

Report of the Director of Neighbourhood Services

**Licensing Act 2003 – Proposal to amend the Licensing Act 2003 to simplify the procedures.**

**Summary**

1. This report advises members of recent consultation from the Department of Culture, Media and Sport (DCMS), regarding proposals to amend the Licensing Act 2003 (the Act) to simplify the procedures for Licensing Statements; Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices. It seeks members approval regarding the councils response to the consultation.

**Background**

2. The Licensing Act 2003 has been in operation since November 2005. During this period its operation has been reviewed and the Government are proposing measures to simplify procedures to reduce burden on businesses and licensing authorities. The consultation document is attached at Annex 1.

Statement of Licensing Policy

3. Under section 5(1) of the Act each licensing authority is required to determine and publish a 'statement of licensing policy' (licensing statement) for each three year period. The statement must be published before the licensing authority carries out any function in relation to applications or notifications under the Act. The licensing authority must consult the consultees set out in section 5(3) of the Act before determining licensing policies. It must also keep the licensing statement under review and make appropriate revisions in the interim between the 3 year periods. If revisions are intended it must consult the same stakeholders.
4. The DCMS have been told by licensing authorities that the current requirement to review statements every three years is unnecessary and burdensome, for example the licensing authority may have carried out a revision in the interim and there are no further changes needed; or the licensing authority may know that further amendments will be required in the next few months for changes in legislation. The DCMS believe the cost to licensing authorities of reviewing a statement is substantial, around £7550 for each review.
5. Consultees also incur costs in reading and responding to review consultations, some national trade associations may be asked to consider and comment on hundreds of licensing statements at the same time. DCMS research shows that some consultees are deterred from contributing to reviews at all because of the

time and costs involved and therefore lose the opportunity to influence licensing policy.

6. Proposal A – The DCMS has therefore proposed to remove the requirement to review licensing statements every three years, but there will still be a requirement for licensing authorities to keep licensing statements under review and carry out revisions as necessary. The proposal is also to allow licensing authorities to consult only those stakeholder groups likely to be affected by any change, rather than the full list of mandatory consultees, when conducting a revision of a licensing statement. For the determination of a completely new policy licensing authorities will still be required to consult all of the statutory consultees.

#### Interim Authority Notices and Reinstatement on Transfer

7. Under section 27 of the Act, a premise licence lapses following the death, incapacity or insolvency of the licence holder. Under section 47, the licence is reinstated if the licensing authority receives an 'interim authority notice' from someone connected with the business or the licence holder within 7 consecutive days of those events. The applicant must also copy the interim authority to the police, who can object within 48 hours of receiving it on crime prevention grounds. The licence is reinstated and is extant for 2 months. Alternatively, a person may apply for a reinstatement of the licence on transfer under section 50. Likewise, this type of application must be made within 7 consecutive days.
8. The DCMS has been advised that 7 consecutive days is not always a realistic timescale to apply for an interim authority notice or a transfer, for example it takes time to appoint an insolvency practitioner or put a licence holder's affairs in order following death or incapacity, and the deadline can seem unjust, particularly after bereavement. If the deadline is missed relatives or business associates of the licence holder must apply for a new licence with associated fees and timescales, the applicant will incur loss of earnings during that period and, potentially, long term loss of business.
9. Proposal B – The DCMS has therefore proposed to extend the period during which an interim authority notice can be issued or a transfer applied for, to within 28 consecutive days.

#### Temporary Event Notices (TEN)

10. The Act provides for a light touch authorisation under which any person may submit a notification to the licensing authority to conduct a licensable activities on a temporary basis. The TEN must be given to the licensing authority and the police at least 10 working days in advance of the event. The licensing authority issues an acknowledgement to the event holder if it is satisfied that the TEN is within statutory limits and has been submitted with the 10 day notification period. Otherwise a counter notice must be issued. Only the police can object on crime prevention grounds. The police have 48 hours after receipt of the notice to object by giving an objection notice to the licensing authority and premises user. The licensing authority must hold a hearing to consider any objection and, if it decides

that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead.

