

Committee(s):	Date(s):	Item no.
Licensing Committee	16 January 2012	
Subject: Police Reform and Social Responsibility Act 2011		Public
Report of: City Remembrancer		For Information
<p style="text-align: center;"><u>Summary</u></p> <p>This report provides an update to Members following the passing of the Police Reform and Social Responsibility Act 2011 on 15th September 2011.</p> <p>The Bill was previously reported to your Committee in April.</p> <p>The key points for Members to note are:</p> <ul style="list-style-type: none"> • The Act introduces amendments to the Licensing Act 2003 in eight main areas and creates a new “late night levy”. • Once the provisions are brought into force, licensing authorities will have the discretion to set their own fees on a cost recovery basis. • Licensing authorities will become responsible authorities in their own right and therefore can object to applications or initiate reviews. • Licensing Policy Statements will in future be reviewable every five years rather than every three years. • Part 2 of the Act which contains the licensing provisions has not yet been brought into force. Much of the Act will be implemented through secondary legislation in the form of regulations but these have not yet been published. <p>Recommendations</p> <ul style="list-style-type: none"> • Members are invited to note the contents of this report. 		

Main Report

Background

1. Following lengthy parliamentary scrutiny, the Police Reform and Social Responsibility Act 2011 received Royal Assent on 15th September 2011. Although the Bill received a high profile during its progress, especially through the Lords, the provisions relating to licensing in Part 2 of the Bill generated very little controversy and it was the introduction of elected Policing and Crime Commissioners which grabbed the attention.
2. A commencement order for Part 2 of the Act has not yet been laid although it is expected that some provisions may be brought into force before the Olympics. Detailed regulations for other licensing aspects, particularly the Late Night Levy, are also awaited.

Amendments to the Licensing Act 2003

3. As set out to the Committee previously, this legislation introduces amendments to the Licensing Act 2003 in eight distinct areas and creates a new “late night levy”. In summary, the changes are
 - ***Responsible Authorities*** - 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. Some responsible authorities have chosen to exercise this function at Officer level. Members already have the right to take such action in their individual capacity as elected members of the licensing authority.
 - ***The Vicinity Test*** - 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.
 - ***Exercise of Licensing Functions*** - Instead of licensing authorities having to take steps that it considers ‘necessary’ for the promotion of the licensing objectives (e.g. imposing conditions or refusing applications) when hearing applications, the steps now have to be ‘appropriate’. The purpose of this is to lower the evidential burden placed on Licensing Committees. The statutory guidance will be amended to give advice on the interpretation of what is ‘appropriate’,

- ***Temporary Event Notices (TENs)*** - The right to object to a TEN is extended 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. Licensing authorities also now have the power to impose conditions on a TEN in limited circumstances if they consider that this promotes the licensing objectives.
- ***Underage Sales*** – The maximum fine on conviction of persistently selling alcohol to children is doubled to £20,000. If the option of a closure notice is taken instead, this must be for a minimum of 48 hours and not exceed 14 days. Previously a closure notice could not operate for longer than 48 hours.
- ***Early Morning Restrictions*** – Early Morning Restriction Orders were originally inserted into the Licensing Act 2003 by the Crime and Security Act 2010 but never implemented. They were intended to allow licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 3am and 6am if they consider this appropriate for the promotion of the licensing objectives. The licensing authority would be limited to imposing the same restricted hours for every day of the week that the restrictions were to have an effect. The 2011 Act extends the 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*** - Licensing authorities have a new power to suspend a licence or certificate for non-payment of an annual licensing fee and, following a Government amendment, licensing authorities have the discretion to set their own fees on a cost recovery basis.
- ***Licensing Policy Statements*** – These are now reviewable every 5 years rather than every three years.
- ***Late Night Levy*** – Licensing authorities have the power to impose a “late night levy” on premises which serve alcohol during a set period between midnight and 6am. 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. A Late Night Levy cannot be introduced to apply to only part of a licensing area.

Impact on the City of London

4. Apart from the principal aspects indicated above, much of the Act will be implemented through secondary legislation in the form of regulations. These will be examined as they appear.
5. From what is currently known, the main impact on the Licensing Authority is likely to be in the following areas.

Responsible Authority

6. Broadening the number of authorities that can object to the grant of a licence or initiate a review means that there is a possibility of more hearings in the future. Similarly, the ability for licensing authorities to make representations in their own right, whether it be for a new premise licence or for a variation to an existing licence, could also lead to more hearings.
7. When the licensing authority is raising objections in its own right, care will need to be taken so as to ensure fairness and due process in any subsequent hearing. It will be important to ensure that officers working on the 'administrative' aspects of the Licensing Act 2003 are separate from those objecting to the application or instigating a review. Changes may need to be made in the procedures of the licensing service in order to ensure that the decision making process is not subject to judicial review.

Advertising

8. It is not clear at this stage what responsibilities will be placed on licensing authorities to advertise applications. If the requirement is to bring the application to the attention of persons likely to be affected by the granting of any licence, care will need to be taken to ensure the correct groups are identified and adequately informed. Failing to do so could give rise to legal challenges at a later date.

TENs

9. Changes to the procedures surrounding TENs will have a knock on effect and consideration will need to be given to applying conditions to the TEN and to how this will be carried out in practice. How best to deal with the submission of late TENs and the receipt of electronic applications will also require further consideration. Changes to the duration of TENs are not expected to have a significant impact. However, licensing authorities will have to work closely with other responsible authorities to ensure that premises do not abuse the process.

EMRO/Late Night Levy

10. Once the provisions are in force and the regulations have been published, consideration may need to be given to Early Morning Restriction Orders and the Late Night Levy. EMROs can be used to restrict licensable activities anytime between midnight and 6am where the licensing authority believes that it is appropriate for the promotion of the licensing objectives. They can also be targeted in specific areas where they may be particular problems and would apply not only to new licence applications but to existing licenses. If a Late Night Levy were introduced, it would have to be applied to relevant premises across the whole of the City. The two are not mutually exclusive and both a Late Night Levy and EMROs could be introduced.
11. If the City were to decide to introduce a Late Night Levy, most of the income – at least 70% as prescribed in the Act – would go to the police to help them meet additional policing costs that arise from policing the relevant premises. The remainder – up to 30% – would go to the City as licensing authority to alleviate the costs of reducing alcohol-related crime and disorder in the night-time economy. The City's position as a police authority as well as licensing authority resulted in less than ideal drafting of this provision in terms of clarity, warranting Home Office confirmation of its effect as described above, which has been given.

Consultees

12. The Director of Markets and Consumer Protection and the Comptroller and City Solicitor have been consulted in the preparation of this report.

Background Papers:

- *Police Reform and Social Responsibility Act 2011*
- *Report to the Licensing Committee on the Police Reform and Social Responsibility Bill, 18 April 2011*

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