

Committee(s):	Date(s):	Item no.
Licensing Committee	18 April 2011	
Subject: Police Reform and Social Responsibility Bill	Public	
Report of: City Remembrancer	For Information	
<p style="text-align: center;"><u>Summary</u></p> <p>This report provides an overview of the Police Reform and Social Responsibility Bill introduced in the House of Commons last November and identifies those issues likely to be of most relevance to the City of London Corporation.</p> <p>The Bill proposes to “rebalance” the Licensing Act to give greater local discretion in the licensing regime. The Bill introduces amendments to the Licensing Act 2003 in eight distinct areas and creates a new “late night levy”. The Bill does not include any provision to ban the sale of alcohol below cost price. The Government has indicated that if such legislation is brought in, the trigger date will not be until 2012.</p> <p>Recommendations</p> <ul style="list-style-type: none">• Members are invited to note the contents of this report.		

Main Report

Background

1. The Conservative Party manifesto for the 2010 General Election indicated the Conservatives would “overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems”. Among the proposals trailed were powers to allow councils and the police to shut down permanently any shop or bar found persistently selling alcohol to children and enabling licensing authorities to charge more for late night licences to pay for additional policing. Incidentally, responsibility for licensing within Government has now

shifted from the Department for Culture, Media and Sport (DCMS) to the Home Office. Responsibility for entertainment licensing remains with DCMS.

Overview of the Bill

2. The Police Reform and Social Responsibility Bill was introduced in the House of Commons on 30 November. The Bill completed its Commons Stages on 31 March and is scheduled for Second Reading in the Lords before the end of April. The Bill is split into 5 parts with the main elements – on police reform and licensing – in the first two parts. The remaining parts cover regulating protests around Parliament Square, temporary drugs bans and the introduction of a new requirement for private prosecutors to obtain the consent of the Director of Public Prosecutions prior to the issue of an arrest warrant for “universal jurisdiction” offences such as war crimes or torture.

Amendments to the Licensing Act 2003

3. The licensing provisions are contained in Part 2 of the Bill and follow on from the Government’s consultation on licensing reform issued last summer. The Bill introduces amendments to the 2003 Act in eight distinct areas and creates a new “late night levy”. The Bill does not include any provision to ban the sale of alcohol below cost price.

Responsible Authorities

4. The Bill creates two further categories of “responsible authorities” that are entitled to make representations to licensing authorities in relation to licence applications. The 2003 Act defines responsible authorities as including the police, fire authorities, local authorities exercising health and safety, local planning, environmental health and child protection functions, and any licensing authority in whose area a part of the premises is situated. Under the Bill, the licensing authority where the premises are situated or where the licence application is lodged are included within the definition and will be able to object to the grant of a licence or initiate a review of an existing licence. Primary Care Trusts are also added to the list of responsibility authorities.

The Vicinity Test

5. The “vicinity” and interested party tests are removed from the 2003 Act. This will enable anybody to make representations in relation to new premises licences and to apply for the review of existing licences. Such representations must, however, relate to one or more of the four licensing objectives (prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm) and must not be “frivolous or vexatious”.

Exercise of Licensing Functions

6. The 2003 Act imposes a general duty on licensing authorities to exercise their licensing functions with a view to promoting the licensing objectives. A number of specific processes require licensing authorities to take steps which are “necessary” for the promotion of the objectives. The Bill amends those provisions by instead requiring licensing authorities to take steps which are “appropriate” for the promotion of the objectives. In the words of the Explanatory Notes to the Bill, “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 (TENs)

7. The Bill makes various changes in relation to the scrutiny and utility of temporary event notices. It extends the right to object to a TEN to environmental health authorities where, previously, only the police could object and then only on crime prevention grounds. The police and environmental health authority will be able to object on the basis of any of the four licensing objectives and not just crime prevention. Also, for the first time, licensing authorities will be able to impose conditions on a TEN in limited circumstances if they consider that this promotes the licensing objectives. Provisions will also enable premises users to give a limited number of TENs later than the existing process permits and, in any calendar year, to hold a single event under a temporary event notice for up to seven days or use a single premises for up to 21 days.

