

## **Appendix 6 - Rebalancing the Licensing Act 2003 proposed changes**

### **Changes to the Application Process**

Currently, applicants can detail how they will promote the Licensing Objectives, on their Operating Schedule. The Government plan to expand upon this by creating a new section to the application form where applicants must specify how they have taken into consideration the impact their application will have on the local area. The intention behind this change is to shift the onus onto the applicant to give greater consideration to the local area when setting out the steps that they will take to promote the licensing objectives. It is hoped that this amendment will reduce any negative impact a premises may have on local residents.

In addition, when dealing with a licence application the Licensing Authority are only allowed to impose conditions and make decisions which it feels are “necessary” to promote the Licensing Objectives. The new proposals intend to replace the word “necessary” with “appropriate”. The intention of this amendment is to lower the burden of proof placed on licensing authorities in making their decision. Under the proposals, Licensing Authorities will now be able to use their knowledge and experience in making such decisions without the need for substantial proof.

Currently, representations made against licensing applications must be from Responsible Authorities, Interested Parties and residents who live within the vicinity of the premises. The Government intend to remove this restriction so that residents in a wider area can submit representations or indeed call a licence in for review. Representations must still be relevant and focus on one or more of the Licensing Objectives.

Finally, the Government has included a proposal to require Licensing Authorities to accept all representations from the police and adopt all their recommendations unless there is clear evidence that these are not relevant. This amendment will give greater weight to representations received by the police than to any other representation.

### **Early Morning Restriction Orders (EMROs)**

A further proposal of the Rebalancing of the Licensing Act is to give Council's the power to impose EMROs on certain areas of the borough. An EMRO restricts licensed premises from trading during certain hours. For example if an EMRO was imposed from 2am until 6am, it would mean that no licensed premises could be open after 2am or before 6am on whichever days of the week the EMRO is in force.

This could mean that certain premises who operate late at night may find their hours reduced if their premises falls in an EMRO zone. It is at the Licensing Authority's discretion whether EMROs are introduced and the Licensing Authority would only take such steps if it is felt that the Licensing Objectives were not being met by a group of licensed premises in a particular area.

### **Health Authorities**

There are numerous Responsible Authorities who can make representations based on any of the 4 objectives, these include the Police, Fire Brigade, Trading Standards, Environmental Protection and Health and Safety.

The new proposals set out by the Government initially intended to create a 5<sup>th</sup> Licensing Objective entitled “The prevention of health harm”. The government has since stated that it does not intend to introduce a new objective for the time being. However, the Government do intend to introduce Health Authorities (currently Primary Care Trusts) as a Responsible Authority. This means that Health Authorities will be able to comment on licence applications and call licences in for review. Health Authorities will be able to use their knowledge and statistics relating to certain premises to support any representations.

### **Licensing Authorities as Responsible Authorities**

One of the main functions of the Licensing Authority is to deal with all applications made under the Licensing Act 2003. These include applications for new premises licences, variations, transfers, personal licences etc.

Currently the Licensing Authority processes the application and manages any incoming representations. The Licensing Authority are then responsible for granting the licence or arranging a licensing sub-committee hearing to determine the application. Throughout the whole process, the Licensing Authority remains impartial and cannot object to applications.

Under the new proposals this will all change. The Licensing Authorities will become a Responsible Authority and will be able to make comments/representations/objections on all applications. This means that Licensing Officers can use their local knowledge and any history the premises may have (including previous breaches and offences) to make representations on certain applications which they feel do not promote any of the four Licensing Objectives. In serious cases, the Licensing Authority may also have the power to call a licence in for a review.

### **Licensing Fees**

Licensing fees for applications and the annual maintenance fee payable under the Licensing Act have not been altered since the Act was implemented in 2005.

Currently the fees do not cover the costs that Councils incur as a result of processing these applications and enforcing the law. A number of proposals are currently being discussed to alter the current standard fees.

One proposal is that licence fees will be based on full cost recovery. In simple terms, the total fee paid annually by the premises amounts to the cost incurred by the council as a result of that premises. Naturally, it would be largely impossible to work this figure out for each individual premises so it is likely that premises will be placed in a “fee category” as a result of their risk rating. Risk ratings can increase or decrease dependent on how well premises comply with their licence.

An additional proposal is the introduction of a Late Night Levy. A Late Night Levy is an additional fee paid by premises that trade after a certain time in the evening. The Government have stated that they feel it is right that those premises which benefit financially from a safe night time economy should contribute towards the costs of maintaining that safety (extra policing). It is not yet known what the levy might be and which premises will be affected., however premises closing before midnight are unlikely to be impacted by the levy. It is also believed that premises will be offered a chance to vary their premises licence free of charge to reduce their hours if they do not wish to pay the levy.

A final proposal in relation to fees is the introduction of penalties for non payment of annual fees. Currently, those who do not pay their annual fees are referred to the Council's debt recovery where the debt is pursued. Under the new proposals, a licence will be automatically suspended should a debt not be paid. This means that carrying out any licensable activities would be an offence and could result in a prosecution and loss of earnings.

### **Temporary Event Notices (TENs)**

Currently, an applicant for a TEN must give 10 working days notice of an event and provide a copy of the application to the Police, who then have 2 working days to object on the grounds of crime and disorder if they so choose. Under the proposed amendments, the Responsible Authority for the prevention of public nuisance (Environmental Protection) will also be able to object to TENs. This may mean that TENs can also be refused on the basis of public nuisance.

The new proposals also intend to increase the time that the Police have to object from 2 working days to 3 working days.

In addition, TENs could have conditions attached to them similar to those attached to premises licences. These conditions could be imposed by Environmental Protection or the Police and failure to comply with them could result in legal proceedings being taken against the applicant. Licensed premises which apply for TENs as an extension of hours may also have their licence conditions automatically transferred onto a TEN.

Currently, a single TEN allows upto 96 hours of licensable activity. The Government are considering changing this as well to limit of the number of TENs any one premises can have in a calendar year.

### **Underage Sales**

The Government has proposed to make changes to the way that premises who sell alcohol to those underage are dealt with. The first change is that the maximum penalty which can be imposed by a court will increase from £10,000 to £20,000.

The second change is to introduce a 48 hours minimum and two weeks maximum closure period as an alternative to prosecution for persistently selling alcohol to underage persons. The Government has defined "persistently" selling alcohol to children as selling to children twice or more in a three month period. It is hoped that the reality of closing a business for up to 2 weeks or a fine of up to £20,000 will deter premises from selling alcohol to those underage.