

# LICENSING AND SAFETY COMMITTEE

14 SEPTEMBER 2006

## LICENSING ACT 2003 - IMPLEMENTATION UPDATE

Report from: Deborah Upton, Assistant Director (Legal, Contract and Property Services)

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### 1. INTRODUCTION

1.1 The purpose of this report is to inform the Licensing and Safety Committee of progress regarding the implementation of the Licensing Act 2003 and to invite Members comments.

### 2. DECISION ISSUES

2.1 The Committee has delegated powers to determine this matter.

### 3. RECOMMENDATION

3.1 That the Committee consider and note the report on the implementation of the Licensing Act 2003 and comment thereon.

### 4. BACKGROUND

4.1 As Members will be aware, the Licensing Act 2003 came fully into operation on 24 November 2005, when the previous liquor licensing, entertainment licensing and late night refreshment licensing system was consigned to the history books and replaced with a new integrated system.

4.2 However, it was not only the detail of the law that changed. The Act is intended to move away from detailed regulation by licensing authorities to self-regulation by operators as they seek to comply with the four licensing objectives that underpin the new licensing regime. The Act replaced the fixed terminal hours for the sale of alcohol with a new system of flexible hours chosen by the operator but subject to representation by responsible authorities and interested parties such as local residents.

4.3 This new way of working has presented considerable challenges to licensing authorities, responsible bodies such as the police and of course operators and their advisors. All have had to master the new procedures and philosophy in a short period of time.

The Act and associated regulations would not gain a "crystal mark" for clarity! There are very many grey areas which will almost certainly only be resolved by the High Court.

- 4.4 It should also be remembered that whilst the Act came fully into operation in November 2005, the council was processing licence applications from 7 February 2005 (the “first appointed day”).  
The Act has now been fully operational for almost a year, and it is timely to report to Members on its implementation, highlighting the main aspects for consideration.

## **5. LICENSING MANAGER’S COMMENTS**

- 5.1 The following comments contain the key points and the Licensing Manager will comment further and answer questions at the meeting:-

( a ) **Licence Statistics**

Currently the Council has issued:-

**695** Premises Licences

(required for sale of alcohol, regulated entertainment and late night refreshment after 11pm)

**67** Club Premises Certificates

(sale of alcohol and regulated entertainment)

**1268** Personal Licences

(authorising the sale of alcohol)

**312** Temporary Event Notices

(for licensable activities on an ad hoc basis where no premises licence is in place)

**162** Transfers of Designated Premises Supervisor

(Head licensee)

**42** Transfers of the Licence Holder

(Premises and Clubs Licence holders)

Between 7 February and 24 November 2005, the Council processed all of the previous licences that needed converting to premises licences together with new premises licences and personal licence applications. This involved a considerable amount of work for both the Licensing Team and Members sitting on the Licensing Hearing panels.

All licences were issued by the end of March 2006. This represented a considerable achievement in view of the volume of licences that had to be individually prepared and the small amount of resources available. It is estimated that this process took over 500 working hours to complete.

The volume of applications has started to decrease, although it is noticeable that some licence holders are now submitting variation applications to their existing premises licences, either to increase hours or extend the licensable activities. These applications are more likely to generate representations and therefore the need for licensing hearing panels to be held.

( b ) **Educational Material**

In view of the complexity of the Licensing Act 2003, the licensing team has to date prepared some 19 individual information leaflets available to all enquirers on various aspect of the legislation. These are designed with a view to answering queries and questions in an understandable format (copies will be available for Members inspection at the meeting). Similar informative material is also available on the Council website and is updated as and when required.

( c ) **Licensing Hearing Panels**

Since May 2005, the Council has held **120+** licensing hearing panels to determine premises licence applications where “relevant representations” were made by the responsible authorities, parish councils or interested parties (including the public and ward councillors). It is interesting to note that to date, only four appeals were lodged by applicants who were aggrieved by the Panel’s decision. Of the 4, 2 were resolved by negotiation. Another did go before the Magistrates on a technicality concerning interpretation of information at the panel hearing and only one ran its full course where the Magistrates granted an applicant slightly longer hours than agreed by the panel, but not the full hours applied for.

( d ) **Statement of Licensing Policy**

As Members are aware, on 9 December 2004, the Council approved a statement of licensing policy following extensive consultation. The policy statement took effect on 7 February 2005 and remains in force for a period of three years. The Licensing Act 2003 indicates that authorities should keep their policies under review and makes provisions for revisions to policies part way through the three year period. If it is decided to review the policy, the Act requires that the same full statutory consultation with all parties takes place as applied in relation to the approval of the original policy statement. Where changes are made, the licensing authority must publish a statement of the revisions.

The Licensing Manager is of the view that the existing statement of licensing policy is working well. It has formed the background to all Licensing Act 2003 application decisions taken by both Members and officers. A key factor is that each application is considered on its merits . This has proved successful as the numbers of appeals lodged has been extremely low (see paragraph 5.1 (c)) and to date the content of the policy has not been challenged in the Courts. Some Councils have already adopted statements including special policies on “cumulative effect” which refers to the potential impact on the promotion of the licensing objectives of a significant number of licensed premises in one area. These policies have been successfully challenged by applicants in the courts. In the light of these comments, the Licensing Manager would not recommend a review of the statement of licensing policy at this time.

( e ) **Reviews of Premises Licences**

As a further protection to ensure that the 4 licensing objectives are being complied with, the Act makes provisions for existing premises licences to be reviewed. The review can be requested by a responsible authority or interested party such as a resident living in the vicinity of the premises. This review procedure provides a valuable enforcement tool and is a very real weapon against unsatisfactory premises.

Having said that, it is imperative that documented evidence of problems occurring over a period of time is obtained prior to initiating the review.

Further training for Members on reviews has been scheduled for 24 October 2006.

(f) **Enforcement**

A key area of the Licensing Act 2003 is enforcement which has fallen on the Council to take the lead. Attached at Appendix A is a schedule showing Licensing Act enforcement since November 2005.

- **Licensing Enforcement Officers**  
Members will note that the licensing enforcement team undertake regular enforcement activity on both the premises and with licence holders. We have implemented procedures on a reactive and proactive basis and have achieved a high level of compliance. The key time for enforcement activity is between 21:00 and 02:00. Through education, formal advice and then a system of warnings leading to prosecution, we have achieved a balance of ensuring that licensing conditions are complied with, the public are protected and licence holders are able to operate their business or trade.

- **Multi-Agency**  
It is imperative that a number of the 'Responsible Authorities' meet regularly to discuss a corporate approach. This has already proved successful in targeting and catching offenders.

Enforcement Officers meet weekly with the Police Licensing Enforcement Officer with ad hoc attendance from the Trading Standards and Environmental Health Teams and the Fire Authority. These meetings enable a detailed discussion on targets, exchange of information and resulting in joint visits at premises/licensees.

- **Corporate Enforcement**  
It is also worth mentioning the Council's Corporate Enforcement Forum where all the enforcement "arms" of the Council meet to review activity and discuss best practice and consistency.

The Licensing Sub-Group of the forum has also proved to be a great asset in achieving monthly licensing updates, county and local strategies, enforcement planning (i.e. Operations) and liaison with other Council departments involved in licensing and outside agencies such as Police and the Fire service.

- **New Powers**  
With the implementation of the Act, new powers have been given to the Council on closure of licensed premises. These have a significant impact on the premises and should be looked at carefully to make sure they are used in appropriate circumstances. The first is a Closure Notice issued by either Police or Authorised Officers of the Council and relates to unauthorised sale of alcohol. This allows for the premises to be closed for up to 7 days to rectify the problems addressed in the notice. At any time an officer can cancel the notice. The second is a Closure Order granted by the Magistrates for a period determined by them. This could also result in them requesting that a review of licence is heard by the Council. The Magistrates can grant the closure on the presumption that crime and disorder is likely to take place at the premises or in relation to noise. The police or authorised officer must apply directly to the Magistrates.

- **Lack of Knowledge**  
Enforcement has increased by ten fold compared with previous years due to the requirements of the Licensing Act. During our daily activities and active enforcement we have found that the gaps in licensee 's knowledge is one of the

contributing reasons for breaches of the Act and illegal activity. It is interesting to note that those applicants who applied for a straight licence conversion did not legally have to attend any up to date courses on the new legislation and have subsequently failed to educate themselves on the new procedures or offences. Education is therefore paramount and over the year we have produced an 'Offences' leaflet and a newsletter (sent to all Members in May for information).

(g) **Temporary Event Notices (TENs)**

The Licensing Act 2003 makes provision for Temporary Event Notices (TENs) be applied for in relation to licensable activities on an ad hoc basis, where no premises licence is in force or for activities exceeding those permitted on an existing premises licence.

It is fair to say that across the country, this is one of the most controversial aspects of the new Licensing Act. The main reason being that an applicant has to give notice of such an event only to the Licensing Authority and the Police a minimum of 10 working days before the event. The only objection that can be raised is by the Police on crime and disorder grounds. If a Police objection is raised and not resolved, a licensing hearing panel has to be arranged within that timescale. This is impractical.

There are also limits on the number of events at any individual site and on who can apply which can lead to monitoring problems. Representations have been made to the Government regarding the above difficulties and also the necessity for a central database. We await information as to whether the TENs legislation and associated procedures will be reviewed.

(h) **Licensing of "Open Spaces and Public Areas"**

Full premises licences have been obtained for Capstone Country Park and Cozenton Park and officers are currently looking at the priority order for similar sites, possibly including "High Streets" although there are a number of implications that need to be considered here. The advantage of obtaining full premises licences is that it avoids a succession of Temporary Events Notices and applications can be more fully discussed prior to and during determination.

(i) **Licensing Forum**

The Act requires that licensing authorities establish local licensing forums consisting of councillors, officers, statutory agencies, trade representatives and the public etc. Officers are currently investigating how best this can be effectively achieved and a further report will be made to the committee in due course.

(j) **General**

Given the considerable changes and challenges that the Licensing Act presented to local authorities, it is fair to say that the implementation has proceeded very well, particularly in terms of administration, licensing hearing panels and importantly positive enforcement results.

**6. Legal Implications**

- 6.1 The legal implications are dealt with within the body of the report. It should be noted that an inappropriately worded statement of licensing policy could result in a legal challenge by way of judicial review.

**7. Financial Implications**

- 7.1 There are no direct financial implications for Medway Council directly concerning the items in this report at present. However, if at any time in the future the licensing policy was subject to legal challenge, there could be costs associated with this process. There may also be financial implications concerning licence application fees (set by statute) not covering the cost of providing the service.

**8. Conclusion**

- 8.1 Members are requested to consider and note the report and comment where appropriate.

**9. Background Papers**

Licensing Act 2003  
Guidance to Licensing Act 2003

Any further information is available from:

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