



LR.09 11/12
Licensing & Regulatory Committee
05 December 2011

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Subject: Police Reform and Social Responsibility Act 2011

Report by:	James Nicholson Director of Neighbourhoods and Health
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Purpose / Summary:	To provide the Committee with the basic implications of the Police Reform and Social Responsibility Act 2011 (the 2011 Act).

RECOMMENDATION:

1) That Members note the information contained within the report.

IMPLICATIONS

Legal: N/A at this stage, awaiting secondary legislation.

Financial: There are no budgetary implications as a result of this report, awaiting secondary legislation.

Staffing: It is envisaged that any extra workload will be managed by existing staff and within current budgets.

Equality and Diversity including Human Rights :

N/A at this stage, a full impact assessment will take place when the policy is revised.

Risk Assessment: N/A at this stage, awaiting secondary legislation.

Climate Related Risks and Opportunities : N/A

Title and Location of any Background Papers used in the preparation of this report:

Information contained within Appendix A.

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes

No

Key Decision:

Yes

No

1. Purpose of Report

- 1.1 To provide the Committee with the basic implications of the Police Reform and Social Responsibility Act 2011 (the 2011 Act). The Licensing Act 2003 (the 2003 Act) has been amended and new measures introduced in respect of the sale of alcohol.

2. Background

- 2.1 The Home Office has taken responsibility away from the DCMS for the legislation covering the sale of alcohol.
- 2.2 The Act resulted from an exercise titled “Rebalancing the Licensing Act” which the Home Office commissioned and in which it was hoped that some of the mistakes made in the original drafting of the 2003 Act will be redressed.

3. Main Body of Report

- 3.1 As the 2011 Act title says, it reforms the police administration and governance as well as other matters that do not concern this Committee. However, redressing the 2003 Act is important to the Committee and officers as it changes some of the administration, the setting of fees and some enforcement issues.
- 3.2 A table has been prepared outlining the provisions (**Appendix A**) with basic implications.
- 3.3 It is clear that the provisions will be subject to secondary legislation which has not yet been published and therefore the detail is not known.
- 3.4 It is expected that commencement of the provisions will be spread over next year probably April for the TENs and October for the remainder.
- 3.5 The table at Appendix A gives a preliminary indication of the work that the Licensing Team will be required to carry out in order to meet implementation of the 2011 Act.
- 3.6 The Committee will note that in respect of TENs (temporary event notices) that EHO officers can now object and this may have an impact on that department as it will have to put steps in place to meet the requirements.
- 3.7 A further report will be presented to the Members of the Committee when more details are known. The statutory guidance made under section 182 of the Licensing Act 2003 will clearly need to be reviewed and amended by the Government accordingly. Once this process has taken place Members input will be required as it is clear that the WLDC current policy will need to be reviewed and fully consulted upon also, which may be the opportune time to engage with Members to steer policy.

4.0 Recommendation

- 4.1 Bearing in mind Members will need to become involved with the review of the licensing policy, the recommendation is that Members note the contents of the report.

Appendix A

	Amendment to LA 2003	Comment
1.	The licensing authority itself becomes a responsible authority, able to make representations and apply for reviews in its own right.	We will need to see the secondary legislation to see if this right is delegated to officers to exercise. It is suggested that when officers consider representations are appropriate and when officers consider it is appropriate to withdraw those representations, the Chair is notified on an advisory basis in advance.
2.	Individual members of licensing authorities to no longer be interested parties.	Councillors will no longer be able to make representations unless they are fall within the definition of “other persons” living or working in the vicinity of the premises and who are likely to be affected by the application, unless they have been – as currently – been asked to make representations on a residents’ behalf.
3.	The Primary Care Trust becomes a responsible authority, able to make representations and apply for reviews.	Information leaflets and website pages will need to be amended accordingly; need to identify who in the PCT should receive copies of applications; need to check that PCT receive copies of applications.
3.	Definition of “interested parties” deleted	
4.	Notices of applications are to be advertised in a prescribed manner to bring it to the attention of “other persons” - persons who live, or are involved in a business, in the licensing authority area and who are likely to be affected by the application.	This increases the number of people who may make representations about licence applications, with the possibility of more representations leading to more contested applications. The current test of whether someone or not “lives or works in the vicinity of the premises” can usually be determined by officers, but whether someone under the new test “is likely to be affected by the application” may be better resolved at the LSC hearing.

