

**Committee:** LICENSING AND ENVIRONMENTAL  
HEALTH

**Agenda Item**

**4**

**Date:** 18 April 2012

**Title:** POLICE REFORM AND SOCIAL  
RESPONSIBILITY ACT 2011

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## Summary

1. The Police Reform and Social Responsibility bill contains amendments to the Licensing Act 2003. At the time of preparation of this report none of the Act, so far as it relates to the 2003 Act, is effective although the Government has expressed an intention to lay a statutory instrument giving effect to certain parts of the reforms on 25 April 2012. If the Government is to give effect to its intention, then the instrument will need to have been laid before this Committee meets.

## Recommendations

2. That in the light of the contents of this report, members decide whether they wish to carry out a review of the Council's Licensing Policy Statement at this stage.
3. Members to determine whether they wish to delegate the functions of the licensing authority as a responsible authority.

## Financial Implications

4. In the event that members do decide to review the Policy there will be costs involved in consultation and advertising but these can be met from within existing budgets.

## Background Papers

5. None.

## Impact

- 6.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.

Health and Safety	Primary Care Trust and local health boards will be responsible authorities and entitled to make representations with regard to the grant of licences and also entitled to seek reviews.
Human Rights/Legal Implications	The Secretary of State has certified that in his opinion the proposed amendments are Human Rights Act compliant.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

**Situation**

7. The restriction that only relevant authorities and interested parties may make representations or apply for a review of a licence or club premises certificate will be abolished. In future, where an application is made for a new premises licence, a club premises certificate, or for a variation of such a licence or certificate representations may be made by responsible authorities or any other party. Similarly responsible authorities and any other party may apply for a review of a licence or club premises certificate. The distinction between responsible authorities and others is retained. The reason for this appears to be that whilst the licensing authority may reject any representations which do not relate to the licensing objectives, the power to reject representations on the basis that they are frivolous or vexatious or to reject a review on those grounds or on the basis that the same is repetitious only applies in the case of representations made by third parties and not representations made by responsible authorities.
  
8. The definition of responsible authorities has been expanded to include Primary Care Trust and local health boards. It also now includes the licensing authority. This means that the licensing authority may make representations on applications for new licences or certificates, on applications for variations and may also call for a review of the licence. Members have in the past indicated that they disapprove of this amendment. Members have considered it is desirable that the Licensing Committee should remain independent and that such independence would be called into question in the event that the Licensing Committee were to seek a review of a licence. If members wish the Council to exercise the power of the licensing authority to make representations or call for a review they may consider that this function should be delegated to officers. In terms of delegation there would be no purpose in delegating such function to the Environmental Health Team as that department is already a responsible authority under the Act. Bearing in mind the support given to the Committee by both the Legal Services and Licensing Teams I consider it inappropriate that officers from those teams (including

myself) should have delegated authority to exercise these functions. If members were minded to delegate the function, I would suggest that the team leader of the Enforcement Team would be the appropriate officer to have these delegated powers.

9. There is a welcome reform which reduces the evidential burden upon licensing authorities. The 2003 Act originally required the licensing authority to impose only those conditions considered “necessary” for the promotion of the licensing objectives. The 2011 Act substitutes the word “appropriate” for “necessary”. This is a more subjective test and one which licence holders will find difficult to attack on appeal providing that decisions explain why members consider the conditions “appropriate”.
10. The Act also contains revisions to the law relating to Temporary Event Notices. In future in addition to serving TENs upon the Police and the licensing authority the event organiser must also serve the local authority’s Environmental Health department. If a TEN is served in respect of premises which have the benefit of a premises licence or club premises certificate, the licensing authority may transpose conditions attached to the licence or certificate to a TEN if it considers appropriate to do so for the promotion of the licensing objectives unless those conditions would be inconsistent with the carrying out of the activities covered by the TEN.
11. The duration of temporary events has also been extended from 96 hours to 168 hours. The maximum number of days for temporary events in any calendar year has been increased from 15 days to 21 days. There are also provisions for late service of TENs. On a limited number of occasions an event organiser may serve a TEN no later than 5 working days before an event rather than 10 working days before an event. There are however limits upon the number of late TENs which may be served. For a personal licence holder the limit is 10 late TENs in a calendar year and for non-personal licence holders the number is 2. If an event holder uses all of their allocation of late TENs during the course of a year they may not serve any further TENs within that year even if the overriding limit for temporary events (50 for personal licence holders, 5 for others) has not been met. The consequence of this is it is likely that late TENs will be used very much as a last resort.
12. In future, when an annual fee is not paid on time instead of taking proceedings in the Court for debt, the Council will suspend the licence. This effectively closes the premises. In consultation on the Bill the committee urged the Government to give the licensing authority power to revoke the licence for non-payment of the fee rather than suspend it. This is because whilst suspension will be a powerful weapon with regard to premises which are trading, it does not assist the authority in cases where premises are vacant but the licence remains valid. Unfortunately, the Government did not respond positively to the Council’s representations.
13. The Act contains tougher provisions for dealing with underage sales. The penalty for persistent sales of alcohol to children has been doubled to £20,000 and the Police power to issue a closure notice in such circumstances has been increased to a period between 48 hours and 336 hours.

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14. The requirement for the revision of the Council’s Statement of Licensing Policy has been relaxed so that instead of carrying out reviews at 3 year intervals the policy now has to be reviewed at least every 5 years. The next review of this Council’s policy was initially due in 2014 but as a result of this amendment the review is not due until 2016. However, there are ongoing requirements to keep the policy under review. Clearly the amendments to the legislation mean that some parts of the Council’s policy are no longer relevant. In the circumstances, members may well consider that a review would be appropriate before 2016. The Home Office may issue amended guidance under the Licensing Act to reflect the recent changes in legislation. If members consider a review of the Policy is appropriate before 2016 members may wish to embark upon that exercise now but to defer making any recommendations to Full Council until Government guidance has been issued to ensure the revised Policy is consistent with the Government guidance.
  
15. The provisions of the 2011 Act which enable local licensing authorities to set their own licensing fees and which deal with late night levies have not yet been brought into effect and I have therefore not considered them in this report.

**Risk Analysis**

16.

Risk	Likelihood	Impact	Mitigating actions
The Council’s licensing policy does not accord with the current legislation.	4, the timing of bringing the Act into effect coupled with the absence of Government guidance reflecting the provisions of the Act has meant that it has not been possible to bring forward a revised Licensing Policy for consideration before the legislation became effective.	3, members of the trade and public may be confused by apparent contradictions between the legislation and the Council’s Licensing Policy thereby causing the Council reputational damage.	The Committee gives consideration to the publication of an informative note to be published on the Council’s website and to accompany all application forms relating to licensing matters pending a full review of the Licensing Policy.

1 = Little or no risk or impact

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2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.