

Agenda Item No: 4
Report To: LICENSING HEALTH AND SAFETY
COMMITTEE
Date: 29TH NOVEMBER 2006
Report Title: LICENSING ACT 2003 - IMPLEMENTATION
UPDATE
Report Author: Licensing Manager



Summary:	The purpose of this report is to inform the Licensing Health and Safety Committee of progress regarding the implementation of the Licensing Act 2003 and to invite Members comments.
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Key Decision: NO

Affected Wards: All

Recommendations: That the Committee consider and note the report on the implementation of the Licensing Act 2003 and comment thereon.

Policy Overview: The licensing policy links to and supports other strategies of the Council such as the Local Plan, Cultural Strategy, Transport Policy and Community Strategy, especially in terms of Crime and Disorder. The licensing policy also contributes to the objectives of a wider group of related organisations, including the Police Authority, the Fire Authority, Ashford PCT and KCC.

Financial Implications: None

Risk Assessment NO

Other Material Implications:

Exemption Clauses: None

Background Papers: Licensing Act 2003
Guidance issued under s 182 of the Licensing Act 2003

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Report Title: LICENSING ACT 2003-IMPLEMENTATION UPDATE

Purpose of the Report

1. The purpose of this report is to inform the Licensing Health and Safety Committee of progress regarding the implementation of the Licensing Act 2003 and to invite Members comments.

Issue to be Decided

2. Members are requested to consider and note the report and comment where appropriate.

Background

3. As Members will be aware, the Licensing Act 2003 came fully into operation on 24 November 2005, when the previous liquor licensing, entertainment licensing and late night refreshment licensing system was consigned to the history books and replaced with a new integrated system.
4. However, it was not only the detail of the law that changed. The Act is intended to move away from detailed regulation by licensing authorities to self-regulation by operators as they seek to comply with the four licensing objectives that underpin the new licensing regime. The Act replaced the fixed terminal hours for the sale of alcohol with a new system of flexible hours chosen by the operator but subject to representation by responsible authorities and interested parties such as local residents.
5. This new way of working has presented considerable challenges to licensing authorities; responsible bodies such as the police and of course operators and their advisors. All have had to master the new procedures and philosophy in a short period of time.
6. The Act and associated regulations would not gain a "crystal mark" for clarity! There are very many grey areas which will almost certainly only be resolved by the High Court.
7. It should also be remembered that whilst the Act came fully into operation in November 2005, the licensing authority was preparing to process licence applications from 7 February 2005 (the "first appointed day"). The Act has now been fully operational for a year, and it is timely to report to Members on its implementation, highlighting the main aspects for consideration.
8. The following comments contain the key points and the Licensing Manager will be available to answer questions at the meeting.
9. The licensing authority has issued between May 2005 and November 2006:-
 - **370** Premises Licences (required for sale of alcohol, regulated entertainment and late night refreshment after 11:00pm)
 - **33** Club Premises Certificates (supply of alcohol and regulated entertainment to members and guests)
 - **653** Personal Licences (authorising the sale of alcohol)

- **373** Temporary Event Notices (for licensable activities on an ad hoc basis where no premises licence is in place)
 - **88** Applications for the variation of Designated Premises Supervisors (Head licensee)
 - **38** Applications for transfers of the licence holder (Premises and club premises certificates)
 - **10** Applications for the variation of premises licences (To add hours or activities or due to a change in the plan of the premises)
10. Between 7 February and 24 November 2005, the Council processed all of the previous licences that needed converting to premises licences together with new premises licences and personal licence applications. This involved a considerable amount of work for both the Licensing Team and Members sitting on the Licensing Sub-Committee Hearing panels.
 11. All licences were issued by February 2006. This represented a considerable achievement in view of the volume of licences that had to be individually prepared and the small amount of resources available. It is estimated that this process took over 500 working hours to complete.
 12. The volume of applications has started to decrease, although it is noticeable that some licence holders are now submitting variation applications to their existing premises licences, either to increase hours or extend the licensable activities. A proportion of these applications have generated representations and therefore the need for licensing hearing panels to be held.
 13. In view of the complexity of the Licensing Act 2003, the licensing team have prepared a number of individual information leaflets available to all enquirers on various aspect of the legislation. These are designed with a view to answering queries and questions in an understandable format. Similar informative material is also available on the Council website and in the coming months these leaflets will be updated.
 14. In addition the Council's Licensing Authority has conducted a number of information sessions in Ashford and Tenterden to assist members of the public and local businesses in the application process.
 15. **Licensing Hearing Panels:**

Since August 2005, the Council has held 25 licensing hearing panels to determine premises licence applications where "relevant representations" were made by the responsible authorities or interested parties. It is interesting to note that to date; only one appeal has been lodged by an applicant who was aggrieved by the Panel's decision. Another did go before the Magistrates brought by an interested party that was aggrieved by the Panel's decision, but the bench did not find against the sub-committee's decision and the matter was resolved amicably by the applicant and neighbour.
 16. **Statement of Licensing Policy:**

As Members are aware, in December 2004, the Council approved a statement of licensing policy following extensive consultation. The policy statement took effect on 7 February 2005 and remains in force for a period of three years. The Licensing Act 2003 indicates that authorities should keep their policies under review and makes

provisions for revisions to policies part way through the three year period. If it is decided to review the policy, the Act requires that the same full statutory consultation with all parties takes place as applied in relation to the approval of the original policy statement. Where changes are made, the licensing authority must publish a statement of the revisions.

