

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel **LICENSING COMMITTEE** Date **01/02/2012**

Originating Service Group(s) **EDUCATION AND ENTERPRISE**

Contact Officer(s)/ **COLIN PARR**

Telephone Number(s) **0105**

Title/Subject Matter **POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011**

Recommendation

That the Committee notes the licensing reforms detailed in the Police Reform and Social Responsibility Act 2011, the proposed approach to implementing these changes and the ongoing consultation on regulations.

1 **Purpose**

- 1.1 To apprise the Committee of the licensing reforms detailed in the Police Reform and Social Responsibility Act 2011 and the potential impact of these on the Council, partners and the City's night time economy.

2. **Background**

- 2.1 There are a number of proposed changes to the Licensing Act 2003 detailed in the Police Reform and Social Responsibility Act 2011. These proposals follow a Home Office consultation in the summer of 2010 titled "Rebalancing the Licensing Act"
- 2.2 The Council's response to the consultation was presented to the Licensing Committee on 20 October 2010.
- 2.3 Further to the consultation, the Home Office drafted the Police Reform and Social Responsibility Bill, details of the Bill were shared with Members on 7 March 2011. This report is attached at Appendix A to this report.
- 2.4 The Bill received Royal Assent in on 15 September 2011 and became the Police Reform and Social Responsibility Act 2011.

3. **Police Reform and Social Responsibility Act 2011**

- 3.1 The Act contains a number of changes to the Licensing Act all of which will have an impact on how the Council discharges its functions as a licensing authority.
- 3.2 All of the licensing reforms detailed in the Bill and presented to Members on 7 March 2011 have been included in the Act.
- 3.3 An additional power not initially detailed in the Act was also added as the Bill progressed through the Lords, this is detailed below:

Ability to Set Fees Locally

The Act introduces powers to allow licensing authorities to set fees for Licensing Act applications locally on a cost recovery basis, currently fees are determined by the Secretary of State.

4. **Implementation of Reforms**

- 4.1 The proposed implementation dates of the various aspects of the Act are detailed at Appendix B to this report. With the exception of fee setting powers, the mandatory aspects of the Act will be introduced when these dates are confirmed by the Home Office.
- 4.2 Additional training for Members of the Licensing Committee regarding the changes will be provided if necessary.
- 4.3 The powers referred to in paragraphs 5.2, 5.3, 5.4 and 5.5 of the attached report are discretionary which means the local authority would only implement them if it were deemed appropriate.

- 4.4 The delivery of the Council's licensing responsibilities is stipulated as a non-executive function in the Licensing Act 2003. As such, in order to introduce any of the discretionary measures detailed above approval would be required from the Licensing Committee.
- 4.5 In the case of the Late Night Levy, Zoning and Cumulative Impact a revision to the Council's Statement of Licensing Policy would also be needed and as such Full Council approval would also be required.
- 4.6 A cross service officer working group has been established to consider the potential impact, scope, benefits and costs of each of the discretionary proposals detailed above were the Council to introduce the measures in Wolverhampton.
- 4.7 The working group will be lead by Licensing Services and consist of officers from Legal Services, Strategic Finance and Safer Wolverhampton Partnership.
- 4.8 Detailed consultation engagement will take place with trade representatives through the existing Licensing Forum and with partner agencies including the police, the PCT and Wolverhampton City Centre Company. Consultation will also take place to explore the relationship between the proposed Business Improvement District and the late night levy.
- 4.9 The findings of this impact assessment and recommendations from the working group will be presented to a Member Reference Group for consideration and further direction. The already established Casino Licence MRG has agreed to extend it's remit to include the consideration of these reforms.
- 4.10 Following this any recommendations will then be present to the Licensing Committee with a view to undertaking a review of the Statement of Licensing Policy later this year, to include these changes.

