lead to a person's death or to physical injury to a person, including arson (whether or not it would otherwise	The attempt to commit any offence leading, intended to lead or likely to lead to a person's death or to physical injury to a person, including arson (whether or not it would otherwise

		fall within this definition)	fall within this definition)	
20	Private Security Industry Act 2001	None	3 Engaging in certain activities relating to security without a licence	
22	Fraud Act 2006		2 Fraud by false representation	
			3 Fraud by failing to disclose information	
			11 Obtaining services dishonestly	
22	Business Protection from Misleading Marketing Regulations 2008		6 Misleading advertising (where the advertising in question relates to alcohol or goods including alcohol)	
23	Consumer Protection from Unfair Trading Regulations 2008		8 Commercial practice contravening professional due diligence distorting the economic behaviour of the consumer	
			11 Aggressive commercial practice	

ANNEX C: IMPACT ASSESSMENT

Summary: Intervention & Options		
Department /Agency: ■ Department of Culture, Media and Sport	Title: ■ Impact Assessment for proposals to amend the list of relevant offences in schedule 4 of the Licensing Act 2003.	
Stage: Consultation	Version: 1.3	Date: 07/10/2009
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Anna Woodham

Telephone: 0207 211 6435

What is the problem under consideration? Why is government intervention necessary?

The Government would like to consult on amending the list of 'Personal licence: relevant offences' in Schedule 4 to the Licensing Act 2003 ("the 2003 Act"), which result in an individual's application for a personal licence being considered against the crime prevention objective by the police. The current sections of the Act relating to relevant offences are working well but following representations from enforcement stakeholders, it was brought to our attention that there are several offences not currently included that there is good reason to include. We are consulting on whether certain offences should be added to the list and whether any should be taken away.

What are the policy objectives and the intended effects?

Having examined requests from key enforcement partners, the Government believes that there are some offences that should be included in the list of relevant offences in the Act but which aren't currently included. The Government agrees that an application for a personal licence submitted by a person with an unspent conviction for one or more of the proposed offences should be more carefully scrutinised than that of other applicants. There may also be some offences included in the list that are either little used, considered outdated, or not directly relevant to a person's suitability to hold a personal licence.

What policy options have been considered? Please justify any preferred option.

The Government has explored which offences to include with relevant stakeholders. We have only included those that satisfy tests identified below in order to establish if offences are appropriate to be included in schedule 4. Broadly speaking, the tests are that the offence is relevant to carrying out the duties of a personal licence holder; that there is evidence that supports including the offence; and that they are of a similar nature and gravity as the existing relevant offences. For the most part, we have added the corresponding offences for 'conspiracy' and 'attempt' (where appropriate) to the offences currently in the list. We are also proposing that the offences for failing to cooperate with a preliminary test under section 6(6) of the Road Traffic Act 1988 be included as this is a notable omission. See Annex B for a full list of proposed offences.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We will review the actual costs and benefits of the proposals three calendar years after implementation (subject to Parliament) if necessary and appropriate.

Ministerial Sign-off For Consultation Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Agenda Item 11

Summary: Analysis & Evidence

Policy Option: Relevant Offences

Description: Proposed amendments to schedule 4 of the Licensing Act 2003.

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups'</p> <p>The proposals will only affect a small number of individuals, so the cost to businesses will be marginal.</p> <p>It has not been possible to obtain data of how many people have unspent convictions for each offence and this would not provide us with a reliable basis as it is difficult to predict accurately how many of these people may apply for a personal licence in the future.</p>
	One-off (Transition)	Yrs	
	£ Marginal		
	Average Annual Cost (excluding one-off)		
	£ Marginal		<p>Total Cost (PV) £ Marginal</p>
Other key non-monetised costs by 'main affected groups': N/A			

BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p>
	One-off	Yrs	
	£ Marginal		
	Average Annual Benefit (excluding one-off)		
	£ Marginal		<p>Total Benefit (PV) £ Marginal</p>
Other key non-monetised benefits by 'main affected groups': Largely social. Greater scrutiny for personal licence applicants convicted of the proposed offences helping to ensure that personal licence holders uphold / promote the licensing objectives.			

Key Assumptions/Sensitivities/Risks

- That the number of people affected will be very small
- That there will be applications for a personal licence made by people with unspent convictions of the proposed offences in the future.

Price Base Year	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	-------------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		Subject to Parliament		
Which organisation(s) will enforce the policy?		Licensing Authorities		
What is the total annual cost of enforcement for these organisations?		Marginal		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro Marginal	Small Marginal	Medium Marginal	Large Marginal
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ Marginal	Decrease of	£ Marginal	Net Impact £ Marginal

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The Issue

1. The 2003 Act provides that individuals who may be engaged in making and authorising the sale of alcohol require a personal licence. This is because such a person has a large responsibility and a potential impact on crime and anti-social behaviour. Not every person retailing alcohol at a premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must at least be authorised by such a holder. Each premises with a licence to sell alcohol must have at least one personal licence holder, but may have several.
2. The responsibility of a personal licence holder means that the application process has several requirements such as that they must possess an accredited licensing qualification and they must be over 18. They are also required to provide a criminal records check with details of any unspent convictions they have. If an applicant does have an unspent conviction for a relevant or foreign offence, then the application is examined by the police who decide whether the applicant is suitable to hold the responsibilities of a personal licence holder. An unspent conviction does not necessarily preclude a person from being granted a personal licence, but does require that they are more thoroughly scrutinised.
3. The relevant offences in Schedule 4 to the Act are included because it is felt that they are offences that are either of a serious enough nature, or in some way related to the responsibilities of a personal licence holder to mean that their application to hold a personal licence should be more thoroughly considered. See Annex A for a full list of the existing relevant offences.
4. Key enforcement partners have alerted Government to the fact that there are some offences not currently included in the list of relevant offences but which they feel should be included. The Government has discussed the suggestions and considered the implications and would like to consult on whether certain offences should be included.
5. The Government is also concerned that there may be some offences currently included which are not appropriate for inclusion in this list. This may be because they are extremely little used, outdated, or not relevant to a person's suitability to hold a personal licence. We are also consulting on whether any offences should be removed.

Objectives and Intended Effects

6. The inclusion of additional offences is intended to tighten up the list of offences in order to make the 2003 Act more robust. The inclusion of some additional offences should achieve this. The intended effect is that the system for applying for a personal licence has an adequate level of scrutiny and ensures that personal licence holders uphold and promote the licensing objectives.
7. On the other hand, the list of relevant offences should not contain any unnecessary or disproportionate offences as this would be against the principles of better regulation. Whilst we need to make sure that it contains all necessary protection to the public, we also believe that in order to develop a good working understanding of the offences, it should not contain any superfluous or unnecessary offences. It is important that police

Agenda Item 11

time is not wasted in considering offences that are not relevant to the duties of a personal licence holder. We would also not wish to deter people from applying for a personal licence unnecessarily.

8. In order to strike this balance, we have drawn up three tests to judge each proposed new offence against. These are:
 1. Is the offence relevant to carrying out the duties required of a personal licence holder?
 2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
 3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?

The Government's Proposals

9. We are consulting whether the following offences should be added to the list of Relevant Offences:
 - Failure to cooperate with a preliminary test (section 6(6) of Road Traffic Act 1988)
 - Conspiracy offences relating to offences listed in Schedule 4
 - Attempt offences relating to offences listed in Schedule 4.
10. The Government has considered the proposed offences carefully and believes they satisfy these tests and is therefore in favour of including them as Relevant Offences for the purposes of obtaining a personal licence under the 2003 Act.
11. Any offences that are added to the list of relevant offences will apply to new applications and to applications for the renewal of a personal licence. It will not affect those who already hold a valid personal licence.
12. We would also like to consult on whether there are any offences in the current list that should be removed and two areas for further consideration, persistent sales of tobacco to under 18s and offences under the Food Safety Act.
13. The Government is also minded to include the offences drunk and disorderly behavior under section 91 of the Criminal Justice Act 1967 and an unspent conviction for possession of a controlled drug under the Misuse of Drugs Act 1971.
14. We have not explicitly included a 'no change' option, but if the responses that we receive favour leaving the relevant offences as they currently stand, this option will be considered.

Costs and Benefits

15. It has been extremely difficult to gather reliable data on which to base an accurate estimate of the costs and benefits of the proposals.
16. This is largely because we have not been able to calculate accurately the number of people that the new amendments will affect as, other than failure to cooperate with a preliminary breath test, it has not been possible to obtain the data for how many people

are convicted of the new offences per annum. A more detailed explanation as to why this has not been possible can be found in the relevant sections below.

