

LICENSING COMMITTEE: 2 February 2010

Report of the Chief Strategic Planning and Environment Officer

Government Consultation on Proposals to amend the Licensing Act 2003.

1. Background

- 1.1 The Department of Culture, Media and Sport (DCMS) has issued a consultation document on proposals to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices.
- 1.2 The report is to provide details of the consultation and to make recommendations on a response.

2. Details.

- 2.1 On 9 December 2009 the Department of Culture, Media and Sport (DCMS) issued a consultation document on proposals to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices.
- 2.2 The consultation document seeks views on three separate simplification proposals relating to the Licensing Act 2003. The Government proposes to simplify the requirements for:
- the revision of licensing statements;
 - making an interim authority notice;
 - applying for reinstatement on transfer (RT) following the death, incapacity or insolvency of the licence holder; and
 - temporary event notices (TENs).

As a result of the proposals it will also be necessary for the DCMS to amend the statutory Section 182 guidance to local authorities to take account of the changes and these proposals are also detailed in the document

- 2.3 The Act currently requires licensing authorities to consult on its policy of licensing statement every three years regardless of whether any change to the policy is necessary. The first proposal in the consultation document is to remove the requirement to determine and publish a policy every three years and to enable local authorities to only carry out a review where there is believed to be a need to

- change the policy. This is a very sensible proposal in the interests of effective streamlined administration.
- 2.4 The second proposal is to extend the period for an Interim Authority Notice (IAN). This provides a process to enable a person to apply to temporarily take over a licence following the death, incapacity or insolvency of the Licensing Holder. The notice must be submitted within a seven day period. The limited time period can cause problems on insolvency and also following the death of the Licence Holder. The proposal is therefore to extend the period to 28 days which will provide a more realistic period of time for people to put their affairs in order. There are other consequential minor changes to be made including giving the Police two working days to object to an Interim Authority Notice rather than the current 48 hours and to extend the period for which the notice lasts from two to three months.
- 2.5 When a Temporary Event Notice (TEN) is submitted to authorise a small scale event for a limited period the Police have 24 hours to object. The proposals is to extend the period for Police objections from 48 hours to two or three working days. This would be balanced by a new power to effectively give the Police permission to allow late notification of approval of a TEN. Currently a TEN must be submitted to the authority at least 10 working days before the event takes place. The new power will enable the police to notify the authority that the event may proceed despite the premises user having failed to give notice within ten days of the event taking place, although three days notice must still be given. The proposal would remove a bureaucratic barrier in favour of a more pragmatic approach that should be welcomed. The authority has little time under the system to arrange hearings to consider police objections to TENs. While a small extension of the period for their consideration may be welcome, this will in effect reduce the period for hearing and it is therefore recommended that the extension for police objections should be two rather than three days.
- 2.6 The consultation document proposes a series of questions with largely yes or no responses being required. Details of the recommended responses are contained in Appendix A.
- 2.7 The Government proposes to introduce these simplification measures by means of a Legislative Reform Order under section 1 of the Legislative and Regulatory Reform Act 2006. A draft of the Order is included in the consultation document. It is proposed that that the changes should be implemented from Spring 2010. Responses to the consultation document are required by 9 February 2009.

3. Achievability

This report contains no equality personnel or property implications.

4. Legal Implications

- 4.1 The Government is consulting on its proposals at this time so there are no immediate legal implications. If the proposals are implemented then the legal implications appear throughout Section 2 of this Report.

6. Financial Implications.

- 6.1 The licensing service is required to be self financing with all expenditure being met from fees and charges which are reviewed annually. In the case of Licensing Act fees, these are set nationally and have not been reviewed by the government since they were first set. The reduction in expenditure as a result of the need to review and consult every three years on the licensing policy statement will therefore be a welcome reduction in the total cost of providing the service.

7. Recommendation

- 7.1 It is recommended that the responses to the consultation document detailed in Appendix A be approved by the Committee.

SEAN HANNABY

1 January 2009

CHIEF STRATEGIC PLANNING AND ENVIRONMENT OFFICER

This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers: None

Responses to the Consultation Document.

General Questions:

Question G1:

Do you consider that any, or all, of the proposed simplification measures can be achieved by non-legislative means?

