

Barry Davies LL.B (Hons)
Solicitor/Cyfreithiwr
Head of Legal and Democratic Services
Pennaeth Gwasanaethau Cyfreithiol a
Democrataidd



TO: Councillor: Bernie Attridge (Chairman)
Councillors: Robin Baker, Emlyn Cooke, David Cox
Alan Diskin, Brian Dunn, Jim Falshaw, Grenville
James, Eric Owen, Mike Reece

Your Ref /
Eich Cyf

Our Ref / Ein Cyf

Date / Dyddiad 12/07/2011

Ask for / Gofynner am Ceri Owen

Direct Dial / Rhif Union 01352 702350

Fax / Ffacs

Dear Sir / Madam,

A meeting of the **LICENSING COMMITTEE** will be held in the **CLWYD COMMITTEE ROOM, COUNTY HALL, MOLD** on **MONDAY, 18 JULY 2011** at **10:00** to consider the following items.

Yours faithfully

Democracy and Governance Manager

A G E N D A

1. **APOLOGIES**
2. **DECLARATIONS OF INTEREST(INCLUDING WHIPPING DECLARATIONS)**
3. **MINUTES**
To confirm as a correct record the minutes of the meeting held on 10 November 2010 (copy enclosed).
4. **UPDATED LICENSING SUB-COMMITTEE RULES OF PROCEDURE**
Report of Head of Legal and Democratic Services enclosed
5. **LICENSING ACT 2003 - TEMPORARY EVENT NOTICES**
Report of Director of Environment enclosed

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The Council welcomes correspondence in Welsh or English
Mae'r Cyngor yn croesawu gohebiaeth yn y Gymraeg neu'r Saesneg

6. **REBALANCING THE LICENSING ACT IN FAVOUR OF LOCAL COMMUNITIES**

Report of Director of Environment enclosed

LICENSING COMMITTEE
10 NOVEMBER 2010

Minutes of the meeting of the Licensing Committee of Flintshire County Council held at County Hall, Mold on Wednesday, 10 November 2010.

PRESENT: Councillor J B Attridge (Chairman)

Councillors: L A Aldridge, Eng. K Armstrong-Braun, S R Baker, E G Cooke, B Dunn and M Reece

APOLOGIES:

Councillor E W Owen and LA Sharps

IN ATTENDANCE:

Community Protection Manager, Solicitor (Litigation) and Committee Officer

Prior to the start of the meeting, the Chairman welcomed Councillor Armstrong-Braun to his first meeting as member of the Licensing Committee and introduced the officers who were present.

8. DECLARATIONS OF INTEREST

There were no declarations of interest.

9. MINUTES

The minutes of the meeting of the Committee held on 15 June 2010 were submitted.

In the final paragraph under Minute 3, Councillor Dunn pointed out that reference to 'she' should be corrected to 'he'.

RESOLVED

That subject to the foregoing amendment, the minutes be approved as a correct record and signed by the Chairman.

10. LICENSING ACT 2003 - STATEMENT OF LICENSING POLICY

The Community Protection Manager presented the report for Members to consider and approve the next Flintshire County Council Statement of Licensing Policy.

It was explained that the Statement needed to be published prior to the next three year period commencing January 2011, in accordance with Section 5 of the Licensing Act 2003. The Community Protection Manager highlighted consultation undertaken with the necessary bodies and resultant observations shown in the appendix to the report.

In response to a query from Councillor Dunn about evidence of violent conduct of private hire taxi driver applicants, it was confirmed that this was covered under a separate policy. The Solicitor advised that he was currently in discussion with the Head of Legal & Democratic Services regarding this issue.

Under discussion on the consultation responses included in the appendix to the report, Councillor Armstrong-Braun echoed concerns over private sector Building Control approvals. The Community Protection Manager explained that the introduction of new laws meant that private companies were now able to carry out Building Control approvals, in addition to that already done by Local Authorities. Due to capability concerns surrounding some private companies undertaking this type of work, a recommendation had been included in the policy to point out that if people chose to use private sector companies for Building Control approvals rather than Local Authorities, then steps should be taken to ensure that the company was adequately approved.