5. **Consultation on Regulations**

- 5.1 Regulations will be required to detail how licensing authorities will need to respond to some of the reforms. The Home Office will conduct a series of consultations on each set of regulations, prior to their agreement.
- 5.2 The first such consultation commenced on 17 January 2012 and details the proposals for the implementation and exemptions for the Late Night Levy and Early Morning Restriction Orders.
- 5.3 The officer working group detailed above will engage with stakeholders to prepare a draft response which will then be presented to Members for agreement and sent to the Home Office.

6.0 **Financial Implications**

- 6.1 The proposals in the Act, specifically the Late Night Levy, will have direct financial implications for the authority and partners. These will result in changes to the Council's current policies and further reports to Members will be presented including the financial implications. (JJ/20012012/X)

7.0 **Legal Implications**

- 7.1 There are a number of legal implications detailed in the report.
- 7.2 Officers from Legal Services will be engaged in the process of initiating any changes resulting from the Act. (SH/20012012/M)

8.0 **Environmental Implications**

8.1 There are no direct environmental implications arising from this report. However, some of the measures that could be introduced through the proposed amendments to the Licensing Act 2003 could potentially have a positive impact on local disturbance and nuisance in some areas.

9.0 **Equalities Implications**

9.1 The implementation of the proposals in the Act will require completion of an Equalities Impact Assessment.

10.0 **Background Papers**

- Licensing Committee Report - *"Rebalancing the Licensing Act"*, 20 October 2010
- Licensing Committee Report - *"Police Reform and Social Responsibility Bill"*, 23 March 2011 (attached at Appendix A)

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel **LICENSING COMMITTEE**

Date **23/03/2011**

Originating Service Group(s) **REGENERATION AND ENVIRONMENT**

Contact Officer(s)/ **COLIN PARR**

Telephone Number(s) **0105**

Title/Subject Matter **POLICE REFORM AND SOCIAL RESPONSIBILITY BILL**

1. Recommendation

- 1.1 That the Committee notes the proposed licensing reforms detailed in the Police Reform and Social Responsibility Bill and the possible impact of these on the Council, partners and the City's night time economy.

2 **Purpose**

- 2.1 To apprise the Committee of the proposed licensing reforms detailed in the Police Reform and Social Responsibility Bill and the possible impact of these on the Council, partners and the City's night time economy.

3. **Background**

- 3.1 There are a number of proposed changes to the Licensing Act 2003 detailed in the Police Reform and Social Responsibility Bill. These proposals follow a Home Office consultation of last summer titled "Rebalancing the Licensing Act"
- 3.2 The consultation sought views regarding a number of proposals which sought to increase the powers of licensing authorities and the police. It was the view of the Home Office that licensing decisions needed to be "rebalanced in favour of communities".
- 3.3 The Council's response to the consultation was presented to the Licensing Committee on 20 October 2010.
- 3.4 Subject to some minor amendments the proposals have now been included in the Bill. The key measures proposed in the Bill are consistent with the comments made in the Council's consultation response.
- 3.5 The Bill is currently progressing through Committee Stage in the Commons and it is expected that it will receive Royal Assent on 20 July 2011.
- 3.6 Following the Bill becoming an Act consultation will be required on revised guidance from the Secretary of State. It is difficult to determine with certainty when the Bill will become law as it has yet to pass through both Houses of Parliament and receive Royal Assent. It's progress could be delayed at various points however, it is expected that the measures in the Bill are likely to come into force from 1 April 2012.

4. **Licensing Act 2003 Reforms**

- 4.1 The Bill contains seventeen separate changes to the Licensing Act all of which will have an impact on how the Council discharges its functions as a licensing authority.
- 4.2 Many of the changes are mandatory and will impact the way in which licensing applications are processed and determined.
- 4.3 However there are also proposals to introduce a range of discretionary powers to licensing authorities to help tackle alcohol related crime and disorder.

5. **Mandatory Measures**

- 5.1 The following sections details briefly those proposals that will mandatorily be applied to the Licensing Act and will impact on the way the Council currently processes, considers and determines premises licence applications.

Consideration to the local area

Premises Licence/Club Premises Certificate applicants would be required to give greater consideration to the local area when setting out the steps they will take to promote the Licensing Objectives and provide better information on which to make informed representations or determinations. This information will be included by applicants in a new section to be added to the statutory application forms.