5.	Regulations must require the licensing authority to advertise applications	This will increase officer costs and times in advertising the applications, including reviews, in a prescribed form to bring it to the attention of persons who live, or are involved in a business, in the licensing authority area and who are likely to be affected by the application.
6.	The test for whether a decision is needed will be that is “appropriate” for the promotion of the licensing objectives, and not “necessary” as now.	“Necessity” suggests that there is a pressing requirement for a decision to be taken that furthers the objectives. “Appropriate” applies a lower threshold which may be harder to challenge on appeal. Will need to amend information leaflets.
7.	EHOs will be able to object to temporary event notices	Officers will have to ensure EHOs are notified of (or have received copies of) TENs. Will have to amend guidance notes.
8.	Objections to TENs may be made if they would undermine a licensing objective.	This is an extension from the current position where the police can only object if they feel the TEN would undermine the crime prevention objective. It may potentially increase EHO workload and the number of LSC hearings.
9.	Counter notices where permitted levels exceeded for the number of TENs allowed in a calendar year must also be sent to EHOs	Slight increase in licensing officer work.
10.	A LSC may impose conditions on a TEN following a hearing where (a) it is appropriate to do so and (b) that those conditions are already included on a premises licence/club premises certificate for those premises and (c) it would not be inconsistent with carrying out the licensable activities under the TEN. For example, a licence condition to use door supervisors can be extended to include the period	May require more compliance checks to ensure conditions on TENs have been met. Will require slightly more time in preparing reports for LSC as the relationship between the TEN and the premises licence/club premises certificate will have to be included as well.

	covered by the TEN.	
11.	A separate statement of conditions applicable to the TEN must be given to the premises user, police and EHOs.	There will be an increase in officer time to produce these.
12.	There will be different routes to give a TEN: a) electronically or in writing no later than 10 working days before the event begins; or b) electronically to the licensing authority, no earlier than 9 working days before the event and no later than 5 working days before the event begins ("a late TEN"); or c) in writing to the licensing authority, police and EHO no later than five working days before the event begins and to at least one of those no earlier than nine working days before the event begins ("a late TEN").	Late TENs are probably going to become the norm, which makes it easier for premises users but may put more pressure on officers. This will be quite complicated and information leaflets etc will need amending.
13.	Officers must give a counter notice where an objection notice has been received from the police or EHO in respect of a late TEN.	This is likely to increase the workload on officers.
14.	In addition to the current 50 standard TENs that a personal licence holder can give a year, and the five standard TENs a non-personal licence holder can give a year, they will also be able to give a further ten and two late TENs respectively.	This may lead to an increase in the number of TENs received.
15.	TENs will be able to last for a maximum of 168 hours (1 week), rather than the existing 96 hours (4 days), and premises can be used for up to 21 days a year (rather than the existing 15 days).	Most TENs only apply for a few hours, so extending them to 168 hours is only likely to be of assistance at Christmas when premises may want to have a whole week of extended time.
16.	The police and EHOs will have three working days in which to object to a TEN as opposed to the current two working days for the police.	

