

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 7th June 2010

Title of Report: EARLY MORNING ALCOHOL RESTRICTION ORDERS.

Report of: P. J. Moore
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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 the proposed changes to be made to the Licensing Act 2003 by the Crime and Security Act 2010.

Recommendation(s)

That Members:

- i) Note this Report and the proposed changes to be made to the Licensing Act 2003; and,
- ii) Note that a further Report will be brought forward to update Members once the provisions come into force.

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.
- The Crime and Security Act 2010.

Background

1. The Bill that preceded the Crime and Security Act 2010 (“the 2010 Act”) was first introduced on 19th November 2009 and contained a range of policing, crime and security measures covering the following key areas:
 - reducing information requirements for police stops and searches;
 - establishing new time limits for the retention of DNA samples, DNA profiles and fingerprints (following a European Court of Human Rights judgement) together with extensions to the circumstances in which such samples can be collected;
 - introducing a new Domestic Violence Protection Notice, by which a senior police officer could require a suspected perpetrator to stop molesting a victim and to leave the premises, pending application to court for the Bill’s new Domestic Violence Protection Order;
 - extending the new injunctions to prevent gang-related violence to under 18s;
 - strengthening the legal assumption that a court will make a parenting order when 10-15 year olds are convicted for a breach of an anti-social behaviour order;
 - establishing a new licensing requirement for businesses carrying out vehicle immobilisation, in addition to the existing one for individuals;
 - introducing a new criminal offence of possessing a mobile telephone in prison; and,
 - introducing a new offence of allowing minors access to air weapons.
2. At the time of introduction time the Bill contained no provisions relating to the Licensing Act 2003 (“the LA03”).
3. A motion was moved in Parliament on 10th February 2010 asking the House to “instruct” the Bill Committee to consider certain amendments to the Bill to amend the LA03 to give local authorities power to “ban 24 hour licences in their area”.
4. The 2010 Act received Royal Assent on 8th April 2010; however the provisions to amend the LA03 will not come into force until the Secretary of State lays the necessary Commencement Order.

Proposed changes to the LA03

5. Section 55 of the 2010 Act will amend the LA03 by inserting five new sections (sections 172A to 172E) into Part 9 of the latter Act.
6. S.172A will give a licensing authority the power to make an “early morning restriction order” (“the Order”). The effect of the Order being to suspend any authorisation of the sale or supply of alcohol between 3am and 6am. This includes premises licences, club premises certificates and temporary event notices.
7. Such an Order may apply to:
 - (a) every day or only on particular days;
 - (b) in relation to the whole or part of a licensing authority’s area, or
 - (c) for a limited or unlimited period.
8. The Order must therefore specify the days in relation to which it is to apply, the area in relation to which it is to apply, and if it is to apply for a limited period, that period. The

Order must also specify the date from which it is to apply. The Order must be in the prescribed form and contain the prescribed content both to be prescribed by regulations.

9. An Order may therefore be made which only applies to Friday and Saturday nights only, or one may be made that has effect only for six months rather than an indefinite period.
10. S.172B sets out the procedural requirements for the making of the Order, which includes advertising the proposed Order, in a manner to be prescribed by regulations, and holding a hearing to consider any relevant representations received.
11. “Relevant representations” means representations which -
 - (a) are about the likely effect of the making of the proposed Order on the promotion of the licensing objectives,
 - (b) are made to the licensing authority by -
 - (i) an affected person,
 - (ii) an interested party, or
 - (iii) a responsible authority.
12. “Affected person” means -
 - (a) the holder of a premises licence or club premises certificate in respect of affected premises;
 - (b) the premises user in relation to a temporary event notice in respect of affected premises;
 - (c) a person who has applied for a premises licence or club premises certificate in respect of affected premises (where the application has not been determined); and,
 - (d) a person to whom a provisional statement has been issued in respect of affected premises.
13. S.172C prohibits a licensing authority from making an Order applying to:
 - (a) an area not specified in the proposed Order advertised under section 172B, or
 - (b) a day not specified in that proposed Order.
14. S.172D contains provisions relating to variation and revocation of early morning alcohol restriction orders.
15. S.172E provides for exceptions from the effect of an Order in cases or circumstances prescribed by the Secretary of State in regulations. These may be defined by reference to particular kinds of premises (such as hotels which sell alcohol to residential guests but not to the general public between 3am and 6am), or particular days (e.g. New Year’s Day). Subsection (3) ensures that an Order made under section 172A is subject to an order made under section 172 of the LA03 (unless the s172 Order provides otherwise). Section 172 enables the Secretary of State, with the approval of both Houses of Parliament, to make a licensing hours order for a specified period to mark an occasion of exceptional international, national or local significance. An Order under section 172 has the effect of relaxing the opening hours for premises licences and club premises certificates.

16. As stated in Paragraph 4 these provisions will not come into force until the Secretary of State has laid the necessary Commencement Order. They will also be subject to further Statutory Instrument(s) with regard to the form and content of the early morning restriction orders as well as the manner of their advertising.
17. Further Guidance will need to be issued under S.182 of the LA03 outlining the process and what matters authorities will need to consider prior to making an application for an Order.