Benefits

17. The benefits of the proposal will be social rather than directly financial. The offences proposed are designed to enable greater scrutiny of people who have an unspent conviction of the offences proposed in order to help ensure that they uphold and promote the licensing objectives. This will allow the police to object to the application for a personal licence on the grounds of crime prevention i.e. that they consider the person unfit to fulfill the duties and responsibilities of a personal licence holder. This will help to ensure that licensed premises are responsibly run.
18. There could also be indirect financial benefits as if a licensed premises is responsibly run, the likelihood that it will have problems which could lead to a licence review and possibly to conditions being added to its premises licence is reduced. This would avoid a potentially costly process.

Costs

Failure to Cooperate with a Preliminary Test

19. In the case of the offence of failing to cooperate with a preliminary test, we have been able to obtain data for the number of people convicted of failing to cooperate with a preliminary breath test between 2003 and 2007 from the Ministry of Justice's Office for Criminal Justice Reform Evidence and Analysis Unit. These figures show that 4,696 people were convicted of this offence over five years, an average of 939 per annum.
20. We can also calculate how many of these are likely to apply for a personal licence. Between April 2006 and March 2008, an average of 0.14% of the working population applied for a personal licence. Assuming that the same proportion of people that failed to cooperate with a breath test apply for a personal licence, 1.3 $[(0.14 \times 939) / 100]$ members of this group would apply for a personal licence and could be refused as a result of their conviction.
21. This represents a worst case scenario as a result of the following assumptions that we have made in reaching this figure are taken into account:
 - a. That this group is not deterred from applying for a personal licence as a result of a conviction for this new relevant offence.
 - That all of those that have an unspent conviction for this offence and apply for a personal licence have their application refused (this is not necessarily the case as an unspent conviction for a relevant offence does not preclude a person from being granted a personal licence, but rather means the police will consider the application in light of such a conviction).
22. This only represents failure to cooperate with a breath test, whereas section 6(6) of the Road Traffic Act also contains the offences of failure to cooperate with a preliminary impairment test and failure to cooperate with a preliminary drugs test. Although we have been unable to obtain data for these additional offences, we are told anecdotally that numbers of convictions for failing to cooperate with a preliminary impairment test or a preliminary drug test would be significantly smaller. However, in order to represent a worst case scenario, we have assumed that the same number of people are convicted

Agenda Item 11

for both of these offences individually as for failing to cooperate with a preliminary breath test. This means that our estimated total of people per annum who would apply for a personal licence and might be affected by our proposals as a result of their conviction for this offence is 3.5 people

23. This is a very small number and in light of the assumptions that we have outlined above, the actual number is likely to be even smaller.

Conspiracy and Attempt Offences

24. In respect of the proposed addition of the related offences of conspiracy and attempt, the Ministry of Justice, which is responsible for compiling these statistics, has informed us that they cannot separately identify conspiracies or attempts unless the statute specifically states the offence i.e. 'conspiracy to...'. Of the offences that we propose, this is only true for conspiracy to murder; the figures for the number of convictions of other offences of conspiracy or attempt are not separated out from the related substantive offence. Basing an estimate on the incidence of conspiracy to murder alone would not provide us with an accurate indication of the incidence of the new offences as a whole as the numbers of convictions for these is likely to vary significantly from offence to offence.
25. It has not been possible therefore to accurately estimate the number of convictions for related attempt and conspiracy offence. We believe the numbers will be very small, but if you have any data that may be useful to us in calculating the number of people likely to be affected, please submit it with your response.

Groups Affected

26. Between April 2006 and March 2008, an average of 388 applications for a personal licence were refused per annum, representing 0.7% of all personal licence applications. Due to the small number of people that we anticipate will be affected, the Government does not estimate that this would be significantly increased by the proposed changes.
27. We believe that any costs will be felt by two groups, individuals and local authorities.

Individuals

28. We are basing our costs to individuals on the following calculations:

Time to complete the necessary forms – estimated to be 1 hour	£10.61 ¹
Cost of applying and paying for a certificate that reveals the individual's	£23 (Disclosure

¹ Based on Office of National Statistics' annual survey of hours and earnings, which values the hourly pay for all employee jobs at £10.61.

criminal record or lack of one.	Scotland)
Cost of paying a fee	£37
Cost of time to attend a course for one day – estimated to be 6 hours	£63.66
Cost of the course	£150 (average cost)
Total	£284

29. The cost to individuals whose application is refused is £284.
30. In reality however, we believe that many people with an unspent conviction for a relevant offence will be deterred from applying and will not incur any costs.
31. There is a potential loss of earnings cost for those that are prevented or deterred from obtaining a personal licence based on the assumption that a person could command higher wages as a personal licence holder. However, these proposals would not preclude them from working in licensed premises and would not affect them in other employment fields. We therefore feel that the effect of this will be marginal.

Local authorities

32. Through increasing the number of relevant offences, the cost of an increase in the numbers of refused applications for local authorities would be represented in an increase in hearings.
33. When the fee levels were decided, they were established on the basis that the fee would cover the costs for processing and printing etc. However, the costs for disputes involving police intervention were also factored in, with the fee for all applicants designed to cover the small number of disputed costs and the administrative costs associated with the surrender of licences. As the assumption that the number of disputed cases would be small has been reflected in the statistics collected (an average of 0.53% of applications for a personal licence per annum went to a hearing between April 2006 and March 2008), and spread over the 378 local authorities, this cost should be covered by the personal licence application fees.
34. We therefore believe that the costs of the proposals for local authorities will be marginal.

Conclusions

35. Other than failure to cooperate with a preliminary breath test, we have not been able to gather reliable data for convictions for the new offences on which to base predictions for the increase in refused personal applications that the new offences are likely to result in. Through talking to our partners and the research that we have carried out to investigate these proposals, we have come to the conclusion that a very small number of people will be affected by our proposals. We would however welcome any input that can help us to calculate this more accurately.

Agenda Item 11

36. As a result of the small number of people that we estimate will be affected, we believe that costs of the proposals will be so small as to be recorded as **marginal** and that they will be outweighed by the benefits of increased scrutiny for personal licence holders.

Questions

(N.B. These questions can also be found in the main body of the consultation.)

Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?

Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?

Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?

Key Assumptions

37. Specific assumptions have been laid out in the sections above. We have also however made the following general assumptions:
38. As this will only apply to future applications and future applications for renewal, this consultation makes the assumption that there will be applications for personal licences made by people with unspent convictions for the offences proposed in this consultation in the future. Were this not the case, then it would not be necessary to include these offences. Our partners in the enforcement agencies have supported the need for these offences to be included and consider that it is necessary to include these offences. We are also however assuming that the number of people affected will be small.

Responses from Stakeholders

39. This consultation has been preceded by discussions with law enforcement agencies and agreement has been reached on which offences to put forward. Whilst several other offences were considered, it was felt that they did not meet the requirements. There was general consensus that the offences that we are proposing were the most appropriate.

Specific Impact Tests

Competition Assessment

40. As this will be an amendment that will apply to all licensed premises equally, we do not believe that there will be an impact on competition.

Small Firms Impact Test

41. As it is already a requirement that all licensed premises have at least one personal licence holder, we do not believe that the proposals will place a significant extra burden on small licensed premises. The proposals will only apply to new applications for a personal licence or renewals, so there will be no affect on existing premises until the personal licence holder needs to renew their licence, or there is a change in personal licence holder and this person has an unspent conviction for a new relevant offence. However, if this were the case, then it would be possible for the premises to nominate an employee without such a conviction.
42. There is a possibility that small firms with very few employees could be affected as if the personal licence holder were to have an unspent conviction for a relevant offence and need to renew their personal licence, they may need to hire an alternative employee and retrain them.
43. However, we have discussed this with stakeholders and they agree that this scenario will be rare and that well run companies will understand the reasoning behind these proposals.

Rural Proofing

44. We do not believe that this will affect rural areas more than urban areas, but would be interested to know whether you think that small rural areas with very few licensed premises would be disproportionately affected.

Question

Do you believe that the proposals will affect rural areas differently? If so, why?

Health Impact Assessment Screening

45. We have answered the screening questions for a health impact assessment and do not believe a health impact assessment is necessary. The proposal only proposes adding one substantive offence (failure to cooperate with a preliminary test) and we do not believe that this will have a health impact.

