

Report to: Licensing Act 2003 Committee – 15th July 2005

**PROGRESS ON IMPLEMENTATION OF DUTIES AND RESPONSIBILITIES
UNDER THE LICENSING ACT 2003**

<p>Report of: <i>Environmental Health Business Manager and Head of Legal and Democratic Services</i></p> <p>Report Author: <i>Andy Forbes 01865 252564</i> <i>Email: aforbes@oxford.gov.uk</i></p> <p>Lead Member Responsible: <i>Chair of the Committee – Councillor Brett</i></p> <p>Overview and Scrutiny Committee Responsibility: <i>N/A</i></p> <p>Key Decision: <i>No</i></p>	<p>WARDS AFFECTED</p> <p>ALL</p>
<p>SUMMARY AND RECOMMENDATIONS</p> <p>This report sets out progress upon the implementation locally to date of the Licensing Act 2003 (“the Act”), and the challenges ahead. It shows the volume of applications made in Oxford compared with those expected. It shows how we compare with the national picture. It examines income and staffing resources deployed.</p> <p>We will give additional information orally to the Committee that will give a completely up-to-date figure for applications made.</p> <p>The Committee is asked to note the contents of the report. We will submit similar update reports to future meetings of the Committee.</p>	

1. Timetable for applications

(A) Premises Licences

- 1.1 The transition period for licensing commenced on the 7th February 2005 and applicants have until 6th August to apply to convert their existing premises licences to licences under the new legislation. This process allows the preservation of so called ‘grandfather rights’.

- 1.2 Applications received after 6th August will be treated as new applications. Even if applicants want to carry on the same business for the same hours during which they are already trading, their applications may be subject to objections. Had the same application been made before 6th August there would have been an automatic right to a Licence under the Act.
- 1.3 Licences under the Act will take effect from 24th November 2005 (the end of the transitional period between transfer of licensing responsibilities from the Licensing Justices to local authorities). Since it takes two months for an application to be determined if there are representations made against it, the last date for an application to be processed in time for the end of the transitional period is 24th September 2005. Applications made after this date will probably not be able to be determined by the Council before the new legislation comes into force.

(B) Personal Licences

- 1.4 Applications for personal licences mirror those for premises licences in that applicants who already have their names on a Justices Licence can get a personal licence if they apply before the 6th August. Applications received after this date will require a new qualification to be held by applicants. The training for this qualification will include an understanding of the Act's requirements.

2. Applications Received at 30th June 2005

(A) Premises Licences

- 2.1 156 (20%) of the expected 770 applications have been received. We believe the expected applications figure to be accurate to plus or minus 30 applications. This calculation was based on existing trading patterns although there is some evidence that suggests certain traders may reduce their trading hours to avoid having to take out a licence (for example a takeaway can trade until 11 pm without a licence (unless it sells alcohol) but if it trades later than this it will need to be licensed.

(B) Personal Licences

- 2.2 224 (21%) of the expected 1070 applications have been received. The total figure is only believed to be accurate to plus or minus 300. Clubs and non-alcohol premises do not require personal licence holders. Applicants who operate a licensed premises in Oxford but live outside the City have to apply to the licensing authority that covers their home address.

(C) General

- 2.3 Applications take two months to process in which time there has to be a consultation period (28 days after receipt of the application) and then a further period of 20 working days is allowed for the hearing to take place. If applications have no representations or the representations are successfully negotiated between the applicant and the Responsible Authority a licence can be granted in a shorter timeframe. Representations from local residents (interested parties) cannot be negotiated away and if the representations are valid they will require to be presented at a hearing.
- 2.4 Our figures show complete and properly made applications that can be determined. We filter out incomplete and incorrect applications, giving applicants advice on what is needed or amending applications.

3. Responsible Authorities

- 3.1 There have been a considerable number of representations from the Police and Environmental Health about applications for variation of existing licences. In the main they have been focussed on the Prevention of Public Nuisance and Crime and Disorder objectives.
- 3.2 So far applicants have generally been willing to negotiate and agree conditions with the Responsible Authorities and in these cases a hearing is not required. Where an applicant is unable or unwilling to negotiate with the Responsible Authorities a licensing sub-committee hearing has to be held. Negotiations that are settled within a few days of the hearing will nevertheless be reported to the licensing sub-committee for a decision.

4. Licensing Sub-Committee Hearings

- 4.1 Two cases have been to the first hearing that was held on the 22nd June. (Two other hearings are proposed for 12th July). The first case on 22nd June had been successfully negotiated but agreement had only just been reached. The applicant attended the hearing and informed the sub-committee that he agreed the conditions recommended by the Responsible Authority.
- 4.2 In the second case no negotiation had taken place between the Responsible Authorities and the applicant. The applicants' representatives and the applicant put their case and answered questions and the Police and Environmental Health representations were similarly put before the hearing and the officers were questioned.

