

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 17th January 2011

Title of Report: THE POLICE REFORM AND SOCIAL RESPONSIBILITY BILL.

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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 proposed changes to be made to the Licensing Act 2003 via the Police Reform and Social Responsibility Bill.

Recommendation(s)

That Members note this Report and note that further Reports will be brought forward updating Members on the progress of this Bill.

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.
- Police Reform and Social Responsibility Bill.
- *Proposed response to Home Office consultation – “Rebalancing the Licensing Act - a consultation on empowering individuals, families and local communities to shape and determine local licensing” - Report to Licensing and Regulatory (Urgent Referrals) Committee, 23rd August 2010.*

Background

1. Members will recall that on 28th July 2010 the Home Office published a consultation document entitled "*Rebalancing the Licensing Act - a consultation on empowering individuals, families and local communities to shape and determine local licensing*". There was a short consultation period of only 6 weeks as it was the Government's intention to legislate as soon as possible via the Police Reform and Social Responsibility Bill.
2. Sefton's reply to this consultation was agreed by the Licensing and Regulatory (Urgent Referrals) Committee on 23rd August 2010 and was forwarded to the Home Office on 27th August 2010.
3. The Police Reform and Social Responsibility Bill had its First Reading in the House of Commons on 30th November 2010.
4. The Bill is divided into five Parts:
 - Part 1 entitled "Police reforms";
 - Part 2 entitled "Licensing";
 - Part 3 entitled "Parliament Square Garden and surrounding area";
 - Part 4 entitled "Miscellaneous"; and,
 - Part 5 entitled "Final Provisions".
5. This Report will only deal with those provisions contained within Part 2 of the Bill.

Responsible authorities

6. Members will be aware that the Licensing Act 2003 ("the LA03") defines responsible authorities as principally being the police, fire authorities and local authorities exercising health and safety, local planning, environmental health, weights and measures and child protection functions; a licensing authority itself is not defined as a "responsible authority".
7. Clause 103 of the Bill introduces amendments to bring licensing authorities within the definition of a "responsible authority", thus enabling licensing authorities to make representations in their own right.
8. Clause 104 will also amend the LA03 by adding a Primary Care Trust, for any area in which a premises is situated, as a responsible authority. These new bodies will be able to fulfil the same functions as existing responsible authorities in making representations to an application and being a body consulted by a licensing authority prior to determining or revising its statement of licensing policy.

Interested parties

9. Members will recall that under the LA03 'interested parties' (persons who can make an application for review or a representation with regard to certain licensing processes) in most cases must have a particular relationship to the vicinity of the premises in relation to which the application relates (for example, by living in the vicinity or being involved in a business which is in the vicinity).

10. Clauses 105 to 108 will remove this test of 'vicinity' from the LA03, and consequently will remove the category of interested party from the Act. This will mean that any person will be able to make representations in relation to applications for the grant or variation (including a minor variation) of a premises licence or club premises certificate, the grant of a provisional statement and to make applications for the review of such authorisations, and to make representations in relation to other various processes. All representations, however, will still need to relate to the licensing objectives and must not be frivolous or vexatious.
11. There are requirements on the Secretary of State to make regulations governing who should advertise an application. The Bill indicates that Regulations will be made to require an applicant and licensing authority to advertise the application: the former advertising the application in a way which ensures that it comes to the attention of persons in the licensing authority's area who it may affect; the latter advertising it *in a way that ensures that it comes to the attention of all persons who it may affect*.

Promoting the licensing objectives

12. The LA03 imposes a general duty on licensing authorities to exercise their licensing functions with a view to promoting the four licensing objectives. A number of specific processes require licensing authorities to take steps which are "necessary" for the promotion of the objectives. This requirement is imposed on licensing authorities by a range of provisions in the LA03, primarily arising when licensing authorities are considering whether to grant or refuse an authorisation in relation to which relevant representations or objections have been made.
13. Clauses 109 to 111 will amend those provisions by instead requiring licensing authorities to take steps which are "appropriate" for the promotion of the objectives rather than "necessary". This has the effect of reducing the threshold which licensing authorities must meet to achieve the promotion of the objectives, but ensures that their decisions continue to be solely for the purpose of promoting the objectives.