Agenda Item 11

Department for Culture, Media and Sport: Equality Impact Assessment – Initial Screening

Section	Notes
<p>1. Name of the function/policy to be assessed:</p> <p>Proposal to amend the list of relevant offences in Schedule 4 of the Licensing Act 2003</p>	
<p>2. What is the aim, objective or purpose of the policy?</p> <p>To give greater scrutiny over applicants for a personal licence who have unspent convictions for certain offences.</p> <p>To consult on whether to remove any offences currently in Schedule 4.</p>	
<p>3. What are the intended outcomes?</p> <p>To provide greater public protection through allowing police scrutiny of personal licence applicants who have been convicted of offences that may affect their ability to carry out the responsibilities of a personal licence holder in a satisfactory manner.</p> <p>To remove any unnecessary offences in Schedule 4 in order to cut unnecessary bureaucracy.</p>	<p><i>Consider:</i></p> <ul style="list-style-type: none"> • How will you monitor progress towards these outcomes? • Do the outcomes support or hinder other policies, values or objectives within the Department? • <i>If they hinder other work is this justifiable?</i>
<p>4. Who are the key stakeholders?</p> <p>Enforcement authorities, such as police, licensing authorities and magistrates.</p> <p>Those involved with licensing policy implementation such as LACORS and LGA.</p> <p>Licensed premises and their representatives.</p> <p>Personal licence holders.</p>	<ul style="list-style-type: none"> • <i>Who are the groups/individuals likely to be affected by the function or policy?</i> • <i>Who else might have a significant interest in the implementation of this policy?</i> • <i>Who else might have knowledge of the impact or potential impact of the policy or function?</i>
<p>5. Is the aim of the policy or any of its intended outcomes designed specifically to meet the Public Duties, for example to:</p> <ul style="list-style-type: none"> ➢ Eliminate discrimination? ➢ Promote equality of opportunity? ➢ Promote good relations between different groups? <p>NO</p> <p><i>[Most functions, policies and practices will not be designed specifically to meet the Public Duties.]</i></p>	<ul style="list-style-type: none"> • <i>For example, a policy that has the aim of preventing harassment and bullying</i> • <i>If the answer is YES to any of the questions, then you are required to proceed to a full impact assessment. You should turn to section 13, though please note that sections 7-12 will help you to conduct a full assessment</i>

<p><i>You need only answer ‘yes’ if the specific intent of the function, policy or practice is to meet the public duties. Otherwise, move on to section 6]</i></p>	
<p>6. Does the function or policy involve or have consequences for members of the public or staff employed by the Department?</p> <p style="text-align: center;">YES</p>	<ul style="list-style-type: none"> • <i>If the answer is YES proceed to section 7</i> • <i>If the answer is NO list the evidence or other justification opposite or on an attached sheet that identifies why the function or policy has no consequences for members of the public or for staff employed by the Department</i> • <i>If the evidence that you have indicates that there is no impact or likely impact you do not need to conduct an impact assessment but you do need to monitor the implementation of the policy over time to ensure that there continues to be no impact on people. At a minimum this should be every three years</i> • <i>If you are sure the answer is NO, proceed to sections 13 and 14</i>
<p>7. Is there any evidence that tells you how the function or policy is working or is intended to work for the intended stakeholders?</p> <p>YES Schedule 4 of the Licensing Act 2003 already lists certain offences that result in police scrutiny for a personal licence applicant who has an unspent conviction for any of these offences. DCMS’s statistical bulletins show that the number of people affected is very small – an average of 393.65 per annum. The Government proposes adding one stand alone offence under section 6 of the Road Traffic Act 1988 and offences of attempt and conspiracy in relation to those offences already listed in Schedule 4.</p> <p>We have not been able to obtain reliable data to estimate the exact number of people affected by the new offences, but we believe that it will be small and have some evidence to support this.</p>	<ul style="list-style-type: none"> • <i>If you have no evidence available, then you will not be able to assess if the policy is relevant to equality</i> • <i>You will need to gather evidence about the effects of the policy on stakeholders. (Please refer to section 2 of the guidance notes on gathering evidence)</i> • <i>You should also consider consulting with stakeholder groups and involving disabled people at this stage (Please refer to section 5 on consulting and involving)</i> • <i>When you have gathered evidence of the effects of the policy on the intended stakeholders, you can then proceed with the initial screening</i> • <i>You should ensure that the actions necessary to collect the evidence are identified in an action plan</i>
<p>8. From the available evidence, is there any reason to believe that people are affected differently or are likely to be affected differently according to any of the listed equality strands, for example, because they have different needs or priorities?</p>	<ul style="list-style-type: none"> • <i>If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 9-12 will</i>

Agenda Item 11

	Yes	No	Not known		
Age		X			
Disability		X			
Gender		X			
Race		X			
Religion		X			
Sexual Orientation		X			

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

We have heard from stakeholders that the process of applying for a personal licence does not currently affect any of the above strands differently and see no reason why the proposed changes would do so.

9. Is there any evidence that the function or policy in any way discriminates or might discriminate unlawfully, directly or indirectly against people from any of the listed strands, for example, in terms of access to a service, or the ability to take advantage of an opportunity?

	Yes	No	Not Known
Age		X	
Disability		X	
Gender		X	
Race		X	
Religion		X	
Sexual Orientation		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

As in Section 8, stakeholders have told us that the way that the system currently operates does not affect any of these strands differently. We see no reason why the proposed changes would do so.

10. Are there Specific ways in which this policy positively promotes equality and inclusion. Mark down specific ways it already does, or will do this? Groups to consider: Disabled, Black and Minority Ethnic, Woman, Men, Transgender, Older, Younger, Faith Groups,

- help you to conduct a full assessment*
- *If the answer is No and the evidence supports this, proceed to section 9*
 - *If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above*
- *If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 10-12 will help you to conduct a full assessment*
- *If the answer is No and the evidence supports this, proceed to section 10*
 - *If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above*
- *If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 11-12 will*

<p style="text-align: center;">Gay Lesbian and Bisexual.</p> <p>No. As in sections 8 and 9, we do not believe that this policy will affect these groups differently. This view has been supported by stakeholders.</p>	<p><i>help you to conduct a full assessment</i></p> <ul style="list-style-type: none"> • <i>If the answer is No and the evidence supports this, proceed to section 11</i> • <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i> 																												
<p>11. Is there any evidence that people from the groups covered by the listed strands have or may have different expectations of the function or policy in questions?</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 10%;">Yes</th> <th style="width: 10%;">No</th> <th style="width: 20%;">Not Known</th> </tr> </thead> <tbody> <tr><td>Age</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Disability</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Gender</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Race</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Religion</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Sexual Orientation</td><td></td><td style="text-align: center;">X</td><td></td></tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p>Stakeholders do not believe that any of the groups above will have different expectations of the proposed regulatory change.</p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion		X		Sexual Orientation		X		<ul style="list-style-type: none"> • <i>If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 11-12 will help you to conduct a full assessment</i> • <i>If the answer is No and the evidence supports this, proceed to section 11</i> • <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i>
	Yes	No	Not Known																										
Age		X																											
Disability		X																											
Gender		X																											
Race		X																											
Religion		X																											
Sexual Orientation		X																											
<p>12. Is there any evidence that the function or policy affects or might affect relations between groups covered by the listed strands, for example is it, or might it, be seen as favouring a particular group or denying opportunities to another?</p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 10%;">Yes</th> <th style="width: 10%;">No</th> <th style="width: 20%;">Not Known</th> </tr> </thead> <tbody> <tr><td>Age</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Disability</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Gender</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Race</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Religion</td><td></td><td style="text-align: center;">X</td><td></td></tr> <tr><td>Sexual Orientation</td><td></td><td style="text-align: center;">X</td><td></td></tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available.</p> <p>As above, discussions with stakeholders indicate that the proposed regulatory change</p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion		X		Sexual Orientation		X		<ul style="list-style-type: none"> • <i>If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 12 will help you to conduct a full assessment</i> • <i>If the answer is No and the evidence supports this, proceed to section 12</i> • <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i>
	Yes	No	Not Known																										
Age		X																											
Disability		X																											
Gender		X																											
Race		X																											
Religion		X																											
Sexual Orientation		X																											

