

Committee: Licensing Committee
Date: 27 October 2004
Agenda Item No: 2
Title: Consultation on draft Regulations under Licensing Act 2003
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Summary

- 1 The draft Regulations have been prepared by the Secretary of State under the provisions of the Licensing Act 2003. Regulations will be made for each of these matters: the application process for personal and premises licences, club premises certificates, the procedure for hearings, the procedure during the transitional period and the Licensing register.
- 2 The Government states that the regulations are intended to enable the licensing system to function efficiently in the way agreed by Parliament, to be functional and practical for all users of the system, should be easily understood, ensure that any burdens imposed on the industry are proportionate to the benefit of the regime and should strike a fair balance between the interests of the industry and the wider general public.
- 3 With those themes in mind, the Government is seeking our views as the Licensing Authority on the proposed regulations. A formal response is being prepared from the Essex Licensing Officers Joint Forum, and LACORS are paying particular detail to the application forms for their response. This report is to inform members of the proposed regulations with a view to a response being sent to the Secretary of State if Members wish. The draft regulations are not reproduced in full in this report as they are far too lengthy (over 200 pages), however the full text is available on the Department for Culture Media and Sport 's website. Equally the length of the regulations and the detail covered has meant that this report is rather long, and does include the questions raised in the consultation paper on the draft regulations for Members to consider.

Draft Regulations – Personal Licences

- 4 These regulations provide that the personal licence should be in the form of a physical document and should include a photograph, licence number and date of expiry. [The Act provides that a licence should include name and address and issuing Authority, and a record of relevant offences].

**Question – Do you have any views on the form of licence proposed?
Officer comment – should it be in a similar form to the new photocard driving licence with a card showing the photo and a paper part on which offences could be endorsed? Should the date of birth and/or place of birth be included for added security to verify identity?**

- 5 The draft regulations also prescribe the appearance and content of the application form, for the transition from a Justices Licence, for a first application and for renewal. Each form is three pages long and comes with guidance notes on understanding the questions and filling in the form. It asks for name, address, previous address, licensing qualification and certificate, any previous applications, forfeiture, relevant offences with the necessary level of CRB disclosure, and a declaration.

Question – Do you have any views on the content of the application forms?

Draft Regulations – Hearings

- 6 These regulations provide for the periods of time in which hearings for certain applications must be heard. Hearings for the determination of ordinary applications for premises licences or variations, personal licences, reviews are to be held 20 working days after the period for representations has ended.
- 7 Hearings following police objections to a Temporary Events Notice must be held within 7 days following the 48 period in which the police have to object.
- 8 Hearings into the conversion of existing licences during the transitional period must be held within 10 working days of the end of the consultation period. Hearings following the issuing of a closure notice by the police must be heard in 10 working days.

Question – Do you have any view on the proposed timescales and whether they proved adequate preparation time?

- 9 The regulations also provide for the periods of time within which notice of the hearings must be given to applicant, relevant parties and the public. For Temporary Event Notices, notice of the hearing must be given 2 working days before the hearing. In the case of hearings into reviews of a licence following a closure order and applications for conversions of licences the notice must be given 5 working days before. In all other cases, 10 working days notice is required.
- 10 The regulations also provide a list of who would need to be given notice in any given circumstance of the hearing

Question – Would this cause any difficulties for licensing authorities in complying with these regulations?

Officer comment - It appears that a number of these provision conflict with our requirements under the Local Government Act 1972, particularly in respect of the Temporary Event Notices and would recommend that a formal representation is made on this issue.

- 11 The regulations provide that the following information needs to be included in the Notice of the Hearing: the rights of the parties at the hearing (to address the Authority, to have representation, to call witnesses etc), the consequence

of non-attendance or lack of representation at the hearing, the procedure to be followed at the hearing and any matters that need clarification from a party.

- 12 The regulations also provide for certain parties to be provided with certain additional documents, for example, the applicant should be provided with copies of the relevant representations made

Question – Are these arrangements satisfactory, fair and practical?

Officer comment – These procedures seem to mirror current good practice

- 13 The Regulations require parties who have been given the notice of the hearing to give notice back to the Licensing Authority indicating whether they will attend and/or be represented, whether any witnesses will be called and their names and addresses and whether they consider a hearing to be necessary. The time limits for giving the Notice to the Licensing Authority vary depending on the hearing as follows

- a. Temporary Event Notices – 1 working day before the hearing
- b. Reviews following closure orders - 2 working days before the hearing
And transitional applications
- c. All other cases - 5 working days before the hearing

Question – Can you foresee any difficulties that may arise relating to compliance with these regulations?

