

Decision Maker: General Purposes and Licensing Committee

Date: 11 July 2012

Decision Type: Non-Urgent Non-Executive Non-Key

Title: Changes to the Licensing Act 2003. The Licensing Authority as a Responsible Authority.

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Chief Officer: Nigel Davies Director of Environmental Services

Ward: All Wards

1. Reason for report

To advise Members of recent changes to the Licensing Act 2003 and seek agreement for the Director of Environmental Services to be authorised on behalf of the Licensing Authority to take executive action as a 'Responsible Authority' and for the service 'Closure Notices' for the unauthorised sale of alcohol.

2. **RECOMMENDATION(S)**

Members are asked to

1. Note the changes made to the Act and the action taken to implement these changes.
2. Delegate authority to the Director of Environmental Services to act on behalf of the Licensing Authority as a 'Responsible Authority'.
3. Delegate authority the Director of Environmental Services to serve 'Closure Notices' for the 'Unauthorised Sale of Alcohol'.

Corporate Policy

1. Policy Status: Existing Policy: The Council adopted a licensing policy for the period 2011-2014. the policy supports the Council as the Licensing Authority to promote the four licensing objectives
 2. BBB Priority: Excellent Council Quality Environment Safer Bromley Vibrant, Thriving Town Centres:
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Public Protection
 4. Total current budget for this head: £6.0m
 5. Source of funding: Existing Total Revenue Budget 2012/13 (controllable & non-controllable budgets)
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Staff

1. Number of staff (current and additional): 74 FTEs
 2. If from existing staff resources, number of staff hours:
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Legal

1. Legal Requirement: Statutory Requirement: The Council enforces the Licensing Act 2003. which has been amended by the Police Reform and Social Responsibility Act 2011. This report highlights some of the major changes for the Council
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Members of General Purposes & Licensing Committee, all businesses licensed under the 2003 Act, future applicants and all residents and businesses.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

The Police Reform and Social Responsibility Act 2011 made a number of changes to the Licensing Act 2003 with effect from 25 April 2012 .

- 3.1 The Licensing Authority is now also a 'Responsible Authority' which means that it can now make representations on applications in its own right and can also make applications to 'Review' a licence.
- 3.2 The Council must now suspend a licence if the annual fee is not paid.
- 3.3 The penalties for persistently selling alcohol to Children have been increased. Persistently selling alcohol to children is defined as when a licence holder is found to be selling alcohol to children two or more times within a three month period. The key change is to double the maximum fine from £10,000 to £20,000. In addition the period of voluntary closure that can be issued by the police or trading standards officers as an alternative to prosecution is increased from 2 days to a maximum closure period of two weeks. There will also be a presumption that a licence will be 'Revoked' on Review.
- 3.4 Temporary Event Notices
- The key change is to allow Environmental Health Officers (EHO's) as well as the Police to object within 3 working days to a Temporary Event Notice on the basis of all 4 licensing objectives.
 - To give licensing authorities discretion to apply existing licence conditions to a Temporary Event Notice.
 - To allow a limited number of late Temporary Event Notices to be made (i.e. those submitted less than 10 working days, but more than 5 working days, before the beginning of the event) unless there are objections by the Police or EHO's.
 - To increase the total annual period covered by a temporary event notice in a single premises from 15 days to 21 days per year.
 - The period covered by each Temporary Event Notice has been increased to 168 hours from 96 hours.
- 3.5 It will be easier for Councils to set up an area covered by a Cumulative Impact Policy (Saturation areas) allowing licensing authorities to have more control over outlet density. Bromley already has two of these, one in Bromley Town Centre and the other in Beckenham Town Centre.
- 3.6 Councils will be able to justify licensing decisions as being 'appropriate' rather than 'necessary' to promote the 4 Licensing Objectives
- 3.7 Copies of licence applications will have to be sent to 'The Director of Public Health' who becomes a 'Responsible Authority' under the Act and can make representations on individual applications.
- 3.8. Anyone can now make a representation on a licence application. Previously only people living or working in the 'vicinity' of the premises could comment on an application.
- 3.9 The statutory period for formally reviewing the Councils Statement of Licensing Policy is increased to five years from three years. This means that our current policy will now need to be reviewed in 2016.

3.10 Commentary on the Changes

Every licence holder has been written to setting out the main changes directly affecting them and a brief description of the other more administrative changes.

3.11 The Licensing Authority as a 'Responsible Authority'

3.12 To enable the Licensing Authority to exercise its functions as a 'Responsible Authority' Members are asked to delegate the function to the Director of Environmental Services. He in turn can authorise the Councils Licensing Officers to undertake executive action where necessary.

3.13 There is a potential conflict of interest in the Licensing Authority acting both in its statutory capacity and as a 'Responsible Authority'. The Revised Guidance issued by the Secretary of State under section 182 of the Act addresses this and says

LICENSING AUTHORITIES ACTING AS RESPONSIBLE AUTHORITIES

9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

9.14 Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.

9.15 It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

9.16 The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

9.17 In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub

committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority.

9.18 In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. It is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.

9.19 For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.

- 3.14 As there are four officers currently authorised under the Act , we will separate the normal administrative functions from those where they are acting directly on behalf of the Licensing Authority as a Responsible Authority
- 3.15 **Suspension of Licences for unpaid Fees**
The Licensing team have identified premises where the fees are outstanding and are issuing notices of suspension as appropriate.
- 3.16 **Temporary Events**
The Public Health Nuisance Team have been trained on the new procedures and new TENS forms have been loaded on the Website.
- 3.17 **Public Health as a 'Responsible Authority'**.
The Director of Public Health has been actively involved and a partnership approach is being developed for the local implementation of the Governments Alcohol Strategy which was published in March 2012.
- 3.18 **Closure Notices for the unauthorised sale of Alcohol**
The Criminal Justice and Police Act 2001 gave authority to the Police and Local Authority to serve a 'Closure Notice' where premises have been used within the last 24 hrs for the unauthorised sale of alcohol for consumption on, or in the vicinity of, the premises.
- 3.19 The Closure notice specifies the steps which may be taken to ensure that the alleged use of the premises ceases or (as the case may be) does not recur. If these steps are not taken then an application may be made to the Magistrates Court for a formal Closure Order.
- 3.20 This procedure has been exercised by the Police on behalf of and in partnership with the Licensing Authority since the commencement of the Licensing Act in 2005.

3.21 It would be more effective if these procedures could be initiated by the Councils Licensing Officers independently of the Police when required and given the new role of the Licensing Authority as a 'Responsible Authority' it is timely to seek Members agreement to this at the same time as they are considering the delegation of authority to the Director of Environmental Services.

4. POLICY IMPLICATIONS

The changes will necessitate a further review of the Councils Licensing Policy to ensure it is in keeping with the current law and guidance. This will be covered in a separate report for the Committee

5. LEGAL IMPLICATIONS

The Council is required to prepare, approve and publish its Statement of Licensing Policy every 5 years and to keep it under review in the intervening period.

Non-Applicable Sections:	FINANCIAL IMPLICATIONS & PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	Licensing Act 2003 Police Reform and Social Responsibility Act 2011 Secretary of States Guidance issued under section 182 Licensing Act 2003 The Criminal Justice and Police Act 2001