Agenda Item 11

<p>will not favour a particular group or deny opportunities to another.</p>																													
<p>13. Have previous consultations with relevant stakeholder groups or individuals indicated that policies of this type create exclusion or hold specific challenges for any of the listed groups?</p> <table border="1" data-bbox="135 492 801 772"> <thead> <tr> <th></th> <th>Yes</th> <th>No</th> <th>Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table> <p>Our pre-consultation discussions with enforcement bodies and further discussion with stakeholders indicate that the proposals will not create exclusions or hold specific challenges for any of the groups listed.</p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion		X		Sexual Orientation		X		<ul style="list-style-type: none"> • <i>If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13</i> • <i>If the answer is No and the evidence supports this, proceed to section 13</i> • <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i>
	Yes	No	Not Known																										
Age		X																											
Disability		X																											
Gender		X																											
Race		X																											
Religion		X																											
Sexual Orientation		X																											
<p>14. Is a full impact assessment required?</p> <p>NO We do not believe that the proposals will affect any of the groups under the listed strands in a different way. The changes do not introduce a new aspect of the Licensing Act 2003, but rather amend a system that is currently operating and feedback from stakeholders indicate that the list of relevant offences does not affect any of the strands listed in a different way. We do not believe that the proposed changes would affect any of these strands differently.</p>	<ul style="list-style-type: none"> • <i>If the answer is NO please use the space opposite to summarise why and attach any further supporting evidence</i> • <i>If the answer is YES you will need to arrange to carry out a full impact assessment</i> • <i>Please note that the information that you have already identified in this initial screening will be valuable to you in carrying out the full impact assessment</i> 																												
<p>15. If a full impact assessment is not required, please indicate the plans to monitor the implementation of this policy over the next three years.</p> <p>If appropriate, we will check with key stakeholders whether the statement in section 14 is still correct 12 months after the regulatory change (subject to Parliament) is enacted.</p>																													
<p>16. Please return a copy of this form to:</p>	<p><i>Name: Anna Woodham</i></p>																												
	<p><i>Unit/Directorate: Licensing Policy Team; Sport and Leisure Directorate.</i></p>																												
	<p><i>Date: 06/12/2009</i></p>																												

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	No	No
Rural Proofing	Yes	No

ANNEX D: GOVERNMENT CODE OF PRACTICE ON CONSULTATION

THE SEVEN CONSULTATION CRITERIA

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

- 1. Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.**

As Licensing Authority we would expect any eventual personal licence holder to co-operate with the Police in the course of their duties and therefore in principle we support the inclusion of this offence.

However the information contained in the consultation document does not indicate either:

- that there is the likelihood of a high number of applicants who would have such a conviction, or,
- that the failure to include the offence has caused problems for authorities in the past.

We therefore have concerns as to whether the test set out in Paragraph 3.2 of the consultation document is satisfied.

- 2. Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.**

We support the inclusion of conspiracy offences.

There is currently a major anomaly in the list of relevant offences and we have had occasion where we have had no alternative but to grant a personal licence to an applicant who had serious conspiracy offences and who had received a custodial sentence.

Clearly such a conspiracy offence can be just as serious as the corresponding actual offence and allowing someone to have a personal licence with such a conviction would, in our opinion, undermine the Crime & Disorder licensing objective.

- 3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences? Please explain your answer.**

We support the inclusion of Criminal Attempts Act 1981 offences, for similar reasons to those described above.

Anybody convicted under this Act would demonstrate that they had the criminal intent to commit the offence. Again this would be another anomaly which, if not rectified, would undermine the Crime & Disorder licensing objective.

- 4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.**

No, for the reasons outlined above. However please see our qualification under Question 1 in respect of the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988.

Agenda Item 11

5. **Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?**

We agree with the reasoning behind the decision not to include conspiracy and attempt offences relating to relevant offences arising from those Acts repealed by the 2003 Act.

6. **Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act?**

We have no evidence of these types of unspent convictions.

7. **Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?**

We would query whether Paragraph 18 (C) (“an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress)”) should remain in the list of relevant offences.

This on the basis that we suspect that the number of convictions for this offence is low.

8. **Should an unspent conviction for Drunk and Disorderly be included in the list of relevant offences? Please include the reasons for your view.**

We believe that an unspent conviction for Drunk and Disorderly in a public place should be included in the list of relevant convictions.

The reason being that the offence is clearly related to the duties of a personal licence holder.

9. **Should an unspent conviction for Possession of Controlled Drugs be included in the list of relevant offences and, if so, which classes of controlled substances should be included. Please include the reasons for your view.**

We believe that an unspent conviction for Possession of any Controlled Drug should be included in the list of relevant offences.

Again, the offence is relevant to the duties of a personal licence holder and is a serious offence. In Sefton we promote a zero tolerance to drugs on licensed premises and we do not differentiate between classes of drugs and for that reason all should be included.

10. **Do you have any views on whether persistent sales of tobacco to under 18s and offences under the food safety act should be reflected in the relevant offences?**

We would prefer to see what effect the new arrangements for the sale of tobacco to under 18's, and the offences under the Food Safety Act, have before commenting upon their inclusion to the list of relevant offences.

Agenda Item 11

- 11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?**

We have no comments to make with regard to this question.

- 12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?**

We have no comments to make with regard to this question.

- 13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?**

We are unable to provide you with the information you request.

This page is intentionally left blank

Agenda Item 12

REPORT TO: LICENSING & REGULATORY COMMITTEE

DATE: 22nd February 2010

SUBJECT: **GENERAL LICENSING – FEES AND CHARGES 2010/2011**

WARDS AFFECTED: All

REPORT OF: P.J. Moore,
Environmental Protection Director

CONTACT OFFICER: K.T. Coady,
Senior Licensing Officer,
0151 934 2946

**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

To seek the approval of Members for proposed changes to fees and charges for General Licensing Services in 2010/11.

REASON WHY DECISION REQUIRED:

In order to maintain cost recovery for the General Licensing services provided.

RECOMMENDATION(S):

That Licensing and Regulatory Committee:

- (i) Endorse the proposed fees and charges for 2010/11 as listed in the Annex; and
- (ii) Recommends that Cabinet approve the proposed fees and charges for 2010/11.

That Cabinet:

- (i) Approve the proposed fees and charges for 2010/11 as listed in the Annex.

KEY DECISION: No

FORWARD PLAN: No

IMPLEMENTATION DATE: 1st April 2010

Agenda Item 12

ALTERNATIVE OPTIONS:

Not to agree the proposed fees and charges which would have significant budgetary implications for the department.

IMPLICATIONS:

Budget/Policy Framework: Fees and Charges are outside the budget setting framework.

Financial:

Many of the licensing fees & charges are set nationally. Where this is not the case and increases are proposed, the increases reflect the costs of inflation and are required for the General Licensing Services to maintain cost recovery for the services provided.

<u>CAPITAL EXPENDITURE</u>	2009/ 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure	-	-	-	-
Funded by:	-	-	-	-
Sefton Capital Resources	-	-	-	-
Specific Capital Resources	-	-	-	-
<u>REVENUE IMPLICATIONS</u>	-	-	-	-
Gross Increase in Revenue Expenditure	-	-	-	-
Funded by:	-	-	-	-
Sefton funded Resources	-	-	-	-
Funded from External Resources	-	-	-	-
Does the External Funding have an expiry date? Y/N N	When?			
How will the service be funded post expiry?				

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities		√	
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy		√	
8	Children and Young People		√	

Legal: None

Risk Assessment: None

Asset Management: None

Consultation Undertaken/Views

None

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

None

Agenda Item 12

Background

1. This matter originally came before Members on 18th January 2010. At that time it was RESOLVED that:
 - (1) the proposed fees and charges for 2010/11 as detailed in the Annex to the report be deferred until the next appropriate meeting of the Committee; and
 - (2) a report outlining the expected income from Gambling Act fees for 2010/2011 and the anticipated costs arising from the Licensing Authority's costs for carrying out its functions under the Gambling Act be brought to the next appropriate meeting of the Licensing and Regulatory Committee.
2. The majority of fees applicable to local licensing matters are set by Central Government. Where an increase has been proposed in the Annex to this report, that increase is inline with inflation and LACORS guidance.

Gambling Act Premise Licence fees

3. Members will recall that unlike the Licensing Act 2003, where the fees are set centrally, the fees for Gambling Act Premise Licences are determined by the licensing authorities themselves. These fees being up to a maximum prescribed limit which has been set centrally.
4. When determining these fees, the Licensing Authority is limited to setting those that recover the costs of carrying out their functions under the Gambling Act, in other words this means that the service should be cost neutral. Costs will cover administration (including hearings and appeals), inspection, and enforcement and will include direct costs and indirect costs, including a full proportional share of overhead costs, insurance, depreciation and cost of capital charge.
5. These fees were initially agreed by Members at their Meeting on 26th March 2007. For years 2008/2009 and 2009/2010 it was agreed not to up rate these fees as the new regime was still fairly new; had not yet had a chance to fully "bed in"; and, Officers had not yet fully inspected all relevant premises and risk rated them for targeted inspection in later years.
6. In formulating the original fees certain assumptions were made with regard to the extent of work that would be involved for the Authority in carrying out its functions under the new regime.
7. These assumptions concerned the:
 - Number of applications that would be received each year (this process included the vetting of files, the copying of plans, the inputting of files onto the Authority computer system, maintenance of the Licensing

Agenda Item 12

Register, corresponding with the Gambling Commission and issuing the Licences/Notices);

- Number of representations that would be received each year (this process included Officer involvement in mediation between parties, the preparation of Committee Reports, the sending out of Committee Reports and invites to all parties, the holding of hearings, the notification of Committee results to all parties, and appeals against Committee decisions);
- Number of requests for service that would be received for Gambling premises each year (this process included complaints and requests for information, legal advice etc.); and,
- Number of Inspections that would be required to be completed each year (this process included travelling time, inspection time at the premises, follow up letters and re-inspections).