Officer comment – Timescales do appear to be tight, but obviously have to fit in with the other regulations on hearing dates. However, the Authority could not wait for the return of the notice indicating whether a hearing is necessary before arranging the hearing, as it would not have enough time to comply with its Local Government Act 1972 requirements, irrespective of the ability to organise at such short notice.

- 14 The regulations also provide that a hearing can be dispensed with if all the parties agree. Withdrawal of representations can be made no later than 24 hours before the hearing in writing or orally at the start of the hearing.

Question – Is the 24 hour time limit reasonable and fair for all parties?

- 15 The Licensing Authority will be given the discretion to extend time limits, where the extension is necessary in the public interest or to adjourn a hearing where necessary for consideration of representations made or notices made by any party. However, this discretion cannot be used to defeat the time period for determination of an application under the transitional arrangements.

Question – Any comments on these discretionary powers?

- 16 The hearing should be held in public although the public can be excluded from all or part of the hearing where the public interest in doing so outweighs

the public interest in the meeting being in public. Public includes any party or their representative.

Question – It is recognised that it is a sensitive issue and welcomes views

Officer comment – Generally sensible that Licensing Authority can seek to remove people with unreasonable or disruptive behaviour. However, it does not seem to cover the situation where the decision is being discussed and made, and although it would seem beneficial to a full and frank discussion if the public could be excluded whilst the decision is being made, it might not be in the public interest. I would recommend a representation be made that this situation be explicitly covered as it is for Standards Committee hearings.

- 17 At a hearing, the parties will have the right to call witnesses and supporting evidence, and to address the Licensing Authority, the Licensing Authority can question any party, can disregard irrelevant evidence, and take into account any documentary or other evidence produced by a party either before or at the hearing.
- 18 A hearing will be able to proceed in the absence of a party who has already notified the Authority of their absence. If a party fails to attend without giving prior notice, the Authority will be able to adjourn the hearing if it is in the public interest and any such adjournment should be notified to all parties. If the decision is made to proceed in absence, the Authority must consider the representations made by the absent party.
- 19 Aside from the regulations above, the Authority can determine its own procedure for the hearing, which must be explained to the parties, and to ensure fairness, all parties should be allowed an equal period of time to make their representations.

Question – It is recognised that these are sensitive issues and the Secretary of State would welcome views.

Officer comment – It is important that the hearing is fair to all parties, and wonder whether it would be beneficial that the format was prescribed to ensure consistency and prevent challenge. If the procedure is not prescribed, this Authority will have to draw up and adopt a standard procedure.

- 20 When determining the application, if the matter relates to Temporary Event Notice, review of a closure notice or a transitional application the decision must be given at the conclusion of the hearing. In all other cases, the determination must be made within 5 working days.
- 21 The Licensing Authority must notify forthwith a party of its determination in writing.

Question – Can you foresee any difficulties in complying with the time limits?

Officer comment –Is this adequate time to type up and send copy of decision? It is recommended that the regulations be amended to allow an initial brief notice be given within the 5 days with a more detailed record of the decision to follow within another 5 days.

- 22 The Authority is required to make a permanent and intelligible record of the hearing and keep it for 6 years from the determination.
- 23 Any irregularity arising from failure to comply with the Regulations does not automatically render the proceedings void. Where there has been such an irregularity, and the Authority considers that a party has been prejudiced as a result that can take sure steps as see fit to cure the irregularity prior to making the determination. Clerical errors can be correct by the Authority.
- 24 Any Notices required to be given are to be given in writing, which would be satisfied by electronic means provided it is in intelligible form and capable of being used for future reference, the receiving party has agreed to accept by electronic means and the notice is subsequently provided in hard copy.

Questions – The Secretary of State welcomes views

Officer comment – Needs clarification of the record required to be kept, does it mean verbatim, Council minute or decision with reasons? Clarification of the requirement to send a hard copy following notice by electronic means

Draft Regulations - Premises Licences

- 25 Under these regulations, it is proposed to add the Crime and Disorder Reductions Partnership as Responsible Authorities and therefore become statutory consultees.

Question – Any views on the addition and are they are another bodies that should be prescribed as a responsible authority?