No

Question G2:

Do you consider that any of the simplification measures is of constitutional significance?

No

Proposal A: Licensing Statements:

Question A1:

Do you agree that the existing requirement to review licensing statements every three years should be removed?

Yes.

Question A2:

Do you agree that the existing requirement for LAs to consult all statutory consultees for all revisions should be replaced by a requirement for the LA to consult those statutory consultees that will be affected by the proposed revision.

Yes

Question A3:

Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees is proportionate to the policy objective?

Yes

Question A4:

Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees strikes a fair balance?

Yes

Question A5:

Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees does not remove any necessary protection?

Yes

Question A6:

Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

Yes

Proposal B: Interim Authority Notices and Reinstatements on Transfer:

Question B1:

Do you agree that the period during which an Interim Authority Notice can be issued should be extended to 28 consecutive days?

Yes

Question B2:

Do you agree that the period during which a Reinstatement of Licence on Transfer can be applied for should be extended to 28 consecutive days?

Yes

Question B3:

Do you agree that the period during which the police may cancel an IAN should be changed to two working days?

Yes

Question B4:

Do you think that the interim authority period should be extended to three months?

Yes – the current period of time has not caused the authority significant problems however the minor extension of time for the holder to resolve their affairs and arrange a transfer if necessary. In respect of insolvency it would be desirable to bring the period of time in line with the Insolvency Service's proposal to extend the maximum time limit for court sanctioned moratoriums on creditor action.

Question B5:

Do you agree that the Government's proposal to amend the deadlines for IAN and RTs is proportionate to the policy objective?

Yes

Question B6:

Do you agree that the proposal to amend the deadlines for IAN and RTs strikes a fair balance?

Yes

Question B7:

Do you agree that the proposal to amend the deadlines for IAN and RTs does not prevent any person from exercising a right that might reasonably expect to continue to exercise?

Yes

Proposal C: Temporary Event Notices:

Question C1:

Do you agree that the police should be able to decide (at their discretion) to permit licensed activities under a late TEN, by issuing a confirmation to the licensing authority?

Yes

Question C2:

Do you agree that the latest a TEN may be confirmed by the police should be three working days before the proposed event commences?

Yes. There should be sufficient time for the police to give proper consideration to any decision to use their discretion.

Question C3:

Do you think that a police confirmation should be issued within two working days of receiving the TEN?

Yes both the premises user and the local authority should have sufficient notice that the event is to be permitted to proceed.

Question C4:

Do you agree that the period during which the police can issue an objection to a TEN should be changed to two working days?

Yes

Question C5:

Do you consider that the period during which the police can issue an objection to a TEN should be extended to **three** working days?

No. Where the police object to a TEN the local authority has a very tight timetable for arranging for the matter to be considered at hearing, the further reduction in the time available would give rise to an additional administrative burden which would not be beneficial to any party.

Question C6:

Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days is proportionate to the policy objectives?

Yes

Question C7:

Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would be proportionate to the policy objectives?

Yes. Providing an additional day for consideration would not provide any identifiable benefits in terms of the policy objectives.

Question C8:

Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days strikes a fair balance?

Yes

Question C9:

Do you consider that the extension of the deadline for the police to object to a TEN to three working days would strike a fair balance?

No. The proposed change would have no significant benefits.

Question C10:

Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days or three working days does not remove any necessary protections?

Yes.

Question C11:

Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days does not prevent any person from continuing to exercise any right which that person might reasonably expect to continue to exercise?

Yes

Question C12:

Do you consider that the extension of the deadline for the police to object to a TEN to three working days would not prevent any person from continuing to exercise any right which that person might reasonably expect to continue to exercise?

Yes. It would reduce the period of notice that the applicant could be given of the hearing which may prevent their attendance.

Draft Statutory Guidance

Question SG1:

Does this draft Guidance provide sufficient advice to assist licensing authorities in their administration of the Licensing Act?

Yes.

Impact Assessment

Question IA1:

Do you broadly agree with estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website)?

Yes

Draft Legislative Reform Order

Question LRO1:

Do you think this draft Order accurately reflects the changes proposed in chapters 4-6?

Yes.