8. These assumptions have been re-visited and it is apparent that:

- More Licences are now in force than were anticipated (meaning that the Authority will receive more annual fees than expected);
- More requests for service are being received than was anticipated;
- Less applications are being received per year than was anticipated;
- Less representations are being received per year than was anticipated; and,
- Fewer hearings are taking place per year than was anticipated.

9. At the time of compiling this Report the Gambling Act inspection programme has not yet been completed but it is anticipated that the following numbers will require targeted inspections for 2010/2011 and subsequent years:

Risk Rated A (inspected every year)	33
Risk Rated B (inspected every two years)	18

10. This will mean that Officers will need to inspect 42 premises per year. This figure is less than the 50 that was assumed for the exercise outlined in Paragraph 7.

Costs

11. For 2010/2011 the Authority will receive annual fees from Gambling Act Premise Licences totalling £43,530.

Agenda Item 12

12. It is estimated that the costs of carrying out the Authorities functions under the Gambling Act for 2010/2011 will be as follows:

Dealing with applications received	£ 2,404.87
Dealing with representations / hearings etc.	£ 9,702.36
Dealing with requests for service	£16,656.00
Targeted inspection of premises	£ 7,993.08
Future Policy amendments	£ 2,804.45
TOTAL:	£39,560.76

13. This will leave a surplus of £3,969.24 for any unanticipated costs arising from the Act.

Conclusion

14. Sufficient income will be received, in respect of Gambling Premise Licences, to cover the Licensing Authorities costs in carrying out its functions under the Gambling Act 2005 for 2010/2011 and as a consequence no up rating of these fees is recommended.

Annex

Details	VAT rate	Date of last increase	Previous 2009/10 charges	Proposed 2010/11 charges	Percentage increase on charge	Chief Officer Comments
			£ p	£ p	%	

GENERAL LICENSING

SEX ESTABLISHMENT LICENCES

Initial application	) )	1.4.09	1171.00	1206.00	3%
Annual renewal	) (O))	1.4.09	1171.00	1206.00	3%
Transfer of licence	) )	1.4.09	587.00	605.00	3%

DANGEROUS WILD ANIMALS))	1.4.09	59.00	61.00	3%
------------------------	-----	--------	-------	-------	----

ZOOS) (O))	1.4.09	609.00	627.00	3%
------	---------	--------	--------	--------	----

ANIMAL BOARDING ESTABLISHMENTS

over 50 animals	) )	1.4.09	93.00	96.00	3%
6 to 50 animals	) )	1.4.09	59.00	61.00	3%
1 to 5 animals	) )	1.4.09	36.00	37.00	3%

PET SHOPS))	1.4.09	59.00	61.00	3%
-----------	-----	--------	-------	-------	----

RIDING ESTABLISHMENTS))	1.4.09	128.00	132.00	3%
-----------------------	-----	--------	--------	--------	----

BREEDING OF DOGS))	1.4.09	59.00	61.00	3%
------------------	-----	--------	-------	-------	----

TATTOOING, EAR PIERCING) (O))				
-------------------------	---------	--	--	--	--

Agenda Item 12

Details	VAT rate	Date of last increase	Previous 2009/10 charges	Proposed 2010/11 charges	Percentage increase on charge	Chief Officer Comments
ACUPUNCTURE, ELECTROLYSIS))					
person	) )	1.4.09	13.00	13.40	3%	
premises	) )	1.4.09	59.00	61.00	3%	
HYPNOTIST	) )	1.4.09	93.00	96.00	3%	
MOTOR SALVAGE	) )	1.4.09	81.00	83.00	3%	
GAMBLING ACT 2005						
REGIONAL CASINO PREMISE LICENCE						
Grant	) )	N/A	15000.00	15000.00	Nil	
Annual fee	) )	N/A	15000.00	15000.00	Nil	
Variation	) )	N/A	7500.00	7500.00	Nil	
Transfer	) )	N/A	6500.00	6500.00	Nil	
Re-Instatement	) )	N/A	6500.00	6500.00	Nil	
Provisional Statement	) )	N/A	15000.00	15000.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
LARGE CASINO PREMISE LICENCE						
Grant	) )	N/A	10000.00	10000.00	Nil	
Annual fee	) )	N/A	10000.00	10000.00	Nil	
Variation	) )	N/A	5000.00	5000.00	Nil	
Transfer	) )	N/A	2150.00	2150.00	Nil	
Re-Instatement	) )	N/A	2150.00	2150.00	Nil	
Provisional Statement	) )	N/A	10000.00	10000.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
SMALL CASINO PREMISE LICENCE						
Grant	) )	N/A	8000.00	8000.00	Nil	
Annual fee	) )	N/A	5000.00	5000.00	Nil	
Variation	) )	N/A	4000.00	4000.00	Nil	
Transfer	) )	N/A	1800.00	1800.00	Nil	
Re-Instatement	) )	N/A	1800.00	1800.00	Nil	
Provisional Statement	) )	N/A	8000.00	8000.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
CONVERTED CASINO PREMISE LICENCE						
Annual fee	) )	N/A	1800.00	1800.00	Nil	
Variation	) )	N/A	1200.00	1200.00	Nil	
Transfer	) )	N/A	810.00	810.00	Nil	
Re-Instatement	) )	N/A	810.00	810.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
BINGO PREMISE LICENCE						
Grant	) )	N/A	2100.00	2100.00	Nil	
Annual fee	) )	N/A	600.00	600.00	Nil	
Variation	) )	N/A	1050.00	1050.00	Nil	

Agenda Item 12

Details	VAT rate	Date of last increase	Previous 2009/10 charges	Proposed 2010/11 charges	Percentage increase on charge	Chief Officer Comments
Transfer	) )	N/A	720.00	720.00	Nil	
Re-Instatement	) )	N/A	720.00	720.00	Nil	
Provisional Statement	) )	N/A	2100.00	2100.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
ADULT GAMING PREMISE LICENCE						
Grant	) )	N/A	1200.00	1200.00	Nil	
Annual fee	) )	N/A	600.00	600.00	Nil	
Variation	) )	N/A	600.00	600.00	Nil	
Transfer	) )	N/A	720.00	720.00	Nil	
Re-Instatement	) )	N/A	720.00	720.00	Nil	
Provisional Statement	) )	N/A	1200.00	1200.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
BETTING PREMISE (TRACK) LICENCE						
Grant	) )	N/A	1500.00	1500.00	Nil	
Annual fee	) )	N/A	600.00	600.00	Nil	
Variation	) )	N/A	750.00	750.00	Nil	
Transfer	) )	N/A	570.00	570.00	Nil	
Re-Instatement	) )	N/A	570.00	570.00	Nil	
Provisional Statement	) )	N/A	1500.00	1500.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
FAMILY ENTERTAINMENT PREMISE LICENCE						
Grant	) )	N/A	1200.00	1200.00	Nil	
Annual fee	) )	N/A	450.00	450.00	Nil	
Variation	) )	N/A	600.00	600.00	Nil	
Transfer	) )	N/A	570.00	570.00	Nil	
Re-Instatement	) )	N/A	570.00	570.00	Nil	
Provisional Statement	) )	N/A	1200.00	1200.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
BETTING PREMISES (OTHER) LICENCE						
Grant	) )	N/A	1800.00	1800.00	Nil	
Annual fee	) )	N/A	360.00	360.00	Nil	
Variation	) )	N/A	900.00	900.00	Nil	
Transfer	) )	N/A	720.00	720.00	Nil	
Re-Instatement	) )	N/A	720.00	720.00	Nil	
Provisional Statement	) )	N/A	1800.00	1800.00	Nil	
Change of Licence holder's address	) )	N/A	25.00	25.00	Nil	
Copy of Licence	) )	N/A	10.50	10.50	Nil	
TEMPORARY USE NOTICE						
Grant	) )	N/A	100.00	100.00	Nil	
Copy of Notice	) )	N/A	10.50	10.50	Nil	

Agenda Item 12

Details	VAT rate	Date of last increase	Previous 2009/10 charges	Proposed 2010/11 charges	Percentage increase on charge	Chief Officer Comments
---------	----------	-----------------------	--------------------------	--------------------------	-------------------------------	------------------------