- 26 The regulations provide that representations from Responsible Authorities or interested parties can be made within 20 working days starting on the day after the application is received, except for reviews of closure orders where representations must be given within 6 working days.
- 27 The regulations also prescribe the application form for a premises licence application. The form is 15 pages long and requires details of the applicant, the types of activity that will undertaken and at what times, the time the premises will be open, details of the premises, details the designated premises supervisor, details of any issues that may cause harm to children and then the opportunity to outline what steps will be taken to meet the four licensing objectives. The form also then requires a declaration that the information is true and that copies have been sent to responsible authorities.
- 28 The plan that is attached to the application has to be in scale 1:100 and show the boundary of the premises, external and internal walls, exits, escape routes, where on the premises licensable activities are going to take place, where consumption of alcohol will take place, fixed structures, locations and

height of stage areas, location and type of fire safety equipment and location of any kitchens

Question – Any views on the format of the forms and the information to be provided?

Officer comment – Is there also a need for a location plan, to identify the position of the premises in a locality? If the plan forms part of the licence, what happens if there is a variation to the building or something on the plan has changed? Should it prescribe how the areas of licensable activities are to be defined on the plan i.e. outlined in different colours?

- 29 The regulations again provide for the application forms to be in writing, and this requirement will be satisfied by delivery in electronic form provided again that notice is given in writing. Any notice would only have effect from the time that the electronic message is received, and if there were a requirement for the notice/application to be accompanied by original documentation, a plan or fee, the notice or application would not have effect until that is received.
- 30 The regulations also prescribe the advertising requirements of the application. The Applicant has to advertise their application for a premises licence or variation by, firstly, displaying a notice at the premises for at least 20 days starting on the day after the application is made and secondly by publishing a notice in a local paper within 5 working days of after the day of application to the Authority.
- a. The Notice at the premises must be able to be conveniently read by the public, at least size A4, of pale blue colour, printed in Times New Roman font 14
 - b. The advert must be in a paper circulating in the vicinity of the premises
- 31 The Notice must include details of the licensable activities, the name of the applicant, address of premises, address of Licensing Authority, dates between which representations can be made and that they should be in writing and statement that it is an offence to make a false statement.

Question – The Secretary of State considers that only one form of advertisement would be inadequate but would welcome comments?

Officer comment – Should the notice at the premises have to be visible to the public without having to enter the premises?

- 32 The Applicant is also required to give notice to the responsible authorities that the application has been made with a complete copy of the application including supporting documents and plan on the same day as it is given to the Authority.

Question – Any comments?

Officer comment – As the onus is on the applicant, how do they prove it has been done, and what happens if it is done late?

- 33 The Authority will be required to serve a notice on a person who has made a representation which the Authority believes is vexatious or frivolous, either before the determination of the application or if a hearing is to be held (excluding TEN'S), do so within 5 days. Equally, where a request for a review has been made in similar circumstances, notice should be given forthwith

Question – Any comments?

Officer Comment – A representation should be made that the 5 days be 'working' days.

- 34 The regulations prescribe the information that should be included on the Premise licence and the summary of the premises licence that must be displayed on the premises. The Licence should contain the name of the licence holder, the address of the premise, the licensable activities and time, times premises are otherwise open, name and address of designated supervisor and their personal licence details, period of the licence, conditions for the promotion of the licensing objectives and the plan.
- 35 The Summary will be required to give name of licence holder, address of premises, designated supervisor name and address and personal licence details, licensable activities, times, and conditions relating to the protection of children from harm. The Summary would have to be displayed in a place where it can be conveniently read by the public, at least A4 size, with black type in font Times New Roman 14.

Question – The Secretary of State would welcome comments.

Officer comment – Should the summary be visible without having to enter the Premises, and should the address of the DPS be given on the Summary?

- 36 The regulations require the Licensing Authority to advertise the fact that it has received an application for a review in three ways. Firstly, by displaying a notice at the premises in the same format as required for an application for not less than 20 working days starting on the day following the day the request received (or if review of closure order, 5 working days), secondly to publish an advertisement in the local paper within 5 working days (not required following a closure order) and thirdly, publication on the website.
- 37 The information to be included on the advert will be address of premises, dates during which representations can be made, the grounds of review and the address where register of Licence kept and can be inspected.

Question – the Secretary of State would welcome views on the requirements to advertise reviews

Officer comment – How practical is it for a notice to be prepared and put up at the premises within the first day receipt of the request, and does it mean the first day or first working day following receipt? Does the cost burden of advertising in the paper outweigh the benefits? There is no fee payable by any party for a review, so any costs of advertising will be met entirely by the

Authority, and will be costly. Should the licence holder have to reimburse the cost of advertising if the ground for review is upheld?

