

# CHESHIRE EAST COUNCIL

## REPORT TO: LICENSING COMMITTEE

---

<b>Date of Meeting:</b>	29 <sup>th</sup> May 2012
<b>Report of:</b>	Head of Community Services
<b>Subject/Title:</b>	Update on amendments to the Licensing Act 2003

---

### 1.0 Report Summary

- 1.1 The report provides details about the changes to the Licensing Act 2003 ('the 2003 Act') brought about as a result of the Police Reform and Social Responsibility Act 2011 ('the 2011 Act') together with changes to the statutory guidance to local authorities issued under section 182 of the 2003 Act.

### 2.0 Decision Requested

- 2.1 The Licensing Committee is requested:
- 2.1.1 to note the content of the report in relation to the legislative changes; and
- 2.1.2 to delegate to the Consumer Protection and Investigations Manager the power to act on behalf of the Licensing Authority in its role as a responsible authority under the 2003 Act.

### 3.0 Reasons for Recommendations

- 3.1 The Licensing Committee members are requested to note the amendments to the Licensing Act 2003 and the statutory guidance as the provisions of both the legislation and guidance must be taken into consideration when exercising functions under the 2003 Act.
- 3.2 The Committee is requested to delegate the functions in relation to status as a 'responsible authority' to the Consumer Protection and Investigations Manager to ensure the proper separation between the Licensing Authority as a decision-maker under the 2003 Act and the Licensing Authority as a 'responsible authority.'

### 4.0 Wards Affected

- 4.1 All

### 5.0 Local Ward Members

- 5.1 All

## **6.0 Policy Implications including - Carbon reduction - Health**

- 6.1 The Council has adopted a Statement of Licensing Policy in accordance with section 5 of the 2003 Act. Section 122 of the 2011 Act has amended section 5 of the 2003 Act to provide that licensing authorities must determine and publish statements of licensing policy in relation to each five year period (rather than every three year period). The Council's current Statement of Licensing Policy is due to be reviewed by no later than 7<sup>th</sup> January 2014.

## **7.0 Financial Implications (Authorised by the Director of Finance and Business Services)**

- 7.1 None

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

- 8.1 The details of the statutory changes are set out within the body of the report.
- 8.2 Section 7(1) of the 2003 Act prescribes that the functions of the licensing authority shall be delegated to the Licensing Committee established under the 2003 Act. The Licensing Committee therefore has the power to delegate its functions as 'responsible authority' to officers.

## **9.0 Risk Management**

- 9.1 The proposed delegation to officers avoids the risk of conflict between the Licensing Authority's role as a decision-maker and its role as a 'responsible authority.'

## **10.0 Background and Options**

- 10.1 The Police Reform and Social Responsibility Act 2011 received royal assent on 15<sup>th</sup> September 2011. Chapter 1 of Part 2 of the Act deals with changes to the Licensing Act 2003 and enacts many of the amendments proposed within the consultation paper 'Rebalancing the Licensing Act' which was published in July 2010.

- 10.2 The amendments which took effect on 25<sup>th</sup> April 2012 are summarised below:

### **10.2.1 Responsible authorities**

Primary Care Trusts and Local Health Boards have been added to list of 'responsible authorities' meaning that they must be consulted on applications (new and variation) for Premises Licences and Club Premises Certificates. They will also be able to call for reviews of Premises Licences and Club Premises Certificates.

Licensing authorities have also been designated as ‘responsible authorities’ and so will also have the ability to make representations in relation to applications and to submit review applications.

In order to prevent a conflict between the Licensing Authority in its role as decision-maker and in its role as a responsible authority, the Licensing Committee is requested to delegate to the Consumer Protection and Investigations Manager the functions in relation to the role of responsible authority.

#### 10.2.2 Interested parties – removal of the vicinity test

Section 13 of the 2003 Act has been amended to remove reference to interested parties. Members will be aware that previously, ‘interested parties’ were defined as (a) a person living in the vicinity of the premises; (b) a body representing persons who live in that vicinity; (c) a person involved in a business in that vicinity; (d) a body representing persons involved in such businesses; and (e) a member of the relevant licensing authority. The legislation has also been amended to provide that ‘relevant representations’ may be made by responsible authorities or ‘other person.’ This means that there is no longer any restriction on who can make representations.

