

Meeting: Executive
Portfolio Area: Public and Environmental Health
Date: 14 January 2004

IMPLEMENTATION OF LICENSING ACT 2003
(Department of Environmental Services)

KEY DECISION

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1 PURPOSE

To report back to the Executive regarding the likely workload and legislative requirements and to constitute the new licensing committee.

2 RECOMMENDATIONS

That the Council at its special meeting on 28th January be recommended to approve:-

- 2.1 that a Licensing and General Purposes Committee be established, replacing the General Purposes Committee established in May 2003, with terms of reference shown at Appendix A of this report, and that the Council's Constitution be amended accordingly;

Note: If agreed, this recommendation replaces the recommendation from the December Executive regarding the changes to the terms of reference of the General Purposes Committee in respect of Alcohol Free Zones.

3 BACKGROUND

The implementation of the Licensing Act was considered by the Executive on 12th November 2003. It was agreed that a detailed assessment of the likely numbers, types and locations of premises would be further researched, together with the legislative requirements for the conduct of Member level meetings.

4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS

The table below indicates the level of activity under the existing licensing regime for both the Council and the Magistrates' Court.

Annual Licensing Activity – current regime

	<u>Local Authority</u>		<u>Magistrates</u>	
	<u>Applications</u>	<u>Refusals</u>	<u>Applications</u>	<u>Refusals</u>
<u>Renewals</u>				
Public entertainment licences (PELs)	40	0	10	0
Theatres	2	0	N/A	N/A
Cinemas	3	0	N/A	N/A
Late night refreshment houses	6	0	N/A	N/A
<u>Liquor licences</u>				
Total	N/A	N/A	171	0
<u>Transfers</u>				
PELs	6	0	N/A	N/A
Liquor licences	N/A	N/A	86	3
<u>Variations</u>				
PELs	3	0	N/A	N/A
Liquor licences	N/A	N/A	3	0
<u>Occasional permissions</u>				
PELs	3	0	N/A	N/A
Liquor licences	N/A	N/A	60	6
<u>New applications</u>				
PELs etc	3	0	N/A	N/A
Liquor licences	N/A	N/A	9	0
Protection orders	N/A	N/A	30	3

Under the existing regime all licences issued by a local authority are renewed annually, whereas those issued by the Magistrates are renewed every 3 years. Other activities currently undertaken by the Magistrates, such as protection orders, which are effectively temporary licences, will not be required in the new regime, this function will be undertaken by the Police.

In contrast, the likely workload under the new regime is shown below.

Annual Licensing Activity – new regime

	<u>Initial year</u>		<u>Subsequent years</u>	
	<u>Applications</u>	<u>Members</u>	<u>Applications</u>	<u>Members</u>
<u>Premises licences</u>				
Initial grandfather rights	200	0		
Variations on initial licences	140	70		
Review of premises licence		40		20
New premises applications	6	1	5	1
Transfers	2	1	2	1
Provisional premises statements	1	0	2	0
Vary designated premises supervisor	90	1	90	1
<u>Personal licences</u>				
Personal licences (existing)	350	1		
New Personal licences	50	2	50	2
Temporary event notices	60	6	60	6

Grandfather rights are the conditions that were applied to a liquor licence before the Licensing Act 2003 was implemented. These conditions are protected and cannot be opposed by the Licensing Authority.

These figures are estimates based on information from LACORS and the LGA. The activity of Members, and the Licensing and General Purposes Committee in particular, will depend upon issues such as the level of consultation required, and this has yet to be finalised by Central Government. It has been assumed nationally that a large number of licensees will wish to extend their operating hours or implement other changes that will require a variation application.

It should be noted that only the applications where substantive objections are made will be referred to Committee.

Legislative Requirements for the Conduct of Meetings

The current version of the draft guidance provides for a Committee of up to 15 Members and sub-committees of a minimum of 3 Members who can determine all applications. The current Constitution of the General Purposes Committee fits these constraints, having a membership of 10 and a quorum of 3. This small quorum will prove to be effective at enabling hearings to be convened at short notice to comply with strict time limits imposed in respect of making decisions:-

New applications for premises licences must be determined within 8 weeks otherwise they are deemed refused.

New applications for temporary events must be determined within 10 days otherwise they are deemed granted.

In the event that these deadlines are not adhered to, refusals can then be appealed to the Magistrates' Court where costs can be awarded against the unsuccessful litigant.

An analysis has been undertaken of the location of premises in order to identify whether the workload, particularly during the first year, would justify the establishment of one or more sub-committees. As expected this identified that there is a concentration of premises on the Leisure Park and in the Old Town, and that otherwise the premises are randomly distributed throughout the Wards.

