

CARLISLE CITY COUNCIL

Report to:- CARLISLE CITY COUNCIL

**Agenda Item
No:-**

Date of Meeting:- 17 JULY 2012

Public

Title:- POLICE REFORM & SOCIAL RESPONSIBILITY ACT 2011
AMENDMENT TO THE CONSTITUTION

Report of:- DIRECTOR OF GOVERNANCE

Report reference:- GD.37/12

Summary:

This report sets out changes made to the Licensing Act 2003 as a result of the Police Reform and Social Responsibility Act 2011. These changes necessitate an amendment to the Constitution.

Recommendations:

Make amendments to the Constitution as recommended by the Licensing Committee at Para. 3.2 of the attached Licensing Committee report.

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CARLISLE CITY COUNCIL

Report to:- **The Chairman and Members of the Licensing Committee**

Date of Meeting:- 30 May 2012

Agenda Item No:-

Public

Operational

Delegated Yes

Accompanying Comments and Statements

Required

Included

Cumbria Fire Service

No

No

Cumbria Constabulary

No

No

Environmental Services

No

No

Planning Services

No

No

Title:-

POLICE REFORM & SOCIAL RESPONSIBILITY ACT 2011

Report of:-

DIRECTOR OF GOVERNANCE

Report reference:-

GD 32/12

Summary:-

This report gives an update on changes made to the Licensing Act 2003 as a result of the Police Reform and Social Responsibility Act 2011.

Recommendation:-

Members are requested to note the information in this report.

Make recommendations to the City Council to amend the Constitution as outlined at Para.3.2.

J A Messenger

Licensing Manager

Governance Directorate

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:- Records of Licences issued, Licensing Act 2003, Police Reform and Social Responsibility Act 2011.

To the Chairman and Members of the Licensing Committee on 30 May 2012

1 Background

- 1.1 The Licensing Act 2003 took effect on 24th November 2005, from which date this Council administered all licences issued.
- 1.2 The Police Reform & Social Responsibility Act 2011 was passed by Parliament and received Royal Assent in September 2011. Part 2 of this Act makes changes to the Licensing Act 2003 and the first raft of changes came into effect on 25 April 2012.

2 Summary of changes from 25 April 2012

2.1 New Responsible Authorities

The Licensing Authority for the area in which a premises is situate (or partly situate) and the Primary Care Trust/Local Health Board will become responsible authorities with the power to:

- make representations against applications for new licence and variations, and
- make review applications

Note: there are no changes to the 4 licensing objectives – public health does not become a licensing objective

- 2.2 The term 'interested party' and its definitions has been deleted throughout the Act and replaced by either 'other person' or 'any other person'. This means that any person (resident, business, Councillor, MP, etc) can make representations or apply for a review, regardless of where they reside – there is no longer a 'vicinity' requirement.

2.3 Evidential Burden

Instead of the Licensing Sub-Committee taking steps that it considers 'necessary' for the promotion of the licensing objectives (e.g. imposing conditions or refusing applications) when hearing applications, the steps now have to be 'appropriate'.

The purpose of this is to lower the evidential burden placed on Licensing Sub-Committees. However in practice it is unlikely to have a significant impact on Licensing Sub-Committees decisions, except to perhaps make them more defensible in appeals to the magistrate court.

2.4 Temporary Event Notices

Environmental Health to become a 'relevant person' empowered to object to TEN's. The same rules of procedure etc. shall apply to them as to the Police.

The grounds for objection to a TEN are extended from just the crime and disorder objective to include all four licensing objectives.

2.5 Conditions on Temporary Event Notices

At present the Licensing Sub-Committee can not impose any conditions on an opposed TEN, it may only grant the TEN (in its entirety without conditions) or refuse the TEN (in its entirety). The Licensing Sub-Committee will, with the changes, be able to impose conditions on some TEN's. However this change is very restrictive and will only apply to premises that have a premises licence.