17.	<p>Fines for persistently selling alcohol to children will increase from £10,000 to £20,000.</p> <p>The period that offenders can be ordered to cease selling alcohol by a constable or trading standards officers in those circumstances is varied from a maximum 48 hours to a minimum of 48 hours and a maximum of 336 hours (14 days).</p>	<p>It is well-documented nationally that courts do not give out anywhere near the current maximum penalties, and the closure notices are seldom used.</p>
18.	<p>Where it is appropriate for the promotion of the licensing objectives, a licensing authority may make an early morning alcohol restriction order to prohibit the sale or supply of alcohol between midnight and 6 am as specified in the order. The order can specify the days, times, or parts of the authority's areas to which it applies, and may be on a temporary basis. They may be varied or revoked, and may contain exemptions in prescribed cases or circumstances.</p>	<p>An order may not be made unless the proposal has first been duly advertised and representations considered in accordance with statutory regulations. There is a need for considerable public consultation before an order can be made.</p>
19.	<p>Premises licences and club premises certificates must be suspended no less than two working days after the annual fee not being paid within 21 days of it being due. Receipts must be issued within two working days.</p>	<p>There will need to be compliance checks where the fee remains unpaid. Need to ensure the current invoicing and income process is fit for purpose in his respect. There will be an increase in work in October – December when most fees will become due.</p>
20.	<p>Subject to ministerial approval, the licensing authority will have the power to set certain fees on a cost-recovery basis. The costs may also include the costs of acting as other responsible authorities under the Act, e.g. planning authority.</p>	<p>Considerable officer time required to ensure the function is and can be proved to be cost-recovery. Failure to do so may result in District Auditors failing to sign off accounts.</p>
21.	<p>Licensing policy statements can now be reviewed every five years instead of every three years, such period starting from a date of the licensing authority's choosing which must be stated within the policy statement. A five year period means subsequent</p>	<p>This will represent a small saving in not having to review policies as frequently, providing the risk of ensuring policies are relevant and up-to-date is managed. The Act allows existing policies determined and published for the</p>

	periods ending 6 January 2016.	three year period starting 7 January 2011 to last for five years as if the policy stated it should last for five years.
22.	<p>Further relevant offences have been added to those that may potentially disqualify people from holding personal licences:</p> <ul style="list-style-type: none"> • failing to co-operate with preliminary breath tests for drink-driving; • attempting to commit any relevant offence; • conspiracy to commit any relevant offence; • common law offence of conspiracy to defraud. <p>Once the section is commenced, this applies to personal licences granted or renewed before, on or after that date, and to offences committed before, on or after the commencement date.</p>	<p>Only unspent convictions are relevant and any licences already issued to those licensees with these new relevant offences will not show on their licences. No prospect of recovery as criminal conviction certificates not kept. Therefore, will only apply to new applicants.</p>
23.	The Secretary of State must carry out a review of the amending provisions contained in the Act, and set out the conclusions in a report to Parliament, as soon as reasonably practicable five years after all the amendments have been brought into force.	

NEW PROVISIONS INTRODUCED IN POLICING REFORM AND SOCIAL RESPONSIBILITY ACT 2011		
1.	<p>Licensing authorities may decide that a late night levy is to apply in its area, after considering:</p> <p>(a) policing and other costs for reducing or preventing alcohol-related crime and disorder between midnight and 6 am; and</p> <p>(b) the desirability of raising revenue in accordance with regulation, of which not less than 70 per cent must be</p>	<p>Considering whether to introduce the levy, what costs will business incur? Other than the cost of administering the levy any surplus has to be applied in accordance with the regulations.</p> <p>See below.</p>

	applied to the local policing body.	
2.	<p>The late night levy must apply to the whole of the licensing area, subject to:</p> <ul style="list-style-type: none"> • any time restrictions of premises liable to pay for it; • any permitted exemption categories; and • any permitted reduction categories. 	<p>May result in premises reducing hours so as not to be caught by the levy. Could result in a number of premises all closing at the same time, which defeats one of the original intentions of avoiding artificial closing times. Premises may vary licence to come out of the levy times free of charge and hence unpaid officer time incurred preparing the varied licence.</p>
3.	<p>The licensing authority may determine the time of day between midnight and 6 am during which the late-night levy may apply, which must be the same throughout a “payment year”.</p>	<p>“Payment years” in relation to premises licences and club premises certificates are to be determined in regulations. This may either be linked to the annual fees under ss55(2) and 92(2), LA03 or may be potentially determined at the same time as the authority decides a levy is to apply within its area.</p>
4.	<p>The licensing authority may decide upon “applicable exemption categories” that apply in its area from the levy for the levy year.</p>	<p>This suggests licensing authorities can change the premises exempt from the levy from year to year. The applicable exemption categories will be set out in regulations for the licensing authority to decide whether any particular category applies in its area.</p>
5.	<p>The licensing authority may decide upon “applicable reduction categories” that apply in its area from the levy for the levy year.</p>	<p>The levy is the amount prescribed by, or the amount calculated in accordance with, regulations to be made. The applicable reduction categories will be set out in regulations for the licensing authority to decide whether any particular category</p>