Councillor Armstrong-Braun referred to a response provided on 'concerns over Police reluctance to respond to issues relating to disorder'. He suggested that this be changed to read 'concerns over some Police...' as it would not be applicable in every case.

Councillor Aldridge commended the document which he felt was relevant and needed to be shared. He therefore suggested that copies could be distributed to public libraries and sent to Town and Community Councils. Councillor Armstrong-Braun agreed with this suggestion, adding that Clerks of Town and Community Councils should have the opportunity to refer to the document.

RESOLVED

- (a) That subject to the aforementioned amendment, Members agree to adopt the Licensing Act 2003 Statement of Licensing Policy to take effect from 1 January 2011 for a three year period.
- (b) That the Community Protection Manager arrange for copies of the document to be distributed to public libraries and Town and Community Councils in Flintshire.

11. DURATION OF MEETING

The meeting commenced at 10.00 a.m. and ended at 10.15 a.m.

12. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

There were no members of the press or public present.

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Chairman

SUMMARY OF DECLARATIONS MADE BY MEMBERS
IN ACCORDANCE WITH FLINTSHIRE COUNTY COUNCIL'S
CODE OF CONDUCT

LICENSING COMMITTEE	DATE: 10 NOVEMBER 2010
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MEMBER	ITEM	MIN. NO. REFERS
NO DECLARATIONS WERE MADE		

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 4

REPORT TO: **LICENSING COMMITTEE**
DATE : **18 JULY 2011**
REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**
SUBJECT : **UPDATED LICENSING SUB-COMMITTEE RULES OF**
 PROCEDURE

1.00 PURPOSE OF REPORT

1.01 For Members to consider and approve an updated Licensing Sub-Committee Rules of Procedure to replace the existing procedure.

2.00 BACKGROUND

2.01 Flintshire County Council have in place a procedure that guides and assists Members of the Licensing Sub-Committee who undertake licensing hearings.

2.02 The procedure follows legislation that governs such hearings, including the Licensing Act 2003 and the Licensing Act 2003 (Hearings) Regulations 2005.

2.03 The procedure was drafted some time ago in 2005 and is now considered rather lengthy, not comprehensive and in need of updating.

3.00 CONSIDERATIONS

3.01 The existing procedure, although detailed, only covers procedure in respect of the hearing itself. It would be helpful for both Officers and Members, for example, to have a provision for disclosure of the Licensing Officer's report on all parties prior to any hearing. Although there is no direct legal obligation to serve such a report on all parties prior to the hearing it is probably good practice to do so. The new procedure provides for this.

3.02 The existing procedure does not include private hire/taxi licencing matters. In recent years the majority of Licensing Sub-Committee hearings appear to have been in respect of private hire/taxi licence matters. The existing procedure focuses only on licences under the Licensing Act 2003. The new procedure reflects this and includes both private hire and taxi licencing matters. Furthermore, unlike the existing procedure the updated Procedure can apply to applications under the Gambling Act 2005. The updated Licensing Sub-Committee Rules of Procedure is shown in the Appendix.

3.03 In summary the updated procedure includes the following sub headings:

- Composition of Sub-Committee
- Notice of hearing

Date: 12/07/2011

- Rights of attendance, assistance and representation
- Right to dispense with hearing if all parties agree
- Hearing to be in public
- Report
- Procedure at hearing
- Role of legal advisor
- Role of committee co-ordinator
- Determination of application
- Failure of parties to attend the hearing
- Adjournments
- Records of proceedings
- Waiver of rules
- Qualified privilege

3.04 The Officer, in drafting the new procedure, has consulted with the Licensing department and Head of Legal and Democratic Services.

4.00 RECOMMENDATIONS

4.01 That Members revoke the existing Licensing Sub-Committee Procedure and consider and approve the new Licensing Sub-Committee Rules of Procedure with immediate effect .

5.00 FINANCIAL IMPLICATIONS

5.01 None in respect of this report.

6.00 ANTI POVERTY IMPACT

6.01 Not applicable.

7.00 ENVIRONMENTAL IMPACT

7.01 Not applicable.

8.00 EQUALITIES IMPACT

8.01 Not applicable.

9.00 PERSONNEL IMPLICATIONS

9.01 Not applicable.

10.00 CONSULTATION REQUIRED

10.01 No.

11.00 CONSULTATION UNDERTAKEN

11.01 Consulted on an informal basis with Licensing Department and Head of Legal and Democratic Services.

12.00 APPENDICES

12.01 Please see attached.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS

None

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LICENSING SUB-COMMITTEE

RULES OF PROCEDURE

1. General

- 1.1 These rules of procedure are subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 (the 'Regulations') and will apply equally to the determination of applications under the Gambling Act 2005. Where appropriate, the provisions of the Regulations have been incorporated into these rules. These rules of procedure also apply, unless stated, to applications in respect of Hackney Carriage and Private Hire licences under the Local Government (Miscellaneous Provisions) Act 1976.

2 Composition of Sub-Committee

- 2.1 The Sub-Committee shall comprise three Members of the Council appointed by the Licensing Act 2003 Committee, in accordance with Section 9 of the Licensing Act 2003 (the 'Act'). The quorum shall be three. One Member shall be appointed Chair.
- 2.2 Sub-Committee members are bound by the Council's Standing Orders and the Member Code of Conduct. Members must not prejudge or show bias in any matter and must declare personal interests at the start of every Sub-Committee meeting.
- 2.3 The Sub-Committee comprises experienced councillors who do not have interests in licensing matters which are likely to debar them from consideration of, or voting on, any particular issue.

3. Notice of Hearing

- 3.1 The licensing authority shall give to the parties a notice stating the date and time and place at which the hearing is to be held (the 'notice of hearing') in accordance with the provisions of the Regulations.
- 3.2 The notice of hearing shall be accompanied by information regarding the following:
- (a) the rights of a party provided for in paragraphs 4.1 and 8.5;
 - (b) the consequences if a party does not attend or is not represented at the hearing;
 - (c) the procedure to be followed at the hearing;
 - (d) any particular points on which the licensing authority considers that it will want clarification from a party at the hearing.

4. Right of Attendance, Assistance and Representation

- 4.1 Subject to paragraphs 6.2 and 6.4, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.
- 4.2 Upon receipt of the notice of hearing and within the period of time prescribed by the Regulations*, each party shall give to the licensing authority a notice stating:-
- (a) whether he/ she intends to attend or be represented at the hearing;
 - (b) whether he/ she considers a hearing to be unnecessary. This however does not apply in respect of Hackney Carriage and Private Hire licence applications.

**the notice of hearing given by the licensing authority to the parties shall specify the relevant period of time within which each party must give the notice described in this paragraph*

- 4.3 In a case where a party wishes any other person (other than the person he/she intends to represent him/her at the hearing) to appear at the hearing, the notice referred to in paragraph 4.2 above shall contain a request for permission for such other person to attend at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the licensing authority in relation to the application, representations or notice of the party making the request.
- 4.4 A party who wishes to withdraw any representations they have made may do so:
- (a) by giving notice to the licensing authority no later than 24 hours before the day or first day on which the hearing is to be held; or
 - (b) orally at the hearing.
- 4.5
- (a) Under the Act responsible authorities and interested parties can make representations.
 - (b) Councillors of the licensing authority are deemed an interested party under the Act.
 - (c) Councillors can object to a licensing application on behalf of residents and/or businesses in the vicinity of the application site.
 - (d) Councillors may also object in their own right if they live in the vicinity of the application site.
 - (e) Paragraph 4.5 does not apply to applications in respect of Hackney Carriage and Private Hire licensing.

5. Right to Dispense with Hearing if all Parties Agree

- 5.1 The licensing authority may dispense with holding a hearing if all persons (as required by the Act) agree that such a hearing is unnecessary, other than the licensing authority itself, and done so by giving notice to the authority that they consider a hearing to be unnecessary.
- 5.2 Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph 5.1, the licensing authority, if it agrees that a hearing is unnecessary, shall forthwith give notice to the parties that the hearing has been dispensed with.
- 5.3 Paragraph 5 does not apply to applications in respect of Hackney Carriage and Private Hire licensing.

6. Hearing to be in Public

- 6.1 Subject to paragraph 6.2 below, the hearing shall take place in public.
- 6.2 The Sub-Committee may exclude the public from all or part of a hearing where it considers the criteria set out in schedule 12A of the Local Government Act 1972 require the matter to be dealt with in the absence of public and press and that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
- 6.3 For the purposes of paragraph 6.2, a party and any person assisting or a representing a party may be treated as a member of the public.
- 6.4 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may –
- (a) refuse to permit that person to return, or
 - (b) permit him/her to return only on such conditions as the Sub-Committee may specify,

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

7. Report

- 7.1 A report will be put before the Sub-Committee, prepared by the licensing authority.
- 7.2 The licensing authority shall send a copy of the report to the parties in advance of the hearing.

8. Procedure at Hearing

As a matter of practice, the Sub-Committee will seek to focus the hearing on the steps needed to promote the particular licensing objective(s) which has given rise to the specific representation(s) and will avoid straying into undisputed areas. However the promotion of the licensing objective(s) does not apply to applications in respect of Hackney Carriage and Private Hire licensing. In such applications the Sub-Committee will seek to focus on whether they are a fit and proper person to have or continue to hold a licence within the meaning of the Local Government (Miscellaneous Provisions) Act 1976.

- 8.1 The order of business shall be at the discretion of the Sub-Committee, but will normally proceed in accordance with the following paragraphs.
- 8.2 The Chair shall at the beginning of the hearing introduce the Members of the Sub-Committee, invite the parties to identify themselves and then explain to the parties the procedure that the Sub-Committee intends to follow.
- 8.3 The Sub-Committee shall then proceed to consider any request made by a party under paragraph 4.3 (request for permission for another person to appear at the hearing). Permission shall not be unreasonably withheld.
- 8.4 The Chair may ask a representative of the licensing authority to introduce the report, and outline the matter before the Sub-Committee. Alternatively, the Chair may proceed directly to paragraph 8.5 below.
- 8.5 All parties shall be entitled to: -
 - (a) give further information in support of their application, representations or notice (as applicable) in response to a point upon which the licensing authority has given notice that it will want clarification under paragraph 3.2(d),
 - (b) question any other party* if given permission by the Sub-Committee,
 - (c) address the Sub-Committee.

**cross examination shall not be permitted unless the Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require*

- 8.6 The parties will normally be invited to address the Sub-Committee in the following order:-
 - (a) Applicant
 - (b) Responsible Authorities
 - (c) Interested Parties

- 8.7 Paragraph 8.6 does not apply in respect of applications for Hackney Carriage and Private Hire licensing. In such applications the following order will apply:-
- (a) Applicant and/or their representative
 - (b) Any other party who has been given expressed permission by the Chair to make representations
- 8.8 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.
- 8.9 Where there is more than one representation raising the same or similar grounds, the Sub-Committee will request that only one party address them on behalf of the parties who have made the representations in question.
- 8.10 In considering any representations or notice made by a party the Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either in advance of the hearing date or, with the consent of all the other parties or the Chair, at the hearing.

As a matter of good practice, documentation produced in advance of the hearing date shall be produced no later than two days before the hearing. Failure to comply with this rule may result in the documentation being deemed to have been produced at the hearing requiring the consent of all the other parties or the Chairman.

- 8.11 The Sub-Committee shall disregard any information given or evidence produced by a party or any person to whom permission is given to appear at the hearing by the licensing authority which is not relevant to:
- (a) their application, representations or notice (as applicable) or in the case of another person, the application, representations or notice of the party requesting their appearance, and
 - (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective. This however does not apply to applications in respect of Hackney Carriage and Private Hire licensing.

At the hearing, a responsible authority or interested party may choose to rely on their written representation that gave rise to the hearing, but they may not add further representations to those disclosed to the applicant prior to the hearing. They may amplify their existing representations.

- 8.12 Hearsay evidence may be admitted before the Sub-Committee, but consideration will always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.

- 8.13 The parties shall be entitled to make closing submissions. The closing submissions of the applicant shall follow the closing submissions of any interested party or responsible authority.
- 8.14 The Sub-Committee may place a time limit on the exercise of the rights set out in paragraphs 8.5 and 8.12 above. This may be by setting realistic time limits for constituent elements of the hearing and for the hearing overall. All parties shall be allowed an equal maximum period of time overall for the presentation of their case and the testing of their opponents' cases.
- 8.15 The Sub-Committee may, after hearing the representations of the parties, withdraw from the room to make their deliberations. Alternatively, the Sub-Committee may ask all parties and the public to leave the room.
- 8.16 The committee co-ordinator will accompany the Sub-Committee when they retire to make their deliberations.

9. Role of Legal Adviser

- 9.1 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.
- 9.2 The legal adviser will provide the Sub-Committee with any advice it requires properly to perform its functions whether or not the Sub-Committee requested that advice, on:
- (a) Questions of law;
 - (b) Questions of mixed fact and law;
 - (c) Matters of practice and procedure;
 - (d) The range of options available to the Sub-Committee;
 - (e) Any relevant decisions of higher courts;
 - (f) Relevant national guidance or policy;
 - (g) Other issues relevant to the matter before the Sub-Committee;
 - (h) The appropriate decision-making structure to be applied in any given case.
- 9.3 The legal adviser will assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.
- 9.4 The legal adviser will play no part in making findings of fact but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the committee co-ordinator's notes.
- 9.5 The legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The legal adviser is under a duty to ensure that every case is conducted fairly.

9.6 The legal adviser may join Members during the course of their deliberations either when asked to do so or not.

10. Role of Committee Co-ordinator

10.1 The committee co-ordinator's role shall be to make a record of the proceedings, summarise and record decisions and to provide help and assistance to members of the public attending hearings.

10.2 The committee co-ordinator shall remain with the Sub-Committee when it retires to make its deliberations.

11. Determination of Applications

The Sub-Committee will give appropriate weight to:

- (a) the representations (including supporting information) presented by all the parties;*
- (b) national guidance, if applicable;*
- (c) the licensing authority's licensing policy, if applicable;*
- (d) the steps that are necessary to promote the licensing objectives ,if applicable.*

11.1 The Sub-Committee shall make its determination:

- (a) at the conclusion of the hearing for conversion/simultaneous applications for variation/temporary event notices/review of premises licence/applications to vary designated premises supervisor; or
- (b) within 5 days thereafter (all other cases)

11.2 The determination shall be issued by the licensing authority. The licensing authority shall append the Licence and a Summary to the determination. This does not apply in respect of applications for Hackney Carriage and Private Hire licensing.

11.3 In a case where the Act does not make a provision for the period within which the licensing authority must notify a party of its determination, the licensing authority must notify a party of its determination forthwith.

12. Failure of Parties to Attend the Hearing

12.1 If a party has informed the licensing authority that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

- 12.2 If a party who has not so indicated fails to attend or be represented at a hearing the Sub-Committee may:
- (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date; or
 - (b) hold the hearing in the party's absence.
- 12.3 Where the Sub-Committee holds the hearing in the absence of a party, the Sub-Committee shall consider at the hearing the application, representations or notice made by that party.

13. Adjournments

- 13.1 Subject to the provisions of the Regulations, the Sub-Committee may:

- (a) adjourn the hearing to a specified date;
- (b) arrange for a hearing to be held on specified additional dates;

where it considers it necessary for its consideration of any representations or notice made by a party.