FOR INFORMATION ONLY

Fees prescribed by Parliament

LICENSING ACT 2003

PREMISE LICENCE

Grant / Variation

Band A	)	)	100.00	100.00	N/A
Band B	)	)	190.00	190.00	N/A
Band C	)	)	315.00	315.00	N/A
Band D	)	)	450.00	450.00	N/A
Band E	)	)	635.00	635.00	N/A

Annual charge

Band A	)	)	70.00	70.00	N/A
Band B	)	)	180.00	180.00	N/A
Band C	)	)	295.00	295.00	N/A
Band D	)	)	320.00	320.00	N/A
Band E	)	)	350.00	350.00	N/A

Copy of Licence	)	)	10.50	10.50	N/A
Provisional Statement	)	)	315.00	315.00	N/A
Minor Variation	)	)	89.00	89.00	N/A
Vary Designated Premises Supervisor	)	)	23.00	23.00	N/A
Disapply Designated Premises Supervisor	)	)	23.00	23.00	N/A
Transfer	)	)	23.00	23.00	N/A
Interim Authority	)	)	23.00	23.00	N/A
Notice of Interest in premise	)	)	21.00	21.00	N/A

CLUB PREMISES CERTIFICATE

Grant / Variation

Band A	)	)	100.00	100.00	N/A
Band B	)	)	190.00	190.00	N/A
Band C	)	)	315.00	315.00	N/A
Band D	)	)	450.00	450.00	N/A
Band E	)	)	635.00	635.00	N/A

Annual charge

Band A	)	)	70.00	70.00	N/A
Band B	)	)	180.00	180.00	N/A
Band C	)	)	295.00	295.00	N/A
Band D	)	)	320.00	320.00	N/A
Band E	)	)	350.00	350.00	N/A

Minor Variation	)	)	89.00	89.00	N/A
Copy of Certificate	)	)	10.50	10.50	N/A
Notification of change of name or Rule	)	)	10.50	10.50	N/A
Change of registered address	)	)	10.50	10.50	N/A

Agenda Item 12

Details	VAT rate	Date of last increase	Previous 2009/10 charges	Proposed 2010/11 charges	Percentage increase on charge	Chief Officer Comments
ADDITIONAL FEE / ANNUAL CHARGE WHERE MAXIMUM NUMBER OF PERSONS ALLOWED ON PREMISES IS 5000 OR OVER						
Application fee						
5000 to 9999	) )		1000.00	1000.00	N/A	
10000 to 14999	) )		2000.00	2000.00	N/A	
15000 to 19999	) )		4000.00	4000.00	N/A	
20000 to 29999	) )		8000.00	8000.00	N/A	
30000 to 39999	) )		16000.00	16000.00	N/A	
40000 to 49999	) )		24000.00	24000.00	N/A	
50000 to 59999	) )		32000.00	32000.00	N/A	
60000 to 69999	) )		40000.00	40000.00	N/A	
70000 to 79999	) )		48000.00	48000.00	N/A	
80000 to 89999	) )		56000.00	56000.00	N/A	
90000 and over	) )		64000.00	64000.00	N/A	
Annual Charge						
5000 to 9999	) )		500.00	500.00	N/A	
10000 to 14999	) )		1000.00	1000.00	N/A	
15000 to 19999	) )		2000.00	2000.00	N/A	
20000 to 29999	) )		4000.00	4000.00	N/A	
30000 to 39999	) )		8000.00	8000.00	N/A	
40000 to 49999	) )		12000.00	12000.00	N/A	
50000 to 59999	) )		16000.00	16000.00	N/A	
60000 to 69999	) )		20000.00	20000.00	N/A	
70000 to 79999	) )		24000.00	24000.00	N/A	
80000 to 89999	) )		28000.00	28000.00	N/A	
90000 and over	) )		32000.00	32000.00	N/A	
PERSONAL LICENCE						
Grant	) )		37.00	37.00	N/A	
Renewal	) )		37.00	37.00	N/A	
Copy of Licence	) )		10.50	10.50	N/A	
Notification of change of name and/or address	) )		10.50	10.50	N/A	
TEMPORARY EVENT NOTICES						
Grant	) )		21.00	21.00	N/A	
Copy of Notice	) )		10.50	10.50	N/A	
GAMBLING ACT 2005						
FAMILY ENTERTAINMENT CENTRE						
GAMING MACHINE PERMIT						
PRIZE GAMING PERMIT						
Grant	) )		300.00	300.00	N/A	
Renewal	) )		300.00	300.00	N/A	
Existing Operator Grant	) )		100.00	100.00	N/A	
Change of name	) )		25.00	25.00	N/A	
Copy of Permit	) )		15.00	15.00	N/A	

Agenda Item 12

Details	VAT rate	Date of last increase	Previous 2009/10 charges	Proposed 2010/11 charges	Percentage increase on charge	Chief Officer Comments
CLUB GAMING PERMIT						
CLUB MACHINE GAMING PERMIT						
Grant	) )		200.00	200.00	N/A	
Grant (Club Premises Certificate Holder)	) )		100.00	100.00	N/A	
Existing Operator Grant	) )		100.00	100.00	N/A	
Variation	) )		100.00	100.00	N/A	
Renewal	) )		200.00	200.00	N/A	
Renewal (Club Premises Certificate Holder)	) )		100.00	100.00	N/A	
Annual Fee	) )		50.00	50.00	N/A	
Copy of Permit	) )		15.00	15.00	N/A	
LICENSED PREMISES GAMING MACHINE						
Grant	) )		150.00	150.00	N/A	
Existing Operator Grant	) )		100.00	100.00	N/A	
Variation	) )		100.00	100.00	N/A	
Transfer	) )		25.00	25.00	N/A	
Annual Fee	) )		50.00	50.00	N/A	
Change of name	) )		25.00	25.00	N/A	
Copy of Permit	) )		15.00	15.00	N/A	
LICENSED PREMISES AUTOMATIC NOTIFICATION PROCESS						
On notification	) )		50.00	50.00	N/A	

This page is intentionally left blank

Agenda Item 13

REPORT TO: Cabinet Member - Environmental
Licensing and Regulatory Committee

DATE: 13 January 2010
22 February 2010

SUBJECT: **PUBLISHING SENTENCING OUTCOMES**

WARDS AFFECTED: All

REPORT OF: Peter Moore
Environmental Protection Director

CONTACT OFFICER: David Packard
0151 934 4016

**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

For the Cabinet Member - Environmental and the Licensing and Regulatory Committee to endorse the publication of sentencing outcomes for Council initiated prosecutions.

REASON WHY DECISION REQUIRED:

The Government has issued guidance advising Councils of their expectation of the publication of sentencing outcomes for cases brought to court by Local Authority regulatory services.

RECOMMENDATION(S):

That the Cabinet Member - Environmental and the Regulatory and Licensing Committee endorse the publication of sentencing outcomes from cases brought to court by the Council in line with national guidance.

KEY DECISION: No

FORWARD PLAN: Not appropriate

IMPLEMENTATION DATE: Not appropriate

Agenda Item 13

ALTERNATIVE OPTIONS:

Not to follow the Government guidance.

IMPLICATIONS:

Budget/Policy Framework: None

Financial:

<u>CAPITAL EXPENDITURE</u>	2009/ 2010 £	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	When?			
How will the service be funded post expiry?				

Legal: None

Risk Assessment: None

Asset Management: Not relevant

CONSULTATION UNDERTAKEN/VIEWS

Legal Department
Corporate Communications

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy	√		
8	Children and Young People		√	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

Publishing Sentencing Outcomes

Agenda Item 13

Background.

1. The Local Authority regulatory services of Environmental Health, Trading Standards and Licensing carry out legal enforcement activities to protect the public and the environment from harm.
2. Our services seek compliance through education and support but where the advice is ignored or there is blatant disregard for the law that results in harm or risk to the public, prosecution procedures are brought in line with the councils agreed enforcement policy.
3. The Government has recently made it clear that it expects enforcing authorities to publicize the results of prosecutions undertaken in the public interest and has issued guidance (attached) as to how this should be done.
4. To date Sefton Council has not publicised the results of prosecutions and has relied on the local press attending court to pick up the story. The press is notified informally of the dates of hearings when the council is bringing cases to court. However, with the reduction in the number of local reporters this mechanism is becoming less reliable and cases of interest to the general public regarding the work of the council to protect their interest can go unreported.
5. The Government has stated that it believes the publication of sentencing outcomes is of public benefit in that it would act to reassure the local population that they are being protected. Certainly bringing unscrupulous traders that sell counterfeit poor quality or dangerous goods sometimes badged as premium products or owners of food establishments that put their consumers at risk to court is in the interest of public protection.
6. Publication of sentencing outcomes should reassure the public that they and their interests are being protected by the work of local authority regulatory services and also act as a reminder and deterrent to traders and business operators that there is a sanction if minimum legal standards are not observed.
7. In light of the clear government guidance it is proposed that the Legal Department publish the results of sentencing outcomes from regulatory cases to the councils internet as soon as possible after the court hearing.
8. In line with the guidance the personal information published would be limited to the information referred to in the case summing up including the sanction. The press would be able to seek comment on the detail of the case from the councils press office if they were not themselves present in court.
9. The information would be removed from the Internet after one month.