		applies in its area.
6.	Regulations will specify how payments are collected, administered and enforced, including times for payment. They may also set out how to deal with cases where relevant late-night premises cease or become liable to pay the levy during the payment year, including where an early morning alcohol restriction order has been implemented during that year.	This may inhibit licensing authority flexibility to organise its own affairs in the collection of the levy payments.
7.	Failure to pay the levy may be recovered as a civil debt and lead to suspension of the premises licence/club premises certificate under the new provisions dealing with non-payment of the annual fee.	
8.	Regulations will specify the relevant expenses that may be deducted in calculating the “net amount” of levy payments, may determine the amounts to be taken into account in calculating the net amount, and may determine the periods to which payments or deductions should be attributable. Not less than 70 per cent of the “net amount” must be paid to the local policing body and the remainder applied in accordance with regulations. (Other regulations may amend the specified 70 per cent).	
9.	“Relevant expenses” to calculate the “net amount” means licensing authority administration expenses, particularly the costs of deciding whether to implement, end or amend the levy, and in collecting and enforcing levy payments.	Regulations will also specify the times at which payments are to be made by the licensing authority to the local policing body.
10.	Licensing authorities must publish before the beginning of the levy year a statement of its estimated permitted deductions, and after the end of the levy year a statement of the net amount.	Licensing authorities can decide how to publish those statements.
9.	The licensing authority may decide the date on which the levy is to start; the time period to which it applies; any permitted exemption or reduction categories; and the proportion of the net amount of levy payments to be paid to the relevant local policing body.	

11.	Decisions on the introduction, variation or revocation of levy will be subject to regulations that in particular must require consultation with the local policing body and chief officer of police; holders of relevant late night authorisations; and other prescribed persons. Notices of such decisions must be published.	
12.	Regulations may also set out the matters of which the licensing authority must be satisfied before deciding that a levy is to apply in its area.	This suggests the link between alcohol and crime and disorder may not be the only consideration, or that crime and disorder has to trigger specific levels before a levy could be introduced.
13.	Late night authorisations may be varied before the start of the levy year without any fee, so as to exempt them from having to pay the levy.	Premises subject to a levy may amend their licence/certificate for free prior to the levy year coming into force. There is no guidance at this stage as to how far in advance such applications may be made, the cost to the licensing authority in the (unlikely) event of a contested application, and if the application seeks to take advantage of amending the licence (such as adding licensable activities to it) at the same time as reducing the hours to avoid the levy.
14.	The regulations listing “permitted exemption” and “permitted reduction” categories may relate to taking part in particular arrangements such as taking part in Pubwatch or Best Bar None schemes, or particular descriptions of premises, such as hotels or casinos.	There may be complexities around any individual premises that for example fall within the permitted reduction category.
15.	Regulations must specify what the amount of reduction to be enjoyed by those in the permitted reduction categories, or how the reduced amount is to be calculated, which	

	must be the same for all holders of late night authorisations in that category for a levy year.	
16.	The arrangements relating to levies apply to licensed premises on Crown land, and that owned by the Duchies of Cornwall and Lancaster.	

	Other amendments	
1.	The power to designate an alcohol disorder zone under the Violent Crime Reduction Act 2006 is repealed.	