- 13.2 Where the Sub-Committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.
- 13.3 Similarly, when the Sub-Committee arranges for the hearing to be held on a specified additional date it shall forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held.

14. Record of Proceedings

- 14.1 A record of the hearing shall be kept for 6 years from the date of determination or, where an appeal is brought against the determination, the disposal of the appeal.

15. Waiver of Rules

- 15.1 Except where prescribed by the Regulations, the Sub-Committee may in any particular case dispense with or modify these Rules.
- 15.2 In particular, the licensing authority may extend a time limit provided for in the Regulations for a specified period where it considers this to be necessary in the public interest.

15.3 Where the licensing authority has extended a time limit it shall forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.

16. Qualified Privilege

Statements made in Committee meetings are subject to the general principles of the law of defamation. However, the Committee's proceedings are regarded in law as a 'privileged occasion' to which the doctrine of qualified privilege attaches to statements made in the Committee's proceedings (quasi-judicial in nature) providing the following criteria are met:

- a. any opinions expressed are honestly held;
- b. opinions/statements are based on the facts of the matter;
- c. opinions/ statements are on a matter of public interest;
- d. a clear distinction is made between what is fact and what is opinion;
- e. no malice.

NOTE:

Human Rights

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Sub-Committee will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following provisions: -

Article 1 - of the first protocol – every person is entitled to the peaceful enjoyment of his/her possessions

Article 6 - in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

Article 8 – everyone has the right to respect for his/her home and private and family life

THE APPLICANT

The applicant has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the applicant was notified of the decision of the licensing authority] against a decision:

- (a) to reject the application for a premises licence; or
- (b) to impose conditions on the premises licence; or
- (c) to exclude a licensable activity; or
- (d) to refuse to specify a person as a premises supervisor.

In the case of Hackney Carriage and Private Hire licensing the applicant has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the applicant was notified of the decision of the licensing authority] against a decision:

- (a) to reject an application for a Hackney Carriage and/or Private Hire Licence; or
- (b) to revoke a Hackney Carriage and/or Private Hire Licence; or
- (c) to suspend a Hackney Carriage and/or Private Hire Licence.

PERSON MAKING RELEVANT REPRESENTATIONS AND CHIEF OFFICER OF POLICE

A person who made relevant representations and the Chief Officer of Police has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the person was notified of the decision of the licensing authority] against a decision:

- (a) to grant a premises licence; or
- (b) in relation to the conditions imposed; or
- (c) in relation to the licensable activities authorised; or
- (d) the person specified as premises supervisor.

This does not apply in respect of applications for Hackney Carriage and Private Hire Driver licensing.

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 5

REPORT TO: **LICENSING COMMITTEE**
DATE : **18 JULY 2011**
REPORT BY: **DIRECTOR OF ENVIRONMENT**
SUBJECT : **LICENSING ACT 2003 - TEMPORARY EVENT NOTICES**

1.00 PURPOSE OF REPORT

1.01 To provide Members with information on the existing Temporary Event Notice regime and proposed changes.

2.00 BACKGROUND

2.01 Temporary Event Notices (TEN's) allow the carrying on of licensed activities at premises which are not authorised by a Premises Licence or Club Premises Certificate

3.00 CONSIDERATIONS

3.01 The Licensing Act 2003 covers the sale/supply of alcohol, the provision of regulated entertainment and the sale of hot food + drink (between 11:00pm and 05:00am).

3.02 Regulated entertainment includes -

- a performance of a play,
- an exhibition of a film,
- an indoor sporting event,
- a boxing or wrestling entertainment,
- a performance of live music,
- any playing of recorded music,
- a performance of dance
- entertainment similar to live music, recorded music or dance

where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.

3.03 There are some exemptions, for example, religious meetings or services; garden fetes or functions or events of a similar character; morris dancing; vehicles that are in motion and music that is incidental to certain other activities.