Publicising Sentencing Outcomes

Guidance for public authorities
on publicising information
(including via the internet) about
individual sentencing outcomes
within the current legal framework

SUMMARY

- Verdicts and sentences in criminal cases are given out in open court and are a matter of public record
- There should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:
 - Reassure the public
 - Increase confidence in the CJS
 - Improve the efficiency of the CJS
 - Discourage offending and/or re-offending
- This is not a new concept and this is already happening in many areas
- Providing this information is a legitimate and integral part of activity to engage communities and increase public confidence in criminal justice services
- The internet gives many more opportunities to make information readily available to the public. Alongside this, there are data protection issues
- In the great majority of cases, publication should be straightforward. A small number of cases will raise concerns. This guidance explains those issues to help manage risks.

INTRODUCTION

The Government expects all criminal justice services to be open, transparent and accountable to the people they serve. The police, the prosecution, the courts, probation and prison services should work together to help people understand their work and what the public can expect of them. They should be open about how they are performing and should strive to build confidence in criminal justice services that are fair, effective and above all, working for the public.

These expectations are captured in the Government's criminal justice Public Service Agreement target *Justice for All*.¹

The 2008 Cabinet Office Review 'Engaging Communities in Fighting Crime' (the Casey Review) found that the Criminal Justice System (CJS) can feel too remote from people's everyday lives and that the justice it delivers is not visible enough. The report concluded that:

"Too often the public don't believe that their voice is heard, don't believe wrongdoers face adequate consequences for the crimes they commit, don't believe they are told enough about what happens in the system and, perhaps because of this, they don't believe that crime has fallen when they are told so."

Research shows a strong link between the extent to which the public receive accurate information about the CJS, and their confidence in it. Based on their consultations, the Casey Review team identified 'Justice seen to be done' as a priority for the public, who want: *"to see and hear more about arrests, charges, decisions and sentences... to reassure them that crimes are being brought to justice and to deter potential offenders or re-offenders."*

¹ http://www.hm-treasury.gov.uk/d/pbr_csr07_psa24.pdf

THE POLICY CONTEXT

Verdicts and sentences are given out in open court and are a matter of public record. Copies of the court register, containing the outcomes of criminal cases and details of upcoming court cases, have been available to local newspapers and regularly reported for many years. This long-standing and important feature of local reporting is a vital part of keeping communities informed and, in the summer of 2008, the Justice Secretary abolished fees for making copies of the court register available to newspapers to support and encourage reporting.

In addition, the Policing Pledge, now adopted by all forces, includes a commitment to provide monthly updates on local crime and policing issues, including information on specific crimes and what happened to those brought to justice locally.

In the 'Engaging Communities in Criminal Justice' Green Paper, published in April 2009, the Government repeated its expectation that criminal justice services should give local people more information about what is being done to deal with the problems they raise. In particular, Ministers gave a clear commitment that criminal justice agencies would publicise the outcomes in cases of particular local concern. As a general principle, **there should be a presumption in favour of publicising outcomes of criminal cases** because this would help to:

- reassure the law abiding public that the CJS is fair and effective, by publicising successes;
- increase public confidence in the CJS;
- improve the effectiveness of criminal justice, e.g. by encouraging victims to report crime, and witnesses to come forward; and
- discourage potential offenders and reduce re-offending.

Publicising sentences is part of a set of initiatives to give the public more access to better information about the criminal justice system in a co-ordinated and integrated way. From September 2009, a new national system of

crime maps became operational, giving the public consistent information about local crime levels. These maps are linked to data about offences brought to justice in their criminal justice area. For the first time people can go online, enter their postcode and get up to date information about crime in their area and what action the police are taking. These initiatives will soon be enhanced by the new Courts Results Enquiry Service. The service will provide neighbourhood policing teams, Local Criminal Justice Boards (LCJBs) and local Crime and Disorder Reduction Partnerships (CDRPs) (or Community Safety Partnerships (CSPs) in Wales) with details of specific local cases.

Purpose and scope of this guidance

Easy access to clear and accurate information about the outcome of court cases helps to increase public confidence in the criminal justice system. The Government is supporting the publication of information in various ways, including the reporting of specific sentencing outcomes. There are many misconceptions about the circumstances in which the law allows publication of personal data concerning sentencing outcomes. **The purpose of this guidance is to clarify that, in the vast majority of cases, there is no legal impediment to such publication by the police and local authorities in particular, acting as public authorities that have statutory functions connected with the criminal justice system.**

It aims to:

- clarify the legal issues around publicising sentencing decisions and related personal information;
- set out the powers and responsibilities which agencies and services have to publish information; and
- support robust decision-making by providing a framework for consistent and proportionate local activity to publicise sentencing outcomes to communities.

In the great majority of cases the decision-making process will be straightforward. Front-line staff will routinely take decisions about publicising case outcomes and basic personal information (name, age, offence and summary – rather than full – address) without the need for detailed reference to this guidance. It is generally safe to assume that if a court did not impose reporting restrictions, there is no legal impediment to publicising the outcome of the case. Exceptionally, a particular case may raise specific legal questions or concerns. A checklist and recording proforma for use in such cases is available from OCJR as a tool to help local agencies to reach robust decisions about publishing information in these cases.

This guidance focuses on the legal issues that may affect agencies involved in crime reduction and criminal justice when giving the public personal information about convicted offenders: for instance, in public meetings, in leaflets or local newsletters, or through a website. (This includes convictions for criminal offences following prosecutions initiated by local authorities, under e.g. environmental protection legislation.)

This guidance is concerned with agencies' direct communication with communities about case outcomes. Specifically, it does not affect the existing long-standing arrangements for the courts to send court registers to the press, which the Government encourages. Nor does it cover the release of personal information about:

- **suspects as part of an investigation**
- **defendants who have failed to appear in court**
- **people who have received anti-social behaviour orders (ASBOs), or any other kind of non-criminal penalty.**

Particular care must also be taken when information about sentencing outcomes includes personal information about victims (see 'exceptional cases' opposite).

It focuses on the practical application of the law. It does not cover all the processes by which local agencies might identify crimes of particular local concern, assemble information about the outcome in those and other cases and communicate that outcome to local people. Further guidance on these issues will follow.

This guidance is also not concerned with agencies' dealings with the media or media reporting of local cases. Except where reporting restrictions are imposed, the media are free to report anything that is said in court. Nor does it cover the publication of information by third parties on free access websites.

Finally, this guidance does not cover disclosure of personal information other than that already released into the public domain during the sentencing process. In particular, it does not set out the additional considerations that may apply when photographs of offenders are published.²

What kind of outcomes should and should not be published?

As they are a matter of public record, the presumption should be in favour of publicising verdicts and sentences of crown and magistrates' courts (including fines and community sentences) in the great majority of criminal cases. It is a reasonable expectation that a member of the public should be able to get information about the outcome of a case, whether as a victim of crime; a witness in a case; a member of a community affected by crime; or someone concerned about local crime.

This guidance does not apply to out of court disposals, such as cautions, conditional cautions, penalty notices for disorder and cannabis warnings. A review of the use of out of court disposals was announced by the Justice Secretary on 9 November 2009. This will consider the issue of whether, and if so in what manner, publicity about out of court disposals would be appropriate.

² 'Guidance on the release of images of suspects and defendants to the media is available from ACPO offices. Guidance on publishing photographs of defendants can be found at http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/general/GDC26_Defendant_Photos.doc.

If reporting restrictions have been imposed in a case, the scope of any publicity must be limited by the terms of the restrictions, which must be adhered to scrupulously. It is important to remember that some courts may have standing reporting restrictions that may not be separately recorded with the outcomes of individual cases. In particular, there is a presumption that reporting restrictions will apply in criminal cases where the defendant is a juvenile (under 18), unless explicitly lifted. Or the court might impose specific restrictions, for example, in order to protect witnesses, or if the defendant is involved in other criminal proceedings where identity may be an issue.

Particular care should be taken if disclosure of a sentencing outcome also reveals personal information about a person other than the offender.

