

To: Licensing and Gambling Acts Committee

Date: 8 February 2010 **Item No:**

Report of: Head of Environmental Development

Title of Report: The Policing and Crime Act – Amendments to Licensing Legislation

Summary and Recommendations

Purpose of report: To update Committee on the amendments to licensing legislation brought in by the Policing and Crime Act 2009.

Report Approved by:

Finance: Gillian Chandler

Legal: Daniel Smith

Policy Framework:

Recommendation(s):

Committee is requested to:

- (a) note this report,
- (b) ask the Head of Law and Governance to draft a briefing for all Members on their role as “Interested Parties”,
- (c) receive a further report on the Mandatory Conditions when the relevant secondary legislation has been made, and
- (d) receive a further report on the Council’s powers relating to the licensing of “Sexual Entertainment Venues” when the Home Office Statutory Guidance has been published.

Introduction

- 1 The Policing and Crime Act received Royal Assent on 13th November 2009. It makes a number of amendments to licensing and related legislation. All the amendments will require a commencement order to bring them into force and amendments to Statutory Guidance before

they can be implemented. Below is a summary of the key amendments brought in by the Act.

Members as interested parties

- 2 This was a last minute amendment to the Act enabling councillors to make representations or seek a review in their own right. Section 33 amends sections 13 and 69 of the Licensing Act 2003 to allow Members of a Licensing Authority to act as Interested Parties. This allows Members of Licensing Authorities to make representations to object to licence applications or to call for a licensing review, powers which under the Licensing Act 2003 are only exercisable by "Interested Parties" or "Responsible Authorities". They are not required to live in the vicinity and do not have to have been asked to represent someone who does. "Member of the Licensing Authority" refers only to councillors, and not officers or other employees of the authority.
- 3 At present, Elected Members are barred from making a representation unless they are an "Interested Party". That is, unless they live in the vicinity of the premises concerned. They may only speak for local residents or a group of residents and make a representation on their behalf if asked to do so. Once these provisions are in place, Elected Members will be able to make representations to object to or support licence applications or to call for a licensing review.

Mandatory licensing conditions relating to alcohol

- 4 Section 32 introduces Schedule 4 which makes provision about mandatory licensing conditions relating to alcohol. The amendment creates an enabling power that allows the Secretary of State to set out (in secondary legislation) no more than nine mandatory licence conditions relating to the supply of alcohol for all new and existing premises licences and for all new and existing club premises certificates respectively. All conditions must be made in accordance with the four licensing objectives set out in the Licensing Act 2003. The list of new mandatory conditions in respect of club premises certificates could be different to that for premises licences.
- 5 On 19th January the Home Office announced the "Mandatory Alcohol Code". Five new mandatory conditions will be introduced in two stages. The first three will come into effect on 6 April 2010 and the fourth and fifth from 1st October 2010 to give retailers time to prepare. Breaches of the conditions could result in a range of sanctions including a review of their licence or on summary conviction a maximum £20,000 fine and/or six months imprisonment. The proposed conditions of the code will now go before Parliament for approval.
- 5 The conditions will be applied to all alcohol retailers to ensure consistent good practice and crack down on problem premises where irresponsible drinking could put individuals at risk and lead to crime and

anti-social behaviour. The proposed conditions are:

1. Banning irresponsible promotions such as "all you can drink for £10" offers, women drink free deals and speed drinking competitions. These promotions encourage people to drink quickly or irresponsibly and could lead to crime and disorder.
2. Banning "dentist chairs" where drink is poured directly into the mouths of customers making it impossible for them to control the amount they are drinking.
3. Ensuring free tap water is available for customers - allowing people to space out their drinks and reduce the risks of becoming dangerously drunk.
4. Ensuring all those who sell alcohol have an age verification policy in place requiring them to check ID of anyone who looks under 18 to prevent underage drinking which can lead to anti-social behaviour and put young people at risk of harm.
5. Ensuring that all on trade premises make available small measures of beers, wine and spirits to customers so customers have the choice between a single or double measure of spirits and a large or small glass of wine.

Amendments enforced by the Police

- 4 **Selling alcohol to children**
Section 28 amends the offence of persistently selling alcohol to children so that the offence is committed if alcohol is sold to an individual under the age of 18 on two or more occasions within three months rather than on three or more occasions within three months.
- 5 **Confiscating alcohol from young persons**
Section 29 amends the Confiscation of Alcohol (Young Persons) Act 1997 so that police officers can confiscate sealed containers of alcohol from young persons in public places without needing to prove that they were consuming alcohol or that they intended to consume alcohol in a public place. This amendment also allows the police to return, where appropriate, individuals that are reasonably suspected of being under 16 to their home or a place of safety.
- 6 **Offence of persistently possessing alcohol in a public place**
Section 30 introduces a new offence of persistently possessing alcohol in a public place. Young people under 18 can be prosecuted for this offence if they are caught with alcohol in a public place three or more times within a 12 month period. The maximum punishment for this is a level 2 fine (currently £500).

- 7 **Directions to individuals who represent a risk to disorder**
Section 31 amends section 27(1) of the Violent Crime Reduction Act 2006 so that police can issue Directions to Leave under this section to persons aged between 10 and 15 as well as to those aged 16 and over. It also allows the police to take the young person home or to a place of safety if they are issued with a Direction to Leave and the police reasonably suspect that they are under 16.
- 8 All other offences under the Licensing Act 2003 relating to matters such as, unauthorised licensable activities, drunkenness and disorderly conduct on licensed premises, children and alcohol, vehicles and trains and false statements remain unchanged.

Sex establishments

- 8 Section 27 inserts a new category of “Sex Establishment” called a “Sexual Entertainment Venue” into Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. This new category covers venues that provide ‘Relevant Entertainment’. Relevant Entertainment is defined as any live performance or display of nudity *“which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)”*. These venues will require a “Sex Establishment Licence”. However, there is an exemption for premises which provide such entertainment less frequently than once a month.
- 9 The Home Office has indicated that these provisions relating to “Sexual Entertainment Venues” are expected to commence in April 2010. However, there is a requirement for the Council to pass a resolution to adopt the provisions and appoint a day for them to come into force, before they can take effect locally. The Home Office has yet to issue Statutory Guidance but has given an undertaken to write to every local authority to ensure they are aware of when the provisions come into force and what it will mean for them.

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Background papers:

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