

LICENSING COMMITTEE: 2 February 2010

Report of the Chief Strategic Planning and Environment Officer

AMENDMENTS TO THE LICENSING ACT 2003 AS A RESULT OF THE EU SERVICES DIRECTIVE.

1. Background

- 1.1 The Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) (Electronic Applications etc) Regulations 2009 have amended certain requirements of the Licensing Act 2003. The regulations are a response to the requirements of the EU Services Directive which had effect on 28 December 2009.
- 1.2 This report is to provide details of the amendments for the information of the Committee.

2. Details.

- 2.1 The Licensing Act 2003 and enabling regulations issued in 2005 detailed the application process in respect of applications for Premises Licences and Club Premises Certificates under the Act.
- 2.2 On 28 December 2009 the Services Directive of the European Parliament had effect. The Directive requires that all procedures and formalities concerning access to, or the exercise of, a service activity may be completed at a distance by electronic means, through a single point of contact and with the relevant competent authorities.
- 2.3 To comply with the Directive it was necessary to amend the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (S.I. 2005/42) to ensure that they were compatible with Directive. The Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) (Electronic Applications etc) Regulations 2009 have introduced the necessary amendments. Regulations 4 and 5 of these Regulations substitute a new regulation 21, and insert new regulations 21A and 21B into the 2005 Regulations. The effect of these amendments is to enable an application or notice (and any accompanying plan or other document) given to a licensing authority under Part 3 or Part 4 of the 2003 Act to be given "in writing" by means of a "relevant electronic facility" which is either the Electronic Assistance Facility (provided through the government

gateway), or any equivalent facility established and maintained by a licensing authority.

- 2.4 The Regulations ensure that the requirement to give an application in writing is met if they are given by the appropriate electronic means and are valid when given by electronic means when the information is received by the licensing authority together with the appropriate fee. The details of the changes are:
- An application for review or representations (and any accompanying plan or document) can be given “in writing” if the information comprising it or them satisfies the necessary conditions. Reviews and representations are treated separately from other processes under the 2003 Act, as they are not normally initiated by the service provider.
 - Regulation 6 replaces the existing requirement that plans submitted with applications for premises licences or club premises certificates be drawn in the standard scale unless the licensing authority agrees in writing to an alternative scale. The new paragraph (2) in regulation 23 of the 2005 Regulations provides that the plan must be clear and legible in all material respects. The definition of “standard scale” is omitted in the new regulations.
 - To ensure compatibility with the Directive’s requirement for a single point of contact, the regulations provide that where certain applications are made by means of a relevant electronic facility, the licensing authority (rather than the applicant) must give notice of the application to each of the “responsible authorities” as defined in Part 3 or 4 of the 2003 Act. For applications made by other means, and in the case of reviews, the applicant must give the required notice.
 - For applications of which notice is required to be given to the police (but not the other responsible authorities), regulation 28 of the 2005 regulations is amended so that the licensing authority, rather than the applicant, is required to give the notice in cases where the application is submitted by means of a relevant electronic facility.
 - Regulation 10 inserts a new regulation 39B into the 2005 Regulations, which provides that certain notices given (by a licensing authority) in connection with applications made through a relevant electronic facility must themselves be given through that facility.

3. Achievability

This report contains no equality personnel or property implications.

4. Legal Implications

- 4.1 The legal implications are contained in Section 2 of this Report.

5. Financial Implications.

- 5.1 The licensing service is required to be self financing with all expenditure being met from fees and charges which are reviewed annually. The licence fees under the Licensing Act 2003 are set nationally to recover the cost of administering the system. It is unlikely that the changes brought in by the new regulations will have direct financial implications for the authority.

6. Recommendation

- 6.1 It is recommended that the report be noted.

SEAN HANNABY

1 January 2010

CHIEF STRATEGIC PLANNING AND ENVIRONMENT OFFICER

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

Background Papers: None