Consideration should be given to whether it would be more appropriate to remove the details of third parties from the published information (see 'exceptional cases' below). If it is decided to publish the information then – in accordance with guidance from the Information Commissioner's Office (ICO) – all such people should be informed. This could include the victim, witnesses, any members of the police service or CPS who will be identified as having been involved in the investigation, and any other individual who may be identified from the information being made available. The communication to such people should include information on who to contact for further information, or any concerns. Where the publicity is going to be through a website, details of how to apply to have information removed from it should also be made available.

Exceptional cases

There may be exceptional cases where disclosure would not be appropriate. **In most cases, if the court has not considered it necessary to impose reporting restrictions, it is safe to assume that disclosure is permissible.**

But there may be cases (for instance, where the relevant facts were not before the court at the time) where the court did not impose

formal reporting restrictions but disclosure could nevertheless cause harm. For example, depending on all the circumstances, it might not be appropriate to release information where:

- It could be used to identify victims or witnesses, especially if this would cause the victim undue embarrassment or distress, or place them at risk of suffering reprisals from friends or associates of the offender, or expose them to unwanted media or public attention. Victims should anyway be consulted about proposed publicity and made aware of possible press coverage (except possibly in cases where there is no 'personal' victim, and/or the crime is already visible to the public – e.g. criminal damage).
- It could be used to identify offenders' families (over and above a surname that they share with the offender), especially if disclosure would place them at risk of harm (e.g. reprisals).
- The offender is known to have a specific vulnerability (e.g. mental health issues or physical ill health), which might mean that publicising the conviction risks unwarranted adverse consequences (i.e. not simply that the offender objects to the publicity). This may arise in particular if the sentence includes a drug or drink rehabilitation order or a mental health disposal.
- Wider disclosure could undermine a police investigation.

Even in such cases, it does not necessarily follow that it is unlawful to disclose any information at all. For instance, it might be possible to address the concern by limiting the information to a small number of individuals (e.g. the community affected by the crime), by giving it out in a meeting or leaflet rather than putting it on a website so it will only be seen by people in the local area and it will be less easy to copy. Or in a particular case, it may be possible to reassure a community by making it known that a conviction for a specific offence has been secured without the need to disclose personal information (for instance, it might be possible to give details of the sentence without disclosing that the sentence involved a mental health disposal).

Risks and safeguards

Publicity should be time limited. The objective is to draw attention to the conviction and sentence when they are handed down, not to provide any kind of on-going record.

As a general rule, information should be removed from websites after a month.

This is in line with the commitment in the Policing Pledge to provide monthly updates to communities.

Where a subsequent appeal against a conviction is successful, details of the original conviction that have been placed on a website should be removed.

Care must be taken to ensure that information published is accurate, to minimise the risk of mistaken identity. Even correct information could lead to an innocent person being wrongly identified by a third party as the offender if, for instance, there is another person locally with the same name and/or the same partial address as the offender.

When details of sentencing outcomes are posted on a website, the page containing the details should also include the following message in a prominent position:

“This information is made available for a limited period in order to promote the openness, transparency and accountability of the criminal justice system to the people it serves. This information is made available solely on the basis that it is for the individual use of the person who has accessed this page. The information on this page must not be stored, recorded, republished, or otherwise processed without the explicit agreement of [name of the public authority].”

The legal framework

The main legal consideration which criminal justice agencies and local authorities must take into account in reaching decisions about disclosing and publicising personal information is the Data Protection Act 1998 (DPA).

In the great majority of cases where basic personal information is being publicised in connection with a criminal case outcome, and no reporting restrictions have been imposed, the Act should not be a barrier to publicising the information.

The DPA applies to “personal data”, i.e. information of which a living individual is the subject or from which a living individual can be identified. Processing of data must comply with the eight principles set out in Schedule 1 to the Act.

In particular, the first principle requires that personal data should be processed fairly and lawfully and, in particular, should not be processed unless at least one of conditions in Schedule 2 to the Act is met. Also, in order to lawfully process sensitive personal data (defined in section 2(g) of the Act to include medical information and information about the commission or alleged commission of an offence), disclosure needs to comply with a condition from Schedule 3 to the Act.

In all but exceptional cases of the kind described above, publishing sentencing outcomes in the manner discussed in this guidance will comply with the first principle in the Data Protection Act. The Information Commissioner's Office (ICO) has expressed the opinion³ that the publication of personal information about convictions is “perfectly possible, without compromising either the Data Protection Act 1998... or placing individual members of the public at risk” as long as “due consideration [is] given to all of the implications and consequences that may impact upon the different parties involved”.

In particular, in all but exceptional cases:

- **Disclosure will generally be ‘fair’, because people who have been convicted of offences can expect that the fact of their conviction will be made public, and there is a legitimate public interest in doing so.**

³ Letter to police Data Protection Officers, 22 April 2009, about publication of offender/offence information on police websites.

- Disclosure by relevant public authorities will generally be 'lawful', because it will normally be made by a public authority in connection with the exercise of its functions.⁴
- Disclosure of sentencing information will generally comply with a condition in Schedule 2 of the Act. In particular, in most cases it will fall within paragraph 5(b) (processing necessary for the exercise of any functions conferred on any person by or under any enactment) and paragraph 5(d) (processing necessary for the exercise of any other functions of a public nature exercised in the public interest by any person). In this context, a measure is 'necessary' if a pressing social need is involved and the measure is proportionate to the legitimate aim pursued.⁵ It is usually in the public interest – for the reasons described in this guidance – for public authorities to publicise sentencing outcomes, which in the absence of reporting restrictions will already be public, where it is connected to the exercise of their statutory functions.
- Disclosure of sensitive personal information (such as information about criminal convictions) will generally comply with Schedule 3 paragraph 7(1)(b) (processing necessary for the exercise of any functions conferred on any person by or under any enactment), for similar reasons, subject to the points in 'exceptional cases' on page 5 and 'risks and safeguards' opposite.⁶

The third principle requires that data should be adequate, relevant and not excessive; the fourth principle requires that data should be accurate and up to date; and the fifth principle requires that data should not be kept for longer than necessary. To ensure that these principles are complied with, see 'exceptional cases' and 'risks and safeguards' opposite.

The eighth principle concerns transfers of data outside the European Economic Area. Even though it may be possible to access information held on a website in non-EU countries, this will generally not engage the eighth data protection principle, given that the information was not directly transferred to people outside the UK.⁷

If disclosure is compatible with the DPA, it will generally also respect the rights of the data subject under Article 8 of the European Convention on Human Rights.⁸

It may be contrary to the Rehabilitation of Offenders Act 1974 to publish information about spent convictions. That Act will not prevent publication of sentencing outcomes if the information is only published for a short period after the sentence is imposed.

⁴ In *R (Ellis) v Chief Constable of Essex Police* [2003] EWHC 1321 (Admin), paragraph 32, the court accepted that an offender naming scheme operated by a police force was devised to assist them in performing their statutory duty under the Crime and Disorder Act 1998 to formulate and implement strategies for reduction of crime in their area. In *R (Stanley, Marshall and Kelly) v Metropolitan Police Commissioner* [2004] EWHC 2229 (Admin), paragraph 21, the court accepted that section 2(1) of the Local Government Act 2000 gives local authorities a legal basis to disclose information about particular individuals who are the subjects of anti-social behaviour orders.

⁵ *Stone v South East Coast Strategic Health Authority* [2006] EWHC 1668 (Admin), paragraph 60; *Ellis*, paragraph 29.

⁶ Compare *Stone*, paragraph 63.

⁷ Case C-101/01 *Lindqvist* [2003] ECR I-12971.

⁸ *Ellis*, paragraph 29.

Further information and queries

Further information about the arrangements for Neighbourhood Policing Teams to obtain court outcome information from the Court Results Enquiry Service can be found in The Policing Pledge: Bulletin (Issue 5, 6 November 2009).

More detailed information about the legal framework referred to in this guidance and a sample decision-making checklist/recording proforma can be obtained from the Engaging Communities Team at:

**Office for Criminal Justice Reform
Race, Confidence & Justice Unit
Zone 8.19
102 Petty France
London SW1P 9AJ
Email: EngagingCommunities@cjs.gsi.gov.uk**

Queries about this guidance should also be directed to the Engaging Communities Team as above.

Alongside this guidance, there is further information on the rationale for publicising sentencing outcomes available in 'Publicising Criminal Convictions: Why the public should know' (a Justice Seen Justice Done policy briefing) available on CJSonline at www.cjsonline.gov.uk

A guide to anti-social behaviour orders is available on the Home Office website.

Agenda Item 13

Office for Criminal Justice Reform December 2009



Ministry of
JUSTICE

Home Office

The Attorney
General's Office

By virtue of paragraph(s) 5 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank