

THE EXECUTIVE

DATE: 12th NOVEMBER 2003

FROM THE DIRECTOR OF ENVIRONMENT

FOR INFORMATION / ACTION

NAME OF WARD(s)
ALL

REPORT TITLE : LICENSING ACT 2003 (the Act) – PREPARATIONS FOR THE NEW LICENSING RESPONSIBILITIES

1.0 SUMMARY

- 1.1 This report sets out the current position in respect of the new Licensing Act 2003 and the ongoing preparations which will enable the Council to take on the new functions and responsibilities on the appointed day in 2004.

2.0 RECOMMENDATION

It is recommended that:

- 2.1 Members agree the development of a statement of Licensing Policy, and consultation with interested parties, which is required by the new Licensing Act 2003. (reference paragraph 7.2)
- 2.2 Members note the Council's preparations for taking on the new function and responsibilities, including those to be transferred from the courts.

3.0 FINANCIAL IMPLICATIONS

- 3.1 When preparations for the new legislation started in 2002 committed growth of £300,000 was identified and agreed by Council.
- 3.1.1 The £300K growth breaks down to cover the costs of additional employees, their recruitment, training, transport, accommodation, supplies and services, including an element for legal and democratic services.
- 3.2 The budget growth is being delivered over the financial years 2003 – 2005 (2003/04 £140,000 and 2004/05 £160,000) to assist with the additional costs involved with taking up the new responsibilities.
- 3.2.1 This financial year's growth of £140K represents Brent's start up costs which are needed to have the service up and running to receive licence applications on the first appointed day.

3.2.2 However, slippage has occurred in the legislative process since Royal Assent was given in July, with the first appointed day now likely to be in May/June'04. This means that there will be some savings although at present the level is uncertain. Savings will mainly be in the area of employee salaries as employment dates have moved back. A saving in the region of £27K is currently estimated.

3.3 The Government through the Department of Culture, Media and Sport (DCMS) **has not set aside funds for local authorities to assist with these start up costs.** They remain stubbornly with the belief and policy that the fees should cover the cost to the licensing authority of all administration, inspection and enforcement associated with the licensing regime; there are to be no grants available to cover start up costs.

3.4 The Fee Regulations under the Act have still not yet at the time of this report been finalised. The fees that have been suggested, particularly for the premises licences which will form the bulk of the work, and which will be banded and based on business rates, are not considered to be sufficient for cost recovery. It must therefore, be clearly understood that as things currently stand we have no option but to deal with the new licensing system, but in doing so may well be 'out of pocket'.

3.5 The suggested new premises licence fee structure is to be banded and based on non-domestic rateable values, i.e. business rates.

3.5.1. There are currently eight rateable value bands (A –H) with a corresponding licence fee matching each band that ranges from £80 for band A premises to £500 for band H premises in respect of the new applications.

3.5.2 In subsequent years premises will, unless there are changes, be required to pay an annual reduced charge that starts at £40 for band A premises and rises to £200 for band H premises.

3.5.3 On the information available to us we have calculated that approximately 50% of premises to be licensed in Brent will fall into band B (£100 and £50 respectively), with only 3% of premises falling into band H (£500 and £200 respectively).

3.5.4 From the above we have estimated that the first year's fee income would be in the region of £104K for licensing existing premises under the new scheme. In addition to this we would receive fees for personal licences at £32.00 each; the number that we will be required to process is very difficult to gauge but could well be some 1000 plus, which would bring in excess of £32,000.

3.5.5 The estimate in 3.5.4 could rise if a large number of premises apply for variation of licences which are treated as additional applications to the original that they will all be required to make to us under the new Act.

- 3.6 Both the LGA and ALG are very much aware of local authority concerns over costs and fees and are in negotiations with the DCMS on our behalf. Whatever the outcome the Secretary of State has agreed to allow the Audit Commission to assess the actual costs at the end of the transition period (end 2005) and if necessary make revisions to the fee structure.

4.0 STAFFING IMPLICATIONS

- 4.1 Responsibility for the administration and enforcement of the new Licensing Act will rest with the Health Safety & Licensing Unit, which already undertakes the majority of the Council's licensing functions. The new legislation and its processes are very much administrative by nature and even with the use of Information technology that is ahead of the field and fully e-government compliant, it will be necessary to recruit 3 Licensing Support Officers to work with existing staff.
- 4.2 The possibility of transferring staff if appropriate from the local Magistrates Courts to the boroughs has been discussed between the ALG and the Greater London Magistrates Courts Authority (GLMCA). However, the GLMCA are awaiting an announcement from the Government in relation to TUPE arrangements. Following this announcement the GLMCA are going to issue guidance to the London Courts. Until this happens the London Boroughs have been advised not to make any local agreements.
- 4.3 The support staff will be employed first and be in post during December/January, followed later in the year after the second appointed day when enforcement powers become live, by 3 Licensing Enforcement Officers.
- 4.4 Obviously, as a result of this new function there will be additional duties and demands placed on Legal and Democratic Services, which they have identified as requiring one committee clerk and a lawyer.

5.0 ENVIRONMENTAL IMPLICATIONS

- 5.1 An important feature of the new Act is the requirement for the licensing authority to have in place a local statement of Licensing Policy that provides the basis upon which the authority, through its officers and members will make decisions on licences.
- 5.2 The policy must incorporate and begin with its determination to promote four principle licensing objectives, of which one is the **prevention of nuisance**.
- 5.3 Promoting this policy objective in the statement will enable the licensing authority to pursue issues such as the cumulative impact of the increasing capacity of premises when taken together. This would allow for the impact on the surrounding area of the behaviour of the customers of all premises taken together to be considered in circumstances where an additional premises seeking a licence effects that cumulative impact and undermines the licensing objective on nuisance.

6.0 LEGAL IMPLICATIONS

- 6.1 The Licensing Act 2003 received Royal Assent on 10th July 2003 and it will transfer responsibility for licensing the sale and supply of alcohol and certain other activities from the magistrates' court to local authorities.
- 6.2 It is proposed that the Act comes into force in two stages set out in schedule 8: from a date called the 'first appointed day' local authorities will grant Personal Licences, decide applications to convert existing licences to the new licences specified by the Act and deal with any applications to vary them. From a date called the 'second appointed day' the Act will come into force in full, the new licences will come into effect and local authorities will have responsibility for the licensing functions specified in the Act together with responsibility for enforcement.
- 6.3 During the period running up to the first appointed day the Council must ensure that it has determined and published statement of Licensing Policy under section 5 of the Act, which has been fully consulted and prepared with regard to Secretary of State's Guidance, and agreed by full Council. That policy will inform the decisions of the Licensing Committee its sub committees and officers in reaching a decision whether or not to grant a licence under the Act.
- 6.4 By the first appointed day the Council must have amended its constitution and established a licensing committee of between 10 and 15 members under section 6 of the Act, from which one or more sub-committees, each comprising three members of the committee may be formed.
- 6.5 In respect of the Licensing Committee, it can delegate its functions to the sub-committee and appropriate officers, under section 10 to the extent set out in that section. This is a move that is recommended in the draft Secretary of State's Guidance to ensure speed of process and cost-effectiveness. Procedures will have to be drawn up to regulate proceedings, unless the Secretary of State makes use his power to impose Regulations across the country, such a decision and Regulations have not yet been made.
- 6.6 The Secretary of State will also make regulations as to the charges that can be made by local authorities, these were originally thought to be fixed fees but it has now been suggested that they should be based upon rateable value.
- 6.7 Section 181 of the Act provides that an appeal against a decision of a licensing authority should be made to the Magistrates Court.
- 6.8 Part 7 of the Act deals with various offences including the sale of alcohol to children and allowing the sale of alcohol to children on licensed premises and those two offences are specifically to be policed by the weights and measures authority (in this authority trading standards) under s154.
- 6.9 Part 8 deals with closure orders which are dealt with by the magistrate's court or the police. If a closure order is made the Council has to review the premises licence.

- 6.10 The Race Relations (Amendment Act 2000) amends the Race Relations Act 1976 and requires local authorities to have due regard to the need to eliminate unlawful discrimination and publish a Race Equality Scheme and assess the likely impact of policies on the promotion of race equality and monitor them. This means the policy will have to have an impact assessment undertaken on it.

7.0 DETAIL

Introduction to the 2003 Act:

- 7.1 In April 2000 the Government published a white paper on reforming the alcohol and entertainments licensing laws. It set out to modernise and integrate the licensing schemes that were split between local authorities and the courts.
- 7.1.1 The key aims of the proposals within the metropolitan areas were:
- a. to reduce crime and disorder;
 - b. to encourage tourism; and
 - c. to reduce alcohol misuse
- 7.1.2 The White Paper also set out proposals for the new legislation that would reduce the burden of unnecessary regulation, and ensure that the provision of additional opportunities for licensable activities were matched by additional measures enabling the police and licensing authorities to act promptly to maintain public order, nuisance and safety.
- 7.1.3 The result of the white paper is the Licensing Act 2003, which provides for a unified system of regulation of the activities of sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
- 7.1.4 The purpose of the new licensing system for those activities licensed (see 7.1.3) is to promote four fundamental objectives:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 7.1.5 The new Act provides for a system of licensing that will be achieved by the provision from the licensing authority of personal licences (10 years), which will in the main be dealt with by officers under delegation, premises licences (no time limit unless requested, revoked or surrendered), club premises certificates and temporary event notices.

Statement of Licensing Policy:

- 7.2 The Licensing Act requires all licensing authorities to prepare and publish a statement of its licensing policy every three years. This policy must be completed and published before the authority carries out any of its new functions under the Act in respect of individual applications.

During the three year period the policy must be kept under review and any revisions made as appropriate.

- 7.2.1 The basis for the policy comes from the four licensing objectives in the Act (see 7.1.4) and should also take account of advice given in the Secretary of State's Guidance, which is still only a draft. The national guidance is only guidance and authorities must have regard to it but can diverge from it, however to do so must be based on evidence that furthers one of the objectives.
- 7.2.2 The policy is the Council's biggest opportunity to promote a positive pattern of licensing that embraces cultural diversity, tries to put an end to hard drinking monoculture, sets standards of design, management and control, and looks to establish acceptable local night-time economy.
- 7.2.3 As a part of the policy drafting process the Council is required by the Act to consult with various statutory services, representatives of current licence holders and persons or bodies representative of businesses and residents in the area. Obviously, we are not prevented from a wider consultation process that includes other bodies and persons e.g. local accident and emergency departments, bodies representing promotion of culture and tourism.
- 7.2.4 Neighbouring authorities will be consulted, however, there is no framework for a regional approach to policy development, although the future may see a standardisation of policies, but importantly Brent's policy must reflect its local needs and local issues.
- 7.2.5 Council Officers are working on a first draft and discussing with the Communications Team the best means of undertaking consultation. However, until the Secretary of State's Guidance is confirmed, which is unlikely to be until end of November, it is prudent to hold back from full official consultation.

Licensing Committees:

- 7.3 The Act requires the Council as a licensing Authority to establish a licensing committee of between 10 and 15 members and from that to form one or more sub-committees of 3 members to whom its functions may be delegated. Many functions, particularly those in relation to uncontested applications can be delegated to officers, as is the case under the Council's current constitution. It is expected that the guidance notes when finally published will list those functions that should be delegated to officers.
 - 7.3.1 These committees will need to be in place prior to the first appointed day, and officers are currently working with Legal and Democratic Services to establish the structure and protocols. However, it should be noted that the Secretary of State is given powers to make regulations relating to the committees' proceedings, public access to meetings, publicity, agendas and records. What isn't known yet is if these will be made and invoked, or if Council's will be able to regulate their own procedure.

7.3.2 Training of the new committee members in their new responsibilities is a key issue. To assist London authorities the Association of London Government is preparing co-ordinated London-wide training that is of good quality and value for money. This does not preclude the Council undertaking its own training, which will be necessary in respect making decisions according to Brent's policy, but will provide a consistent source of detailed guidance on the new law to committee members. Further information on this development is awaited.

Other Preparations:

7.4 Needless to say there are numerous steps to be taken in preparing for this new licensing regime and its administration and enforcement. These steps all have to be completed and operational by the first appointed day (see 7.5), which is a matter of some 7/8 months away. The issues other than those dealt with above and that are at various stages of completion are:

- appointment of additional staff
- transfer of data from courts
- setting up and running of IT systems/procedures
- getting evidential base
- talking to the trade
- establishing protocols for enforcement
- establishing protocols with partner agencies (likely that police will be based in Health Safety & Licensing Unit)
- talking to partners

Timetable for Implementation:

7.5 All of the above waits upon two the two key dates of the 'first and second appointed days'(see para. 6.2). These have to date been something of a moving target with the first appointed date starting off as January 2004, moving onto end of March and now likely to be May/June. The second appointed day is set to be 9 months after the first, and so moves back accordingly.

7.5.1 The reason for the first appointed day continually moving is that there is an agreement that there will be a period of six months between the approval of the Secretary of State's Guidance and Secondary Legislation such as Regulations, and Licensing Authorities taking on their new roles (this is needed in order that Councils can see the final detail before drawing up procedures etc.). Unfortunately the DCMS will not be able to get the guidance approved until sometime in November!

7.5.2 The relevance of the first appointed day is that it is the moment when Brent along with other authorities will start to receive its first personal and premises licence applications for process. The second appointed day is when the old regime finally comes to an end with the Courts bowing out gracefully from their time-honoured role of deciding liquor applications.

8.0 BACKGROUND INFORMATION

Details of Documents:

- 8.1 Government White Paper 2000 (Time for Reform: Proposals for the Modernisation of Our Licensing Laws)

The Licensing Act 2003

DCMS Explanatory Notes to Licensing Act 2003

The Secretary of State for CMS Draft Guidance under Section 182 of the Act

Briefing papers from the ALG and ALG TEC Executive Sub Committee report Item 12 dated 11 September 2003

- 8.2 Any person wishing to inspect the above papers should contact Geoff Galilee, Health Safety & Licensing, Brent House, 349 High Road, Wembley, Middlesex HA9 6BZ.
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