Draft Regulations - Transitional Arrangements

- 38 Applications for conversions of existing licences will have to be made on the form prescribed by the Regulations. The forms are 8 pages long, and require the details of the applicant, general description of the premises, the licensable activities authorised by the existing licence, the proposed designated premises supervisor and the conditions on the existing licence to be indicated in reference to the four licensing objectives. There is also an application form for varying the existing licence, which mirrors the application form for a new premise licence.
- 39 The existing licence will also have to be provided along with a plan of the premises showing the same information as required for a premises licence

Question – The Secretary of State would welcome views on the form and information required and whether any additional information should be included.

- 40 The Act provides that where there is a conversion of any existing licence, conditions should be imposed on the new licence that reproduce the effect of any restriction imposed on the use of the premises under the existing licence by any enactment so specified. The regulations specify that the Licensing Act 1964, Cinematograph (Safety) Regulations 1955 and Children and Young Persons Act 1963 are the enactments that the new licence conditions should replicate if they were applied to the existing licence.
- 41 Equally, the protection for opening hours where a licence is converted is restricted to the period between the first and second appointed days. During this period, even if there are representations from the police relating to the application for conversion, the hours cannot be altered. After this period, the hours become subject to review.

Question – Any comments on these issues?

Draft Regulations - Licensing Authority's Register

- 42 The draft regulations prescribe the additional information each Authority would be required to record in the register, above that provided in the Act. The Act requires a record of each licence issued by it and each Temporary Event Notice received, and any notices or applications it receives in respect of any licence it has issued.
- 43 The regulations also require the Authority to record operating schedule and revisions and plans that accompanied the applications. A record also needs to be kept of existing licensable activities and plans where licences are converted. Finally, where a review is requested, a record should be kept of the grounds for review.

Question – Any comments on these requirements?

RECOMMENDED that the Committee determine what (if any) response it wishes to make on the consultation paper.

Background Papers: Consultation Document on Draft Regulations and Order to be made under the Licensing Act 2003

Committee: LICENSING
Date: 27 October, 2004
Agenda Item No: 3
Title: CONSULTATION ON THE DRAFT LICENSING POLICY
Author: Michael Perry (01799) 510416

Summary

- 1 The Licensing Act, 2003 requires the Council to adopt a licensing policy. Prior to so doing the Council is required to carry out a broad consultation on the proposed policy.
- 2 This report is to inform Members of the process of consultation so far and to seek Members guidance as to what amendments (if any) Members wish to make to the draft policy in the light thereof.

Background

- 3 On 9 August, 2004 this Committee approved a draft policy document as a basis for consultation. A date was fixed for a public meeting to consult on the policy and this was held on 13 October, 2004. The draft policy document was published on the Council's website. Letters were sent to all relevant authorities and all interested parties including all current licensees within the district, all breweries and similar organisations with an interest in the district and all parish clerks. The letter stated where the policy document could be found stating that hard copies were available upon request and inviting the addressees to attend the public meeting.
- 4 The public meeting was well attended. However, whilst those at the meeting actively engaged in the debate there were no comments regarding the draft policy document itself.
- 5 To date the Council has received only one written response to the consultation, this being a letter from Ridleys, a brewery based in and having a

number of public houses in the district.