#### 10.2.3 Determination of applications

Amendments have been made to replace the requirement that the Licensing Authority takes such steps as it considers ‘necessary’ for the promotion of the licensing objectives when determining applications, to such steps as it considers ‘appropriate’ for the promotion of the licensing objectives. Chapter 9 of the section 182 Guidance provides guidance to licensing authorities in relation to the determination of actions that are appropriate for the promotion of the licensing objectives.

Paragraph 9.39 states: “The authority’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.”

Paragraph 9.40 continues: “Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to the restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business

.....The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.”

#### 10.2.4 Suspension of licence/certificate for non-payment of fees

Subject to a 21 day ‘grace period’ and to an exemption in the case of administrative errors, the amended legislation provides a new power to licensing authorities to suspend a premises licence or club premises certificate if the licence holder fails to pay the annual fee.

#### 10.2.5 Advertisement of applications

As Members will be aware, applicants are required to advertise applications for premises licences and club premises certificates by:

- (i) publishing a notice in a local newspaper (no later than 10 working days after the date of the application); and
- (ii) placing a notice at the premises in a conspicuous place (for the duration of the 28 day consultation period).

With effect from 25<sup>th</sup> April 2012 in addition to the above, licensing authorities are required to publish a notice of applications on its website.

#### 10.2.6 Temporary Event Notices

The following changes have been made to the Temporary Event Notice (TEN) regime:

- Environmental Health are now able to object to TENs (in addition to the Police);
- Both the Police and Environmental Health are able to object to a TEN on the basis of any of the four licensing objectives;
- Premises users may now serve ‘late TENs’ (i.e. given no later than 5 working days and no more than 9 working days before the date of the event);
- In cases where an objection notice has been received in relation to a ‘standard TEN’ the licensing authority may determine to impose one or more conditions on the TEN if: (a) the licensing authority considers that it is ‘appropriate’ for the purposes of the licensing objectives; (b) where the condition(s) are also imposed on the premises licence/club premises certificate for the premises where the event is to be held; and (c) the conditions would ‘not be inconsistent with the carrying out of the licensable activities under the TEN.’
- An event period may now be up to 168 hours (rather than 96 hours);
- The maximum total duration of the periods authorised by a TENs is now up to 21 days (rather than 15 days); the limit of 12 events per premises per year remains unchanged; and
- The Police and Environmental Health have 3 working days within which to respond (rather than 2 days).

### 10.2.7 Alcohol Sales to Children

The fine for persistently selling alcohol to children has been doubled from £10,000 to £20,000.

The effect of a closure notice for persistently selling alcohol to children has been increased from 'up to 48 hours' to 'from 48 hours and up to 336 hours.'

### 10.2.8 Statement of Licensing Policy

Section 122 of the 2011 Act has amended section 5 of the 2003 Act to provide that licensing authorities must determine and publish statements of licensing policy in relation to each five year period (rather than every three year period).

10.3 The following provisions within the 2011 Act are yet to be commenced; central government have indicated that they may take effect in October 2012:

10.3.1 Early morning restriction orders – the power to make orders prohibiting the supply of alcohol from premises for any duration beginning at midnight and ending before 06.00, where the licensing authority considers that to do so is appropriate for the promotion of the licensing objectives.

10.3.1 Late night levy – a levy which may be imposed on licensed premises, subject to exemptions, to cover the costs of policing and other arrangements for the reduction of crime and disorder in connection with the supply of alcohol between a prescribed period (between midnight and 06.00). The licensing authority would be required to pay at least 70% of the levy collected to the Police.

## 11.0 **Access to Information**

The Licensing Act 2003 is available via [www.legislation.gov.uk](http://www.legislation.gov.uk); the section 182 Guidance is available on the Home Office website: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

There are no background papers associated with this report.

Name: Kate Khan  
Designation: Lawyer, Regulatory Team  
Tel No: (01270) 685847  
Email: [kate.khan@cheshireeast.gov.uk](mailto:kate.khan@cheshireeast.gov.uk)