

LICENSING ACT 2003

1 SUMMARY

- 1.1 This report outlines the primary considerations and implications for the Council in implementing the transitional provisions of the Licensing Act 2003.
- 1.2 A draft Statement of Licensing Policy, for consultation purposes, and changes to the Committee structure and Constitution are proposed.

2 INTRODUCTION

- 2.1 The Licensing Act 2003, which received Royal Assent in July 2003, is intended as a de-regulatory Act to integrate six existing licensing regimes into one streamlined, efficient system of licensing administered by local authorities.
- 2.2 The Act incorporates those activities that currently require licensing for the sale or supply of liquor, the provision of public entertainment and late night refreshment, henceforward to be known as 'licensable activities' and 'qualifying club activities'.
- 2.3 Upon full implementation all licensing functions mentioned above become the responsibility of new Licensing Authorities that, for the purposes of the Act and this district, means Rochford District Council.

Timetable for Implementation

- 2.4 The Act provides for a Transitional Period of at least 9 months duration during which the existing systems for licensing those activities will continue whilst, concurrently, implementation of the new system will take place, albeit without the new licences having effect.
- 2.5 At the end of the Transitional Period responsibility for all licensing mentioned above will be vested with the new Licensing Authority.
- 2.6 The Secretary of State, in issuing the Statutory Guidance required under section 182 of the Act on July 7, 2004, set the First Appointed Day of the Transitional Period as February 7, 2005. The Second Appointed Day, at which the Transitional Period ceases, is expected to be in November 2005.
- 2.7 From the First Appointed Day, Licensing Authorities will have to accept, process and determine applications for Premises Licences, Personal Licences and Club Premises Certificates in preparation for the Second Appointed Day in November 2005.

- 2.8 In the period up to the First Appointed Day, the Council must prepare and publish its Statement of Licensing Policy, establish its Licensing Committee and establish a Register.
- 2.9 The Government is to make further regulations prescribing setting the fee structure, forms to be used in the application process and the application process. Those matters are to be drafted for consultation in autumn 2004.

Licensing Authority

- 2.10 The Licensing Authority must carry out its licensing functions with a view to promoting four licensing objectives: -
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.
- 2.11 It must also
- (a) publish a Statement of Licensing Policy;
 - (b) establish a Licensing Committee of no less than 10 nor more than 15 members;
 - (c) keep a Licensing Register.

Statement of Licensing Policy

- 2.12 The Act requires the Licensing Authority to determine its policy with respect to its licensing functions and publish a Statement of Licensing Policy in respect of each three-year period.
- 2.13 Before determining its policy for each period, the Authority must carry out a process of consultation with police and fire authorities, representatives of the holders of premises licences and personal licences, representatives of the holders of club premises certificates and other such persons the Authority considers to be representative of businesses and residents in its area. The Authority may also consult any other persons or bodies it deems to be relevant.
- 2.14 The Authority is further required to keep the policy under review and make revisions to it, as the Authority considers necessary. A similar process of consultation must be undertaken whenever the policy is revised.

Licensing Committee

- 2.15 The Licensing Authority has to establish a Licensing Committee, consisting of no less than 10 but not more than 15 Members.
- 2.16 The Licensing Authority must refer all matters in respect of its licensing functions for discharging by its Licensing Committee except that the Authority may not refer determination and publication of its Statement of Licensing Policy, which must be approved by Full Council.
- 2.17 The Licensing Committee may establish one or more sub-committees consisting of 3 members of the Committee and may delegate any of the functions of the Committee to a sub-committee except for producing its Statement of Licensing Policy.
- 2.18 The Committee may also delegate any of its functions to an officer of the Authority except, in general terms, those matters concerning the grant, variation, review or revocation of licences where representations have been made.