If a premises that is the subject of a TEN has a premises licence and objections are received against the TEN, the Licensing Sub-Committee will be able to impose any of the premises licence conditions on the TEN as it considers 'appropriate', provided such conditions are not inconsistent with the licensable activities to be carried out under the TEN's.

2.6 New 'Late' Temporary Event Notices

There will be 2 types of TEN 'applications': -

- Standard TEN: the same as at present (i.e must be received minimum of 10 clear working days prior to event) plus the changes in 2.4 and 2.5 above.
- Late TEN: These must be received no earlier than 9 working days and no later than 5 working days prior to the day of the event. The changes in 2.5 and 2.6 above will also apply to them.

If an objection is made to a late TEN, the Licensing Authority must give the premises user a counter notice at least 24 hours prior to the beginning of the TEN event period. There is to be no Licensing Sub-Committee meeting or hearing to determine the TEN, the requirement for the issue of the counter notice is statutorily automatic upon the receipt of an objection notice.

The TEN giver has the same rights of appeal against the Counter Notice for a late TEN as for a standard TEN even though the issue of the counter notice for a late TEN is automatic under the legislation and does not engage the discretion of the Licensing Authority/Sub-Committee

2.7 New limits for TEN's:

- Personal licence holder can have 50 standard TENS and 10 late TENS per calendar year. The present limit is 50 standard TEN's
- Individuals can have 5 standard TENS and 2 late TENS per calendar year. The present limit is 5 standard TEN's
- Numbers of days a premises can have the benefit of TEN's is increased from 15 to 21 days.
- The maximum period for a TEN is increased from 96 hours (4 days) to 168 hours (7 days).

- The maximum number of TEN's that can be made in respect of any one premises remains unchanged at 12 per calendar year.

2.8 Persistently selling alcohol to children

- Maximum fine: increased from £10,000 to £20,000.
- Closure Notice: maximum closure of 48 hours changed to a minimum closure of 48 hours with a new maximum of 336 hours (14 days).

2.9 Suspension of premises licence for failure to pay annual fee

If an annual fee is not paid following its due date, the Licensing Authority will be able to suspend the licence upon giving at least 2 days written notice of the date that the suspension will come into effect. The suspension remains until such time as the fee is paid and the LA issues a receipt to the licence holder. If the premises provides licensable activities whilst the licence is suspended this will be an offence (i.e. Section 136 - the provision of licensable activities without authorisation). There is an exception in the case of an administrative error on either side or where the fee is in dispute.

2.10 Statement of Licensing Policy

Review period increased from 3 to 5 years. If we carry out a review and replace the Policy, the Licensing Authority can determine that the next 5 year period starts with the date of the replacement policy. Our next policy must be issued on the 6th January 2016, unless there is a replacement policy issued in the interim (which is likely in view of the fact that our Policy may have to be reviewed and revised in light of the changes to the Act).

2.11. Personal Licence Holders

There are some new relevant offences which applicants will have to disclose.

3 Amendment to Constitution of the Council of the City of Carlisle

3.1 Paragraph 2.1 explains that the licensing authority now becomes a Responsible Authority under the legislation, as well as being the determining authority for all applications.

3.2 It is recommended that the Director of Governance be given delegated authority to act as the Responsible Authority. This will necessitate amending the Constitution in the following terms:

- **Table at Section 2A, Schedule 1 - Licensing Committee delegation of functions.**

Making of a representation as a Responsible Authority in relation to an application, delegated to the Director of Governance.

- **Section 2B, Delegation of Council functions to the Council's Officers. New Para 4.1 - Powers delegated to the Director of Governance –**

To make representations as a Responsible Authority, where appropriate, in response to applications.

4. Recommendations

- 4.1 Members are requested to note the information in this report.
- 4.2 Make recommendations to the City Council to amend the Constitution as outlined at Para. 3.2.

Prepared by:

J A Messenger

Licensing Manager