The policy has formed the background to all Licensing Act 2003 application decisions taken by both Members and officers. A key factor is that each application is considered on its merits. This has proved successful as the numbers of appeals lodged has been extremely low and to date the content of the policy has not been challenged in the Courts. The Government made minor amendments to the Guidance it issues to Local Authorities in June 2006, but a more significant review is expected in the New Year. In the light of this pending review, the Licensing Manager would not recommend a review of the statement of licensing policy until the revised Guidance is published.

17. Reviews of Premises Licences

As a further protection to ensure that the four licensing objectives are being complied with, the Act makes provisions for existing premises licences to be reviewed. The review can be requested by a responsible authority or interested party such as a resident living in the vicinity of the premises. This review procedure provides a valuable enforcement tool and is a very real weapon against unsatisfactory premises.

Through the successfully negotiation of problems that have arisen with regards to premises licensed under the Licensing Act 2003, no reviews have been requested by interested parties or responsible authorities in the Borough of Ashford as of November 2006, a situation that is believed to be unique across Kent.

Officers are currently developing further training for Members on reviews for delivery in 2007.

18. Enforcement

A key area of the Licensing Act 2003 is enforcement which has fallen on the Council to take the lead. Attached at Appendix A is a schedule showing Licensing Act enforcement since November 2005.

a) Licensing Enforcement Officers

Members will note that the licensing enforcement team undertake regular enforcement activity on both the premises and with licence holders. We have implemented procedures on a reactive and proactive basis and have achieved a high level of compliance. Through education, formal advice and then a system of warnings leading to prosecution, we have achieved a balance of ensuring that licensing conditions are complied with, the public are protected and licence holders are able to operate their business or trade.

Licensing Enforcement Activity Visits to Licensed Premises (from 23 November 2005 to 14 November 2006)

Licensing Manager (Alone)	57
Licensing Manager plus another local authority officer	21
Joint Visits with Police	72
Joint Visits with other agencies	7
Food Hygiene Licensing Inspections	34
Totals	191

b) Multi-Agency

It is imperative that a number of the 'Responsible Authorities' meet regularly to discuss a corporate approach. This has already proved successful in targeting resources.

Enforcement Officers meet regularly with the Police Licensing Enforcement Officer with ad hoc attendance from the Trading Standards, the Environmental Health Teams and the Fire Authority. These meetings enable a detailed discussion on the exchange of information and resulting in joint visits at premises/licensees.

c) Lack of Knowledge

Enforcement has increased by ten fold compared with previous years due to the requirements of the Licensing Act. During our daily activities and active enforcement we have found that the gaps in licence holder's knowledge is one of the contributing reasons for breaches of the Act and illegal activity. It is interesting to note that those applicants who applied for a straight licence conversion did not legally have to attend any up to date courses on the new legislation and have subsequently many have failed to educate themselves on the new procedures or offences.

19. Temporary Event Notices (TEN's)

The Licensing Act 2003 makes provision for Temporary Event Notices (TEN's) to be applied for in relation to licensable activities on an ad hoc basis, where no premises licence is in force or for activities exceeding those permitted on an existing premises licence.

It is fair to say that across the country, this is one of the most controversial aspects of the new Licensing Act, mainly due to the applicant only has to give notice of such an event only to the Licensing Authority and the Police a minimum of 10 working days before the event. The only objection that can be raised is by the Police on crime and disorder grounds. If a Police objection is raised and not resolved, a licensing hearing panel has to be arranged within that timescale.

There are also limits on the number of events at any individual site and on who can apply which can lead to monitoring problems. Representations have been made to the Government regarding the above difficulties and also the necessity for a central database. We await information as to whether the TEN's legislation and associated procedures will be reviewed.

20. Licensing of "Open Spaces and Public Areas"

Premises licences have been obtained for North Park and Victoria Park by Ashford Borough Council and for Ashford Town Centre by the Ashford Town Centre Partnership. The advantage of obtaining full premises licences is that it avoids a succession of Temporary Events Notices and applications can be more fully discussed prior to and during determination. Unfortunately despite numerous attempts a similar approach has yet to be adopted by Tenterden Town Council.

21. Licensing Forum

The Act requires that licensing authorities establish local licensing forums consisting of councillors, officers, statutory agencies, trade representatives and the public etc. Officers are currently investigating how best this can be effectively achieved and a further report will be made to the committee in due course.

22. General

Given the considerable changes and challenges that the Licensing Act presented to local authorities, it is fair to say that the implementation has proceeded very well, particularly in terms of administration and importantly positive enforcement results.

23. Legal Implications

The legal implications are dealt with within the body of the report. It should be noted that an inappropriately worded statement of licensing policy could result in a legal challenge by way of judicial review.

24. Financial Implications

There are no direct financial implications for Ashford Borough Council directly concerning the items in this report at present. However, if at any time in the future the licensing policy was subject to legal challenge, there could be costs associated with this process. There may also be financial implications concerning licence application fees (set by statute) not covering the cost of providing the service.

The authority has recently issued reminder notices to all the premises whose fees are due for renewal and approximately 275 cheques are being processed.

25. Conclusion

Members are requested to consider and note the report and comment where appropriate.

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