Register of Licences

- 2.19 The Licensing Authority must keep a register that contains a record of: -
- (a) each premises licence, club premises certificate, and personal licence issued by the Authority;
 - (b) each Temporary Event Notice received;
 - (c) all licensing applications made and certain notices;
 - (d) such other information as may be prescribed.
- 2.20 Regulations may require the register to be kept in a prescribed format but, as yet, have not been made.
- 2.21 The Licensing Authority must ensure that provisions exist for making the information contained in the register available for inspection by any person during office hours and free of charge.
- 2.22 If requested to do so, the Authority must provide any person with a copy of the information contained in any entry in the register, for which the Authority may determine and levy a reasonable charge.
- 2.23 Subsequent regulations may provide for registers to be kept centrally and the Secretary of State may require the Authority to contribute to funding.

3 PREPARATION FOR IMPLEMENTATION

Statement of Licensing Policy

- 3.1 The Guidance requires that the Statement of Licensing Policy must be passed by Full Council and be available to applicants and other interested bodies by January 7, 2005 to allow a reasonable period of time before the First Appointed Day.
- 3.2 Since November 2001, when the Act was first introduced as a Bill, the Essex Joint Licensing Officer's Forum (consisting of licensing officers drawn from all Local Authorities, Essex Police and Essex Fire & Rescue Service) have been developing a generic Statement of Licensing Policy. The process, although primarily the product of the Forum was informed by consultation with Essex Magistrate's Association, Clerks to the Magistrates, representatives of the licensed trade and others.
- 3.3 The principle was adopted that, so far as was reasonable and appropriate, all Essex local authorities would adopt policies that were broadly similar in content, but which reflected specific local requirements, if appropriate, to afford the police and fire authorities a measure of consistency throughout the county. It was also intended that, by adopting a broadly based common policy, its integrity and robustness would be enhanced and the potential for challenges would be reduced.
- 3.4 In the formulation of its Policy, the Authority is required to consult with a wide number of groups and persons that must include the Chief Officer of Police for the area, the Fire Authority for the area, existing licence holders (under current provisions) and representatives of businesses and residents in the area.
- 3.5 An essential part of that process will be making the Council's draft Statement available for consideration. This might be achieved by publication on the Council's website, making a copy available at Council offices, libraries and similar venues and providing copies to individuals, upon request.
- 3.6 In addition, articles on the impending changes to licensing might be placed in the Council's publications and other local newspapers.
- 3.7 Best practice commends a three-month period for a consultative process. However, due to the restrictions imposed by the legislative timetable, the actual consultation period will now be around 8 weeks. It is envisaged that the responses received will be considered at a further meeting of this Committee and any necessary amendments made to the policy before it is approved by Full Council on 21 December 2004 to meet the 7 January 2005 deadline.
- 3.8 A draft of Rochford District Council's first Statement of Licensing Policy is attached at Appendix A. It should be noted that some intended appendices

are incomplete due to the absence of regulations prescribing aspects of implementation.

Licensing Committee

- 3.9 The Committee initially need to consider the expansion of its numbers to the statutory requirement of between 10 and 15 Members. The Committee may establish one or more sub-committees consisting of 3 Members, which can be considered at a later date.
- 3.10 There is a requirement for Committee Members to have received appropriate training for their role. Arrangements have been made for a full-day's Member Training on Wednesday 20 October 2004, dealing with the principles of the Act, followed by a half-day's training on the morning of Friday 22 October 2004, which will deal more specifically with the practicalities of the Committee process.
- 3.11 Section 9 of the Act provides that the Secretary of State may make regulations concerning proceedings of licensing/sub committees and conducting meetings and they are likely to be amongst those drafts, mentioned in paragraph 2.9 above, due for publication and consultation in autumn 2004.
- 3.12 The Act also provides that the Licensing Committee may delegate any of its functions to sub-committees and officers. However none of those functions concerning applications in which representations are to be made, reviewing premises licences or club certificates, or reviewing those licences/certificates following a closure order may be delegated to an officer.
- 3.13 Changes to the Council's Constitution, including adjustments to Committee size and terms of reference to encompass the provisions of the Licensing Act 2003 and its effective operations, can only be made by Full Council, the next scheduled meeting of which is on 28 October 2004. However, for the purposes of meeting the requirement that all Committee Members receive the training on 20 and 22 October 2004, it is suggested that revised committee membership be identified at or soon after this meeting for ratification at the October meeting of Full Council.
- 3.14 Given the likelihood that there could be a relatively high number of represented cases which the Committee is likely to address via the appointment of sub-committees, it would seem practicable for the main committee to comprise 15 members, thereby maximising the number of trained Members available.
- 3.15 These changes to Committee membership are necessary for training purposes only. The current Committee membership of 6 Members will continue to hear any appeals currently within their terms of reference pending a report on constitutional changes to the Committee's next meeting and Full Council.