Advertising of Applications

It is proposed that the Licensing Authority would be required to advertise new and variation Premises Licence/Club Premises Certificate applications within the prescribed period and in the prescribed form. Regulations are likely to specify that this will include requiring the Council to advertise all licensing applications on its website.

Responsible Authorities

Licensing authorities and local health bodies will become responsible authorities along with Police, Fire, Health & Safety, Planning, Environmental Health, Social Services and Trading standards.

Persistently Selling Alcohol to Children

When a licence holder is found to persistently sell alcohol to children the maximum fine will double to £20,000. (Licensing Authorities and police will have the power to shut a premises permanently if found guilty of persistently selling alcohol to children. – Licensing authorities can already revoke a licence under review in these circumstances which effectively closes the premises, where appropriate.)

Representations and Objection Notices from the Police

Section 182 Guidance is to be amended to require licensing authorities to accept all representations and notices and adopt all recommendations from the police, unless there is clear evidence that these are not relevant.

This has been highlighted as a major weakness with the proposals by the trade as it effectively elevates police representations to the status of being irrefutable.

Reducing the burden of proof on Licensing Authorities

This will give authorities greater power to tackle irresponsible premises by allowing them to make decisions which are appropriate rather than necessary for the promotion of the licensing objectives by reducing the evidential burden. This will allow the licensing authority to make decisions that reflect the probable consequences of a premises proposed licensable activities.

Suspend Licences due to Non-Payment of Fees

Licensing authorities will be able to suspend licences due to non-payment of fees. There will be a grace period of 21 days for the payment to be made. The licence is re-instated as soon as the fee is paid. No information is provided in the Bill as to the governance arrangement to enact this suspension.

Temporary Event Notices (TEN)

The right to object to a TEN will be extended to include Environmental Health and the grounds for objection also extended.

The period for which an objection notice must be made will be increased to 3 working days. Licensing Authorities will have the discretion to apply existing licence conditions to a TEN.

Unless the Police or Environmental Health object, an applicant will be allowed to submit a TEN late, that being less than 10 working days before the event. The limitations for the use of TEN's will be extended to cover up to 168 hours of licensable activities per notice (from current 96 hours) and the total days a TEN can operate at a premises per calendar year is proposed to increase to 21 days per premises from the current 15 days.

Removing the 'Vicinity Test' for Interested Parties

The vicinity test will be removed meaning that any person, body or business will be able to make relevant representation on any premises regardless of their geographic proximity.

Statement of Licensing Policy

It is proposed that policies will now have to be reviewed at least every 5 years rather than the existing 3 years.

Personal Licence Convictions

It is proposed that the list of relevant offences is extended. The new relevant offences include conspiracy to attempt to commit any relevant offence, which was initially omitted from the Licensing Act 2003.

6.0 Discretionary Measures

6.1 The Bill contains a number of discretionary reforms, which, if implemented by the Council could have a significant impact on the City's night time economy. These measures are discussed below and include:

- Late Night Levy
- Early Morning Restriction Orders
- Fixed/Staggered Closing Times and Zoning
- Cumulative Impact Areas Evidence Requirements

6.2 Late Night Levy

6.2.1 It is proposed to allow licensing authorities to introduce a charge for premises which sell alcohol (on and off sales) between 12 midnight and 6am to contribute towards the extra enforcement that the night time economy generates for police and local authorities. The levy, if introduced by a licensing authority, must apply to the entire administrative area for which it has responsibility.

6.2.2 The levy amount that will be charged to each premises will be determined in accordance with a premises "payment year." The payment year is likely to relate to the period in respect of when the holder of the licence pays an annual fee under the Licensing Act 2003 and this fee is usually based upon the rateable value of the premises. The fee levels proposed by the Home Office range from £299 to £1,493.

6.2.3 If the Council introduces the levy there will also be an option for premises that do not want to pay the levy to vary their licence without a fee to reduce their opening hours to before midnight with the result that they cease to be liable for the levy.