Temporary event notices

14. Members will recall that the LA03 currently includes a scheme which enables an individual to carry on a licensable activity, on a temporary basis, by virtue of a temporary event notice ("a TEN"). To hold a temporary event the event holder ('premises user') must send a TEN to the licensing authority and to the Chief Officer of Police at least 10 working days before the event. The Chief Officer, if satisfied that the temporary event would undermine the crime prevention objective, must send an objection notice to the licensing authority and premises user no later than two working days after receipt of the TEN.
15. Clause 112 will extend the right to object to a TEN to the environmental health authority, and will allow the police and the environmental health authority for the area in which the premises are situated (termed as 'relevant persons'), to object to a temporary event on the grounds of all four licensing objectives rather than just on the crime prevention objective as at present. It will also allow licensing authorities to issue a counter notice under section 105 of the LA03 on the basis of all four of the licensing objectives.
16. Clause 113 will enable a licensing authority to impose conditions on a TEN if it considers that this promotes the licensing objectives. A licensing authority can only impose such

conditions if an objection has been made by at least one relevant person (and the licensing authority considers that permitting the event to proceed would promote the licensing objectives), and at least a part of the premises in relation to which the TEN is given is already subject to a premises licence or club premises certificate. Any such conditions must be consistent with the activity authorised by the TEN and the existing conditions attached to the licence or certificate.

17. This will have the effect that a permitted temporary activity must be carried on in accordance with both the existing conditions imposed under section 100 of the LA03 and any conditions imposed on a TEN by a licensing authority under the new section 106A. A licensing authority, if it decides to impose one or more conditions on the TEN under this new section, must give the premises user a notice of the decision and a separate statement (termed the 'statement of conditions') that sets out the conditions imposed on the TEN and give a copy of the notice and statement to each relevant person.
18. Clause 114 will enable a premises user to give a limited number of TENs in a shorter timeframe than that which currently applies to the existing TEN process. This will be termed as a "late TEN". A TEN which is given in accordance with the existing timeframe will be termed as a "standard TEN". An objection from at least one relevant person to a "late TEN" will result in a counter notice being issued, thus making the late TEN ineffective (there will be no right to a hearing and onward appeal, as applies to the existing process) and the event to which it relates cannot lawfully take place. As a consequence the existing processes will be adapted to facilitate the introduction of the availability of a late TEN.
19. A standard TEN will therefore be a TEN which is given to the relevant licensing authority and (if it is made in writing) to each relevant person, no later than 10 working days before the temporary event to which it relates. Whilst a late TEN will be a TEN which is given to the relevant licensing authority electronically no later than five working days, but no earlier than nine working days before the temporary event begins; or, if it is made in writing, is given to the licensing authority and each relevant person no later than five working days before the temporary event begins and to at least one of those persons no earlier than nine working days before the event begins. There will be a limit on how many late TENs can be given in any calendar year: this being 10 for personal licence holders and 2 for non-personal licence holders.
20. Clause 115 will amend sections 100 and 107 of the LA03 to increase the period for which licensable activities at any single event can be carried on in accordance with a TEN from 96 to 168 hours, and the number of days in any calendar year on which a single premises can be used to carry on licensable activities from 15 to 21 days.
21. Clause 116 will amend section 102 of the LA03 to remove the requirement on a licensing authority to acknowledge receipt of a TEN by sending one signed notice to the premises user, and will replace this with a requirement to give a written acknowledgement instead.
22. Finally with regard to TENs, clause 117 will amend section 104(3) of the LA03 to extend the period in which a relevant person can object to a TEN from 2 to 3 working days.

Persistently selling alcohol to children

23. Section 147A of the LA03 makes it an offence for a premises licence holder, or person who has given a TEN, to sell alcohol on two or more occasions in a three month period

to a child. On conviction, a person is liable to a fine not exceeding £10,000; proposed amendments contained within clause 118 will increase this to a maximum fine of £20,000.

24. Section 169A of the LA03 enables the police and trading standards officers to issue a closure notice to a person in relation to whom there is evidence that he has committed an offence under section 147A of the LA03 and for which there is a reasonable prospect of conviction. The closure notice discharges the person from any further criminal liability but prevents him from selling alcohol for the period specified in the notice. Proposed amendments within clause 118 will increase that period from a maximum of 48 hours to a period of between 48 hours and 336 hours.