- 4.3 There is a considerable amount of work and cost involved in any case that goes to a sub-committee hearing. It is not always possible to get the applicant and Responsible Authorities to commence negotiations either at all or at an early enough date to reach agreement before hearing dates are set and reports written.

5. Licensing Income and Expenditure

- 5.1 Appendix 1 contains the decision of Council on 16th December 2004 upon our resource bid under the Act. Appendix 2 illustrates the agreed project budget.

The position to 30th June 2005 is as follows:-

Income

Premises applications	£34,575
Club applications	£ 2,625
Personal applications	<u>£ 8,140</u>
Total	£45,340

Expenditure

Staffing Costs – Environmental Health	£ 48,243
Hardware/software purchase (includes annual maintenance costs)	<u>£ 65,000</u>
Total	£113,243

- 5.2. Generally, the data on which the estimated number of licence applications throughout the complete period was based seems to be substantially correct. The above figures need to be read in the context of the budget in Appendix 2.
- 5.3 Ongoing staffing costs are £11,700 per month for licensing staff. The staff are employed on temporary contracts for 9 months. Four contracts expire in early November and two in December 2005. The licensing solicitor will commence employment on 18th July. He will be on a temporary contract for 9 months. The ongoing staffing costs for this post will be £1,500 per month.

6. What the Licensing Staff Have Been Doing

- 6.1 Although the overall level of applications to date is far lower than that originally expected (but higher than for many other licensing authorities), this has given an opportunity to do a considerable amount of pro-active work.

6.2 A list of the actions is shown below:-

- 1) A new on-line system for processing Licences in accordance with E Government requirements is being implemented and is close to going live. All applications will be able to be made and viewed electronically (with appropriate permissions).
- 2) All the Licensing staff needed and will continue to need training at different levels. The licensing scheme is complex with many different aspects and a wide range of premises.
- 3) All licensing documents are being scanned and held electronically which will assist with document management policy.
- 4) A fairly comprehensive website is available at www.licensing@oxford.gov.uk This covers frequently asked questions, allows applicants to download application forms and gives advice on the Licensing Act and its implications.
- 5) All licensable businesses and clubs have been sent an information pack, which included generic guidance for applicants and application forms.
- 6) There have been six separate licensing workshops. Five were for applicants and one specifically for local solicitors to enable them to give appropriate advice to their clients that would include many local businesses.
- 7) Activity has been concentrated on small businesses, clubs and Council premises such as community halls, leisure centres, parks etc.
- 8) Links with many organisations have been made in an effort to encourage applications.
- 9) Many individuals have received information to assist them in making their applications. However, many of these are yet to come in.
- 10) There has been an effort to get stories out to the local press and a number of articles having been published, especially in the Oxford Mail, including front page headline articles and correspondence. An Oxfordshire-wide comparison has also been featured.
- 11) We have made a conscious effort to recognise the difficulties that the Act poses for small businesses and have tried to target our help towards their needs. The mainstream pubs and clubs have their own head offices and licensing solicitors who advise them.

7. What Legal and Democratic Services Have Been Doing

- 7.1 Legal and Democratic Services has a key objective in its Business Plan to ensure arrangements are in place for administrative and legal support for the new licensing functions. Paragraph 5.3 of this report says that a temporary licensing solicitor will start on 18th July. He will attend Licensing Sub-Committee meetings, advise as necessary and check licences.
- 7.2 On the Democratic side, meetings have been held and advice given to licensing staff on a whole range of procedural issues. The Procedure for the hearings has been drafted. At present Democratic Services arrange hearings in terms of booking rooms and arranging for members to sit on the Sub-Committees that conduct the hearings. Democratic Services also at present draft and send out the notices of the decisions of hearings.
- 7.3 Whilst both parts of the Business Unit are as organised as possible, the Council is faced with an unpredictable situation in terms of the receipt of applications. There will inevitably be significant peaks in work and this will make the process not easy to manage.

8. Implications

- 8.1 There will be many more applications much later in the application timeframe than was originally envisaged. We are still expecting 600 premises and club applications.
- 8.2 If we are to receive the anticipated volume of applications for variations and new licenses, they are likely to have an impact upon staff resources from August onwards.
- 8.3 Members may recall that on previous projections the anticipated number of licensing sub-committee hearings was in excess of 100. This figure still seems probable with the meetings being concentrated in September, October and November.
- 8.4 Discussions with Responsible Authorities have already taken place and, in the event of them being unable to cope with responses to all applications, they are likely to put premises into priority categories. Responses will be given on the higher priority cases first. This may mean that no representations are made for low priority cases from the Responsible Authorities under the most pressure.
- 8.5 We have been issuing personal licences for some time now and around 200 licences have actually been determined and posted out to applicants.