The length of the hearing is similarly difficult to estimate, although estimates of 2 to 3 hours have been given at recent seminars on the Act. As such matters are quasi-judicial in nature they can become protracted. Both the applicant and the Council are required to make a submission calling witnesses and cross-examining each one.

The Committee are also entitled to challenge the information presented and subsequently invite both parties to retire in order that they may consider their verdict. It is imperative that detailed minutes of the proceedings are taken as such matters can be reviewed on subsequent appeal.

Under the circumstances, it may be considered more appropriate, to deal with these applications using only the main Committee and to only establish a sub-committee if this can be fully justified by the workload.

The terms of reference for the proposed Licensing and General Purposes Committee are shown at Appendix A.

Initial Business for the Licensing and General Purposes Committee

It is necessary to establish the new Committee as soon as possible in order that they can consider the final version of the Licensing Policy for consultation. This document was previously agreed by the Executive and will need some amendment once the secondary legislation has been finalised.

The Council is obliged to consult on the new Licensing Policy for a minimum of 3 months, and this policy must be in place before the first appointed day.

In the event that the first appointed day is in June (most recent information seems to point to this), the Committee will not be required to meet to hear individual applications until July (dependent upon there being no temporary event licence applications submitted in June). It would be advisable to programme into the Council Calendar at least one meeting per week or per month (dependant upon the final statutory guidance) over the summer (including August) given the initial number of applications likely to be received. As only 3 Councillors are required to attend for a hearing to take place, the problem of clashes with other meetings and non-attendance due to holidays should be alleviated to some degree. If a meeting is not required, it is much easier to cancel arrangements rather than to set meetings up at short notice.

Current Situation

The finalised legislation has yet to be published by the DCMS and no further consultative documents have been released. The LGA have been seeking a number of amendments, including a revised timetable for implementation, but have received no response.

The secondary legislation awaited includes:

- Committee procedures
- Prescribed forms
- Fees and charges
- Statutory guidance

Similarly, no response has yet been received to the representations made to Tessa Jowell, the Secretary of State for the Department of Culture, Media and Sport, in respect of the proposed level of fees.

On the basis of current knowledge, it is likely that the secondary legislation will be issued without further consultation, and that the first appointed day will still be June 2004

5 IMPLICATIONS

5.1 Financial Implications

None apparent at this time.

5.2 Legal Implications

The measures outlined in this report fulfil our statutory obligations under the Licensing Act 2003.

5.3 Other Corporate Implications

None arising from this report. These were considered in the report to the Executive on 12th November 2003.

BACKGROUND DOCUMENTS

- The Licensing Act 2003.

APPENDICES

- Terms of Reference to the Licensing and General Purposes Committee.

APPENDIX A

DRAFT TERMS OF REFERENCE – LICENSING & GENERAL PURPOSES COMMITTEE

LICENSING & GENERAL PURPOSES COMMITTEE

1. **Membership**

10

2. **Quorum**

3

3. **Reports to:**

- (i) The Council, where appropriate in respect of those functions set out at Table 2 (responsibility for Council functions) of Part 3 of the Constitution or as allocated in Table 1 (local choice functions) or in respect of those matters reserved to Council.
- (ii) The Executive in other cases.

4. **Delegations**

All matters within terms of reference.

5. **Terms of Reference**

5.1 Responsibility for all the Council's functions in relation to the Licensing Act 2003 including to consider and determine the following matters (where not delegated to officers) :-

- Applications for Premises Licences and Personal Licences and all related issues.
- The designation of public places where the consumption of alcohol is to be prohibited.

5.2 To consider and determine certain matters where a right of appeal exists against the decision of a Members body or an officer, including:

- Further reviews under the relevant Regulations by applicants for Housing Benefit and Council Tax Benefits.
- Appeals in relation to housing needs assessment.
- Appeals/reviews in relation to refusals to grant Hackney Carriage/Private Hire Licences.

These terms of reference shall exclude the hearing and determination of:-

- appeals by officers against dismissal or disciplinary action;
- grievances from Officers under the final stage of the grievance procedure;

which shall be dealt with either in accordance with the terms of reference for the Appeals/Grievance Panel or in accordance with the delegations to Officers.

5.3 Insofar as they are not already referred to in these terms of reference, those relevant powers set out in Schedule 1 of the Local Authorities (Functions & Responsibilities) (England) Regulations as amended (See Table 2 of Part 3 of this Constitution) (subject to them being dealt with as appropriate by Officers under delegated powers). This is to include the making of charges for any approval licence or registration, etc in relation to all the powers referred to.

5.4 Insofar as they are not already referred to in these terms of reference, those "local choice" functions set out at Table 1 of Part 3 of this Constitution.