Early morning alcohol restriction orders

25. Section 172A of the LA03 enables a licensing authority to make an early morning restriction order to prohibit the supply of alcohol from premises (including supplies authorised via a TEN) between 3am and 6am in the whole or part of its area. The order can apply every day or on specified days, and for a limited or unlimited period. A decision to make an order must be made by the full council of a licensing authority. A licensing authority can only make an order if it considers that this will promote one or more of the licensing objectives, and the making of the order is subject to a licensing authority observing prescribed procedures. The procedures include a requirement that a licensing authority must advertise its decision to make an order, a right of affected persons to make representations and a requirement on a licensing authority to hold a hearing to consider such representations.
26. Clause 119 excepts the decision of a licensing authority to make an early morning restriction order from those licensing functions which can be exercised by licensing committees. This has the consequence that a licensing authority's decision to make such an order must be made by its full council. Subsections (3) and (4) of this Clause will repeal section 55 of the Crime and Security Act 2010 (which itself inserted sections 172A to 172E into the LA03) and will introduce these provisions in an amended form. This has the effect of enabling a licensing authority to make an order of any duration between 12 midnight and 6am. An order can be made, amongst other things, at different times on different days.

Suspension of licence or certificate for failing to pay annual fee

27. Clause 120 will introduce amendments to the LA03, by inserting sections 55A and 92A, to enable a licensing authority to suspend a licence or certificate for non payment of an annual fee. The exercise of this power being subject to conditions.
28. A licence or certificate holder will avoid this consequence if, at the time that the annual fee became due, the non payment was a result of an administrative error (by any person) or the holder disputed liability to pay the fee (whether as to liability to pay a fee at all, or its amount) and the grace period of 21 days had not expired. In the event of a dispute about liability to pay a fee, the holder of a licence or certificate must notify the licensing authority in writing of this dispute on or before the due date for the fee. If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the day the authority gives the notice. A suspension ceases to have effect on

the day on which the authority receives payment of the fee from the licence or certificate holder.

Licensing policy statements

29. Members will recall that section 5 of the LA03 requires a licensing authority to prepare and publish a statement of its licensing policy every three years and that it must also keep it under review during each three year period revising it as appropriate.
30. Clause 121 will enable a licensing authority to determine its licensing policy and publish a licensing statement in respect of every five year period (this cycle commencing on 7th January 2011), unless it replaces its entire policy at any time during each five year period, in which case the new five year period begins from the date on which the policy is replaced. A licensing authority continues to be required to keep its policy under review during each five year period.

Personal licences: relevant offences

31. Clause 122 will amend Schedule 4 of the LA03 which contains the list of "relevant offences", the unspent conviction of which has to be disclosed by an applicant for the grant or renewal of a personal licence. On receipt of such a disclosure a licensing authority notifies the police of the existence of such a conviction, and the police can object to the grant or renewal of the application if they are satisfied that the grant or renewal of the application would undermine the crime prevention objective. This objection requires the licensing authority to hold a hearing to determine the matter.
32. The relevant offences list currently includes sex offences, offences involving violence and dishonesty, road traffic offences and drugs offences. Clause 22 will amend this list to include an offence of attempt to commit a relevant offence or conspiracy to commit a relevant offence, an offence of failing to co-operate with a preliminary test under section 6(6) of the Road Traffic Act 1988 and conspiracy to defraud.

Late night levy

33. Clauses 124 to 138 will enable a licensing authority to introduce a levy payable by the holders of a premises licence or club premises certificate in relation to each premises in its area which is authorised to supply alcohol during a set period (termed the "late night supply period") between midnight and 6am. Clause 124 contains provision enabling licensing authorities to decide to introduce a levy; the funds raised, subject to a deduction for the expenses for administering the scheme, being payable to the police or to be used in accordance with regulations contained in clause 130.
34. Clause 130 provides that at least 70% of the funds must be paid to the police with any remainder being permitted to be paid to other parts of local government which operate or administer measures to address the effect of alcohol-related crime and disorder in the night-time economy.
35. Clause 133 regulations will require that prior to introducing the levy in its area, a licensing authority must allow any person with a potential liability to pay a levy to apply to vary the relevant licence or certificate with the effect that the person ceases to be liable, without incurring the fee which ordinarily must accompany such applications.

36. Under clause 128 (6) a licensing authority may suspend a premises licence or club premises certificate for non-payment of the levy, on the same basis that a licence or certificate may be suspended for non payment of an annual fee as per the provisions outlined in paragraph 27 above.
37. Finally, under clause 133 regulations will require a licensing authority to consult the police, holders of relevant authorisations and other persons who may be prescribed by regulations before making a decision to introduce the levy in its area or to revoke it or vary certain matters. Any levy introduced will not apply retrospectively to any premises affected by it.