11. The DCMS believes the 10 working day notification period is reasonable in most cases, but there are times when it may be too rigid. For example when premise users wish to arrange a low risk event at fewer than 10 working days notice, or when an event that was due to be held under a TEN is cancelled because of the weather and the premises user wishes to reschedule (a firework display affected by the weather). The DCMS also believes that there may be a cultural loss to the community, as well as a financial loss to the organiser, if events cannot proceed as planned.
12. The Association of Chief Police Officers (ACPO) has said that the police would like to have discretion to allow late notifications for TENs for this type of low risk event and the Local Authorities Coordinators of Regulatory Services (LACORS) agrees.
13. In each particular case, the police would signal their assent to a late TEN by issuing a “police confirmation” to the licensing authority. If a late TEN is given the premise user and licensing authority should be made aware as soon as possible that the police have decided to use their discretion, the DCMS recommends that the police confirmation should be issued within 2 working days of receipt of the TEN. The licensing authority would then check that the statutory limits have not been exceeded and issue acknowledgement or counter notice as appropriate, no later than 24 hours before the beginning of the event.
14. The police objection period is currently 48 hours, they propose to change this to 2 working days, as there is evidence to suggest that in some circumstances the current 48 hours period does not give the police the time intended, and that this may sometimes limit, or prevent, the police from making a proper assessment of the risk of crime and disorder. For example when a TEN is delivered to a police station, which may be unmanned, on a Friday night but not actually received by the chief officer until the following week, by which time the objection period has elapsed. Replacing 48 hours with 2 working days would be small change that should ensure the police have sufficient time to consider TENs properly, even when they are received outside working hours. This is unlikely to result in increased police objections, but will ensure that objections are properly targeted at high risk events.
15. Proposal C – The DCMS therefore proposes that the police are given discretion to allow TENs to be given without the current mandatory notice of 10 working days, however, it is proposed that there would be an absolute minimum notice period of 3 working days.
16. The DCMS is also seeking comments on giving the police a longer period to consider TENs to 3 working days. This is unlikely to result in increased police objections, but would allow the police more time to make a risk assessment of the event, and if necessary, have discussions with event organisers about matters of concern.
17. A 3 working day objection period may have two potential disadvantages: -

- (a) If a TEN that is subject to an objection is submitted to the police within the current minimum timescale of 10 working days notice, the timescale for holding a hearing is already tight and this would mean that there is one day fewer available for all involved in the process.
  - (b) All premises users, not just those subject to an objection, will have one extra day of uncertainty as to whether their event will be subject to police objection.
18. The Parliamentary committees which scrutinise legislative reform orders may consider that this extension does not serve the purpose of reducing a burden or and overall burden. If there is strong support for this proposal, the Government may have to seek a further legislative opportunity to implement this option.

## **Consultation**

19. The DCMS has consulted a wide range of persons and organisations as listed in Annex A of the document. The council has not undertaken a local consultation on this document, discussion has however taken place with North Yorkshire Police.

## **Options**

20. The questions in the consultation document are listed in Chapter 8. Officers responses are attached at Annex 2.
21. Option 1 - Agree with the officers responses.
22. Option 2 - Amend officers responses.

## **Analysis**

23. Officers are in broad agreement with regards to licensing statements and interim authority notices, however there are reservations with regards to the proposals on TENs. These reservations are due to the lack of definition regarding low risk events and limited timeframes that will be given to both licensing and police authorities.

## **Corporate Strategy**

24. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
25. The promotion of the licensing objectives will support the Council's strategy to make York a safer city with low crime rates and high opinions of the city's safety record.

## **Implications**

26. **Financial:** None

**Human Resources (HR):** None

**Equalities:** None

**Legal :** None

**Crime and Disorder:** None

**Information Technology (IT):** None

**Property:** None

**Other:** None

### **Risk Management**

27. There is no risk to the council in submitting this response.

### **Recommendations**

28. Members are asked to approve option 1 and instruct officer to submit the response to the DCMS.

**Author:**  
**Lesley Cooke**  
**Senior Licensing Officer**

**Neighbourhoods and  
Community Safety**

Tel No: 01904 551526

**Chief Officer Responsible for the report:**  
**Andy Hudson**  
**Assistant Director of Neighbourhoods and  
Community Safety**

Report Approved



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**Specialist Implications Officer Legal - Martin Blythe**  
Tel No. 01904 551044

**Wards Affected: All**



**For further information please contact the author of the report.**

### **Annexes:**

Annex 1 – Proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices

Annex 2 – List of questions and officers responses