Underage Sales

8. The Licensing Act 2003 (s147A) defines the “persistent” sale of alcohol to a minor as meaning sale on two or more occasions in a three month period to a child. This Bill increases the maximum fine on conviction to £20,000. The 2003 Act also offers an alternative to prosecution. Where there is evidence that the offence has been committed, as an alternative to prosecution, the individual may instead opt to close their premises for a period specified in a closure notice issued by the police and trading standards officers. The closure notice discharges the individual from any further criminal liability. At present the closure notice can last for a maximum of 48 hours but, under this Bill, closure notices will last for a minimum of 48 hours and up to a maximum of two weeks.

Early Morning Restrictions

9. At present a licensing authority can impose an early morning restriction order to prohibit the sale of alcohol between 3am and 6am in the whole or part of its area. The Bill will extend that power, giving authorities greater flexibility, so that they will be able to make orders for the whole or part

of their areas for a period of any duration between midnight and 6am and impose different restrictions on different days.

Fees

10. The Bill gives licensing authorities a new power to suspend a licence or certificate for non-payment of an annual licensing fee. A new clause was added by the Government at Report Stage in the House of Commons giving licensing authorities discretion to set their own fees. The Minister described this as a response to concerns expressed by some licensing authorities that the current fee structure did not allow for full cost recovery even though it was intended to do so.

Licensing Policy Statements

11. At present a licensing authority has to prepare and publish a statement of its licensing policy every three years and to keep that policy under review and revise it as appropriate during the three-year period. The Bill extends the period from three years to five years.

Late Night Levy

12. The Bill creates a new power for licensing authorities to impose a “late night levy” on premises which serve alcohol during a set period between midnight and 6am. Most of the income – at least 70% as prescribed in the Bill – will go to the police to help them meet the cost of keeping additional officers on the streets in the early hours. The remainder – up to 30% – will go to licensing authorities to alleviate their costs in reducing alcohol-related crime and disorder in the night-time economy. Regulations will require a licensing authority to consult the police and holders of late-night licences before making a decision to introduce a late night levy in their area, or to revoke it once introduced. If local authorities choose to introduce it for their area, the levy rate will be prescribed in regulations and will be set at a uniform rate across England and Wales.

Impact on the City of London

13. Much of the Bill will be implemented through regulations made under secondary legislation and until further detail of those is available, it is not possible to gauge the full impact on the City Corporation. It is however possible to give an initial assessment of the impact of some of the more significant provisions set out in the Bill.

Responsible Authorities

14. Giving licensing authorities the power to refuse licence applications or call for a licence review could have the potential of appearing to remove the independence of the licensing committee when determining a licence

application. Care will have to be taken to ensure that the actions of a licensing authority in its capacity as a ‘responsible authority’ are kept separate from its other statutory duties. This demarcation of duties will need to be made clear and may require the City’s Licensing Policy to be amended.

Early Morning Restrictions (EMRs)

15. The increase in flexibility of setting early morning restrictions will make it easier for the City to target areas that may give rise to problems, particularly with regard to crime & disorder and public nuisance.
16. A continued close working relationship between the police licensing team and the Corporation’s licensing service will be important to ensure that the changes in powers are used appropriately across the City.

Late Night Levy

17. Introducing a late night levy within the City could increase income to the Corporation by up to £20,000. However, the way in which the City combats crime and disorder will need to be considered carefully as the introduction of EMRs may reduce the scope to impose late night levies.

Vicinity Test

18. Allowing representations from almost anybody, along with the increased powers and flexibility that flow from being included as “a responsible authority”, will almost certainly result in an increase in refusals of licence applications, an increase in imposed conditions applied to licences, and an increase in licence reviews, revocations and hearings. It is not clear what implications this will have for the City’s licensing team and the impact will need to be fully assessed when the provisions come into force.

Consultees

19. The Director of Environmental Services has been consulted in the preparation of this report.

Background Papers:

- *Police Reform and Social Responsibility Bill*

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