- 6 Officers are aware of responses received by Southend Borough Council in respect of their consultation process. These representations are from J.D. Wetherspoon PLC and Grays Ltd. both companies being owners of public houses. In view of the limited response to the Council's consultation and to give Members as broad a response as possible the contents of those letters will be commented upon within this report.
- 7 Ridleys response –
- a. It is pointed out that the policy refers to 'the Council'. Due to the various roles the Council has with regard to licensing Ridleys suggest that the policy should refer to 'the licensing authority'.
 - b. Paragraph 24 states that a selection of control measures should be based upon a risk assessment. Ridleys point out there is no legal basis for requiring a risk assessment. Whilst this is acknowledged in paragraph 24 Ridleys express concern that the prominence given to risk assessments in this paragraph may give the impression that an assessment is required. They also state that the requirement for a risk assessment may duplicate other statutory provisions.
 - c. Objection is taken to paragraph 26 which requires the operating schedule to deal with arrangements for instruction, training and supervision of staff. Ridleys state that it is for management to manage not the licensing authority. It is Ridleys view that the licensing authority can only be concerned with possession of personal licences where necessary and the identification of those responsible for ownership and management of premises.
 - d. Paragraph 27 provides that the Council expects the issue of occupancy capacity to be considered and addressed where necessary within the operating schedule. It states in most instances that the authority will seek to agree a maximum occupancy capacity bases on the applicant's assessment. This policy is not supported by Ridleys who correctly point out that the authority cannot impose conditions unless volunteered by the applicant in the operating schedule or representations are received.
 - e. Paragraphs 3.5, 4.3, 5.7 and 6.7 give examples of control measures as guidance to applicants in addressing their proposals for meeting the four licensing objectives. Ridleys state that applicants may feel compelled to include such measures which may not be relevant to their businesses. This could lead to standardisation of conditions which would be contrary to the Act and guidelines. Ridleys believe applicants should have a wider discretion in how to determine the best means of operating the premises. Ridleys further state that certain steps are outside the control of the licence holder. In particular Ridleys state that the reference to CCTV cameras in the draft policy may be seen as creating an obligation for such cameras in the vicinity or on the premises, but Ridley maintain that CCTV is only appropriate in certain

circumstances. Litterbins and lighting are the responsibility of the local authority (other than security lighting). The management of traffic arriving and leaving the premises is outside the control of the applicant. Ridleys also make reference to liaison with public transport providers, deliveries and collection and disposal of litter as being items outside the licence holders control but without any further specific comment. Ridleys further complain that the Council has duplicated existing legislation within the draft policy by requiring proof of regular testing of procedures, appliances and systems pertinent to safety and in requiring effective ventilation systems to prevent nuisance from odour.

- f. Paragraph 3.6 of the draft policy refers to training and experience of the designated premises supervisor and states that the DPS should normally be present at the premises on a regular basis. Ridleys object to this on the basis that the licensing authority has no power to impose such a condition and that only the police can object on grounds that the individual DPS would undermine the crime prevention objective.
- g. Section 5.6 of the draft policy refers to opening hours, 'wind down period' between the end of the licensable activities and closure of the premises and last admission time. Ridleys regard this as confusing and suggest that the times of the licensable activity and the time of closure should be the only times required.

8 Wetherspoons, in its representations to Southend Borough Council, seek confirmation that for variations to licences (whether granted under grandfather rights or after the second appointed date) will not require the same level of information as would be necessary for a new application. They suggest that operating schedules relating to variations need only address additional steps required in relation to the variation.

9 Wetherspoons echo the comments of Ridleys regarding risk assessments, management of premises, capacity limits, public safety and public nuisance.

10 Objection is taken to paragraph 3.4 of the draft code (which is replicated in our code) which requires applicants to demonstrate that they have considered factors which may impact on crime and disorder such as under a drinking, drunkenness on the premises, public drunkenness, drugs, violent behaviour and anti-social behaviour. Wetherspoons state that these are offences in their own right and should not, therefore, be matters subject to condition.

11 In various parts of the draft policy reference is made to 'best practice'. Wetherspoons object should this be the subject of a condition.

12 In their letter to Southend Borough Council Grays echo the representations made by Ridleys regarding the use of the term 'Council' rather than the phrase 'Licensing Authority', capacity limits, inclusion of requirements to deal with unlawful activities, and blanket policy conditions dealing with hours of opening.

13 Officers are aware from discussions with colleagues in other authorities that one authority in particular has modified paragraph 6.8 of the draft policy

regarding films. The Essex wide draft provided that where films were being shown which had not been classified the Council will expect the licensee to conduct an assessment of the suitability of the film for exhibition to children. The authority concerned is not prepared to leave this issue to the licensee and has required instead that in the event that a film has not been classified by the British Board of Film Classification the film may only be shown to children if it has been approved by the Council applying BBFC standards.

- 14 Any further consultations received between the date of preparation of this report and the 31 October will be reported to this Committee at its meeting on 10 November when the Committee will be asked to agree a draft policy to be recommended to Full Council for adoption.

RECOMMENDED that Members consider the representations made with regard to the draft licensing policy to date and instruct officers what variations (if any) they wish to make to the draft policy document in the light thereof.

Background Papers: Letter from Ridleys dated 12 October, 2004.

Copy letter from Berwin Leighton Paisner (Solicitors for Weatherspoons) to Southend Borough Council dated 27 September, 2004.

Copy letter from Gray & Sons to Southend Borough Council dated 6 October, 2004.