3.16 In appointing to committees, the Council has a statutory duty to ensure the appointments reflect the proportion of the total number of seats on the Council held by each political group, unless otherwise agreed (the pro-rata rule). To achieve the pro-rata requirement in increasing the Licensing Committee to 15 from its current number of 6, the additional seats would need to be filled by:-

7 from the Conservative Group

1 from the Liberal Democrat Group

1 non-Group Member from Labour, Hawkwell Residents or Independent

Register

3.17 The Act requires only that a register to be kept. There is no guidance about the form of the register, only of what is required to be recorded.

3.18 However, the Act provides that regulations may be made for the duty of keeping a register to be discharged by means of one or more centralised registers to be kept by a person so appointed. This is an undoubted inference that a central, computerised database will be created in respect of Personal Licence holders.

3.19 In view of the Government's e-strategy encompassing greater freedom of access to information held by local authorities, it would appear both logical and anticipative for the Council to maintain an electronic register from the outset via the integrated 'CAPS Uniform' property database already in place and for which a module is being developed specifically to cater for the Licensing Act 2003.

3.20 The creation of an electronic register would enable the required public access and ability to obtain copies of entries via council offices, internet website etc.

3.21 The Register needs to be established by 7 February 2005.

4 RISK IMPLICATIONS

4.1 Strategic Risk

Delay in approving the draft and agreeing to its use in the consultative process will impede the Council's ability to comply with its statutory obligations to publish a Statement of Licensing Policy one month before the First Appointed Day having completed a process of consultation.

4.2 Operational Risk

Unless the draft Statement is approved for consultation, Officers will be unable to complete the required consultation process.

4.3 **Reputation Risk**

The credibility of the Council and Licensing Authority to function effectively will be challenged if the consultation process and adoption of a Statement of Licensing Policy is not carried out effectively.

4.4 **Regulatory Risk**

Unless the constitutional issues are addressed, the Licensing Authority will be unable to discharge its functions under the Licensing Act 2003.

5 CRIME AND DISORDER / ENVIRONMENTAL IMPLICATIONS

- 5.1 Failure to carry out a comprehensive consultative process, including publication of the draft Statement, will restrict the ability of the statutory consultees and the Council's partners to comment or have their views considered.

6 RESOURCE IMPLICATIONS

- 6.1 Council has approved the establishment of a licensing team to administer the new provisions.
- 6.2 Budgets have been approved to meet office and IT requirements but, subject to further regulations from the Secretary of State, there may be additional budgetary considerations.
- 6.3 An unquantified amount of time will be required for Licensing Officers to meet with licence-holders and others to advise them of the new provisions and as part of the consultation process.
- 6.4 Adequate budgets exist to cater for production of documentation, postage etc. in the consultative process. At this time there are no circumstances that would create large, unforeseen expenditure.

7 LEGAL IMPLICATIONS

- 7.1 If the consultative process is inadequate, the Policy may become subject to Judicial Review. In addition, as the Committee are obliged to have regard to the policy in determining applications, any person who is aggrieved may choose to base their grounds for appeal on the process of formulation of the policy.

8 PARISH IMPLICATIONS

- 8.1 Parish Councils will be consulted on the draft Statement of Licensing Policy.

9 RECOMMENDATION

9.1 It is proposed that the Committee **RESOLVES**

- (1) To consider the draft Statement of Licensing Policy and approve its publication for the process of statutory consultation.
- (2) To nominate 9 additional Members to serve on the Committee for the purpose of Member training on the provisions of the Licensing Act 2003 and on the basis that nominations will be confirmed at the next meeting of Full Council.

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Background Papers:-

None

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