6.2.4 The funds generated by the levy will, subject to a deduction for the expenses of administering the scheme, be payable to the police. The Bill specifies that at least 70% of the net levy amount must be paid to the police. Of the remaining 30% the government will permit funds to be paid to other organs of local government which operate or administer measures to address the effect of alcohol-related crime and disorder in the night-time economy.

- 6.2.5 There is no specific detail in the Bill on how the police or councils should spend the levy. However it could be used to support and mainstream initiatives such as; Keep it Safe and Taxi Marshals for example.
- 6.2.6 As the introduction of the levy would require political endorsement it is likely that Members would want to see a detailed breakdown of what, it is proposed, any revenue would be spent on by both the Council and the police.
- 6.2.7 Once a levy is in place there is a requirement that the Council and the police produce an annual report which details the levy amount collected, the services this has been used to deliver and the impact of this on crime and disorder.
- 6.3 Early Morning Restriction Orders
- 6.3.1 Currently an Early Morning Restriction Order is an un-commenced power within the Licensing Act 2003 to restrict the sale of alcohol for premises within a particular area for a specific period between 3am and 6am.
- 6.3.2 The Bill is proposing to amend these provisions to allow councils to prevent premises from opening between 12am (or later) and 6am if it is considered necessary to promote the licensing objectives.
- 6.3.3 An Early Morning Restriction Order may be applied to a particular area or the entire city.
- 6.3.4 The authority must be satisfied that the introduction of an Early Morning Restriction Order is appropriate for the promotion of the licensing objectives. In order to achieve this, an evidence based decision must be made. An authority must advertise its decision to make an order and businesses likely to be affected by the order will have an opportunity to make their own representations to the licensing authority.
- 6.3.5 Secondary legislation will exempt certain types of premises from being subject to such an order. The Home Office are currently consulting with licensing authorities on the types of business this would be appropriate for.
- 6.3.6 In order to implement an Early Morning Restriction Order within a specified area a consultation must take place with all businesses that it would apply to, any representations will need to be presented to the Licensing Committee as part of a hearing to determine if the Order is appropriate.
- 6.3.7 An Early Morning Restriction Order could be used in conjunction with a Late Night Levy, fixed/staggered closing times and a Cumulative Impact Policy.
- 6.4 Fixed/Staggered Closing Times and Zoning
- 6.4.1 The Bill encourages licensing authorities to consider using measures including fixed closing times, staggered closing times and zoning in order to implement a licensing strategy that is best placed to meet the needs of the local area, this is clearly prohibited by the existing guidance.
- 6.4.2 Revised guidance will make it clear that local authorities can make decisions that are most appropriate to the licensing strategy for the area. There are no details as yet as to what the strategy document will be and who will be responsible for its creation.
- 6.4.3 If the Council were to adopt fixed/staggered closing times for premises in specific zones this would require a review of the existing Statement of Licensing Policy to identify the areas and closing times that this approach would be applicable to.

6.4.4 Evidence that fixed/staggered closing times are necessary for the promotion of the licensing objectives would be required to support any revision to the policy.

6.4.5 It is unclear as yet how premises that already have licences in the zones affected would be dealt with. It is possible that each premises in an area would be required to have their licence reviewed to reduce their hours in line with the policy, again this would require evidence in each case.

6.5 Cumulative Impact Areas Evidence Requirements

6.5.1 It is proposed that the current process for implementing a Cumulative Impact Policy is simplified to allow licensing authorities greater control (a Cumulative Impact Policy creates a rebuttable presumption that due to a proliferation of venues, further alcohol and/or late night refreshment licences will not be granted in a specific area).

6.5.2 Currently the guidance implies that licensing authorities must gather statistical evidence to justify the inclusion of a CIP in their Statement of Licensing Policy, it is proposed this requirement is removed.

6.5.3 When the Council introduced a Cumulative Impact Policy in 2009 a raft of statistical evidence from partners was provided to Members to support the introduction of the policy.

6.5.4 It is recommended as good practice that despite the likely change in guidance proposed in the Bill, that the Council should continue to request robust statistical evidence from the police and partners to justify the continuation of the Cumulative Impact Policy which would help to deter legal challenge.

7. Governance Arrangements

7.1 The powers referred to in paragraphs 6.2, 6.3, 6.4 and 6.5 above are discretionary which means the local authority would only implement them if it were deemed appropriate.

7.2 The delivery of the Council's licensing responsibilities is stipulated as a non-executive function in the Licensing Act 2003. As such, in order to introduce any of the discretionary measures detailed above approval would be required from the Licensing Committee.

7.3 In the case of the Late Night Levy, Zoning and Cumulative Impact a revision to the Council's Statement of Licensing Policy would also be needed and as such Full Council approval would also be required.

8. Summary

8.1 The Bill represents a significant overhaul of the provisions of the Licensing Act 2003 and if introduced as proposed will have a profound effect on the way in which the Council discharges its functions as a licensing authority.

8.2 It is likely that partner agencies and the trade will closely follow the progress of the Bill.

8.3 It is proposed that a cross service officer working group is established to consider the potential impact, scope, benefits and costs of each of the discretionary proposals detailed above were the Council to introduce the measures in Wolverhampton.

8.4 The working group will be led by Licensing Services and consist of officers from Legal Services, Strategic Finance and Safer Wolverhampton Partnership.

- 8.5 Detailed consultation engagement will take place with trade representatives through the existing Licensing Forum and with partner agencies including the police, the PCT and Wolverhampton City Centre Company. Consultation will also take place to explore the relationship between the proposed Business Improvement District and the late night levy.
- 8.6 The findings of this impact assessment and recommendations from the working group will be presented to a Member Reference Group for consideration and further direction. It is proposed to use the already established Casino Licence MRG for this purpose.
- 8.7 A paper outlining the discretionary proposals was presented to Safer Wolverhampton Partnership Board on 1 March 2011 where the arrangements to consider these proposals were endorsed by partners.

9.0 **Financial Implications**

- 9.1 The proposals in the Bill, specifically the Late Night Levy, will have direct financial implications for the authority and partners.
- 9.2 Some of the changes not discussed in this report propose revisions to the Licensing Act application process. These include changes such as requiring the licensing authority to advertise applications.
- 9.3 These changes are likely to increase the costs of processing applications.
- 9.4 Fees for the Licensing Act are set by central government and there are no proposals to increase the fees contained within the Bill.
- 9.5 Officers from Strategic Finance will be engaged in the process of initiating any changes resulting from the Bill.
(AK/15032011/T)

10.0 **Legal Implications**

- 10.1 There are a number of legal implications that could arise as a result of these proposals.
- 10.2 Officers from Legal Services will be engaged in the process of initiating any changes resulting from the Bill (SH/11032011/G).

11.0 **Environmental Implications**

- 11.1 There are no direct environmental implications arising from this report. However, some of the measures that could be introduced through the proposed amendments to the Licensing Act 2003 could potentially have a positive impact on local disturbance and nuisance in some areas.

12.0 **Equalities Implications**

- 12.1 The implementation of the proposals in the Bill will require completion of an Equalities Impact Assessment.

13.0 **Background Papers**

- Licensing Committee Report - "Rebalancing the Licensing Act", 20 October 2010

Commencement dates



Responsible authorities (RAs) - LAs and health bodies	April 2012 (TBC - earliest possible date)
Removing the vicinity test	
+ advertising requirements/on-line publication of licence apps	
Evidence threshold – “appropriate” rather than “necessary”	
TENs (extended period; relaxing prescribed limits; EHA etc)	
Persistent under-age sales offence	
Max fine doubled and voluntary closure notice period changes	
Non-payment of fees (LAs can suspend licence)	
Licensing policy statements - requirement to up-date from every 3 years to 5 years	
Personal licences - additional offences added	
ADZs repealed	
Below cost sales - Duty + VAT - mandatory conditions	
EMROs	
Late Night Levy	
Locally set fees (LAs to recover costs/national cap)	Oct. 2012 (TBC)