- 8.6 Premises licences are a more complex legal document and the new licensing solicitor will assist in checking the draft licences before they are sent out. About 40 licences have been drafted to date.
- 8.7 It seems likely that temporary staffing arrangements will need to be extended since many applications are expected later than 24th September and they will still be being processed after temporary contracts expire in early November. We will report later on this.

THIS REPORT HAS BEEN SEEN AND APPROVED BY:

Legal and Democratic Services: (William Reed, Jeremy Franklin)

Environmental Health: (John Copley)

Financial & Asset Management (Andy Collett)

Background papers: None

Extract from the Council minutes of 16th December 2004:-

92. LICENSING ACT 2003 – LOCAL AUTHORITY LICENSING RESPONSIBILITIES – RESOURCES

Council had before it the following:-

- (1) Minute and recommendation of the Executive Board of 30th November 2004;
- (2) report of the Chief Executive on behalf of the Strategic Management Board.

Councillor Brett seconded by Councillor Turner moved the following amendment to the recommendation, namely to add the following words as a new sub-paragraph:-

“The Chief Executive be asked to write to the Government expressing the City Council’s concern about the estimated 4-5 hours per week every member of the Licensing Committee would be required to spend on casework licensing sub-committees (CLSCs) during the six month transitional period starting on the first appointed date, the Chief Executive’s letter to request that in order to be able to spread the casework burden more widely among the members of the authority the Government reconsider the restriction that only members of the Licensing Committee may sit on CLSCs”.

The Leader on behalf of the Executive Board indicated that he would be prepared to accept the amendment and, following a debate, Council voted upon it. The amendment was carried, 31 members voting in favour and no members voting against.

Council thereupon resolved as follows:-

- (1) (a) noting that the Executive Board had approved a project in the estimated sum of £244,818 (allowing rollover from 2004/05 to 2005/06) to enable the Council to undertake its statutory obligations under the Licensing Act 2003, to agree the budget variation for 2004/05 and to commit the base budget for 2004/05 –2005/06 (subject to the outcome of consultation on the budget for 2005/06) in respect of the project;
- (b) that the one-off predicted shortfall of £52,818 on licensing between income and project costs be met from balances;
- (c) that additional payments be made to members of the Licensing Committee during the start-up period as

recommended by the Members' Allowances Panel and totalling an estimated £24,270, and that the money for the allowances be transferred from balances to the Members' Allowances Budget;

- (d) that as part of the 2005/06 Budget £115,000 be taken from General Fund balances and put into a contingency to meet the potential cost of licensing appeals;
- (e) that the Chief Executive be asked to write to the Government expressing the City Council's concern about the estimated 4-5 hours per week every member of the Licensing Committee would be required to spend on casework licensing sub-committees (CLSCs) during the six month transitional period starting on the first appointed date, the Chief Executive's letter to request that in order to be able to spread the casework burden more widely among the members of the authority the Government reconsider the restriction that only members of the Licensing Committee may sit on CLSCs

(2) To note that the Executive Board had:-

- (a) noted the predicted income of £192,000 from licensing fees (spread over part of 2004/05 and all of 2005/06) and that the figures could be subject to adjustment in the light of the Fee Regulations;
- (b) noted that the Licensing Committee had agreed that inspection and enforcement against conditions would be carried out at a level broadly comparable to that carried out under the present Public Entertainment Licensing (PEL) regime;
- (c) agreed that on account of the reduction in licence fee income from PEL licences, the licence fee income was unlikely to equal the PEL income, and because there would be significantly more licensed premises to which inspection and enforcement would need to apply, £74,030 was predicted to need to be included in the Council's Budget for 2006/07 onwards to cover inspection and enforcement;
- (d) noted that the Licensing Committee had expressed some concern at the low level of the legal resources bid (0.5 FTE) and wished to review the legal provision in 12 months' time;
- (e) noted that the Licensing Committee had noted that: -
 - (i) further reports would be presented, if required, during 2005/06 concerning any further temporary budget needs arising from variances during transitional work;

- (ii) a report would be presented during 2005/06 concerning the baseline resources needed for future years;
- (iii) quarterly reports would be submitted to the Committee on the operation of the licensing regime and expenditure and income thereon.

Licensing Project Budget

APPENDIX 2

	Total	04/05	05/06	06/07
<i>Costs</i>				
Staff	136,972	#NAME?	#NAME?	
Software	50,000	50,000	0	
Recruitment	4,500	4,500	0	
Other	22,500	1,000	21,500	
Enforcement	30,846	0	30,846	
	<u>244,818</u>	<u>85,940</u>	<u>158,878</u>	
<i>Income</i>				
Income	<u>-192,000</u>	<u>-21,330</u>	<u>-170,670</u>	
<i>Enforcement</i>				74,030
<i>Contingency: Appeals</i>		0	115,000	0
<i>Loss of Income on Existing PEL System</i>		0	75,000	100,000
<i>Net Increase in Budget</i>		<u>64,610</u>	<u>178,208</u>	<u>174,030</u>