Date: 12/07/2011

- 3.04 Subject to the exemptions all such activity is illegal unless it is covered by a Premises Licence/Club Premises Certificate or a Temporary Event Notice. Premises Licences/Club Premises Certificates can be varied on a temporary basis by submitting a TEN, for example if a pub wanted extra hours for a particular function or wanted to host a band when they didn't have live music on their Premises Licence.
- 3.05 There are limitations on submitting TEN's. Currently only 12 TEN's can be granted for the same premises in each year. Any individual can submit up to 5 TEN's in a year. Individuals holding a Personal Licence for alcohol sales can apply up to 50 times in a year. TEN's can last for up to 96 hours and there must be a clear 24 hours between different sets of TEN's.
- 3.06 TEN's have to be submitted to the Licensing Authority and copied to the Police at least 10 working days before the event takes place. Unless the Police object the event goes ahead as planned. Any objection can only be under the prevention of crime + disorder licensing objective.
- 3.07 There are proposals in the Police Reform and Social Responsibility Bill to change some of the TEN processes. The notice period for submitting the TEN to the Licensing Authority and Police will reduce from 10 days to 5. A single TEN can last for a maximum of 168 hours which will mean that week long events can take place without needing a 24 hour gap in the middle. A single premises will be allowed to have 21 days of TEN's in a year.
- 3.08 On the enforcement side the right to object to a TEN will be extended to include Environmental Health as well as the Police. These bodies will be allowed to object on the grounds of all four of the licensing objectives and not just the prevention of crime & disorder as at present. This will mean that Pollution will be able to object on public nuisance grounds and Health & Safety on public safety and the protection of children from harm grounds.

4.00 RECOMMENDATIONS

- 4.01 That Members note the Temporary Event Notice requirements and the changes being proposed under the Police Reform and Social Responsibility Bill.

5.00 FINANCIAL IMPLICATIONS

- 5.01 Since the advent of the Licensing Act in 2003 there has been a fixed charge of £21 for a Temporary Event Notice. The Bill will introduce the concept of Licensing Authorities setting their own fees up to a maximum figure set down by Government. Further detail is awaited.

6.00 ANTI POVERTY IMPACT

6.01 None

7.00 ENVIRONMENTAL IMPACT

7.01 Extending the ability to object to include all four licensing objectives and the Environmental Health function will allow more control over events that may cause noise nuisance

8.00 EQUALITIES IMPACT

8.01 None

9.00 PERSONNEL IMPLICATIONS

9.01 None

10.00 CONSULTATION REQUIRED

10.01 None

11.00 CONSULTATION UNDERTAKEN

11.01 None

12.00 APPENDICES

12.01 None

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS**

Licensing Act 2003 and Guidance to Local Authorities
Police Reform and Social Responsibility Bill

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FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 6

REPORT TO: **LICENSING COMMITTEE**
DATE : **18 JULY 2011**
REPORT BY: **DIRECTOR OF ENVIRONMENT**
SUBJECT : **REBALANCING THE LICENSING ACT IN FAVOUR OF LOCAL COMMUNITIES**

1.00 PURPOSE OF REPORT

1.01 To provide an update to Members on changes to the Licensing Act 2003

2.00 BACKGROUND

2.01 In 2010 the Coalition Government gave a commitment to looking again at the legislation covering the sale/supply of alcohol and the provision of regulated entertainment.

2.02 They undertook a consultation process entitled '*Rebalancing the Licensing Act - a consultation on empowering individuals, families and local communities to shape and determine local licensing*'

2.03 Following the consultation feedback and analysis the Government introduced proposals to amend the Licensing Act and the statutory guidance that accompanies it. The changes were incorporated in the Police Reform and Social Responsibilities Bill.

3.00 CONSIDERATIONS

3.01 The proposed changes are summarised below.

3.02 **Applicants to give greater consideration to the local area when making their licence application** - There is acceptance that many Operating Schedules have been poor and they do not assist the Licensing Authority enough with decision making. The guidance is to change and applicants will need to demonstrate an awareness of the local community in which the premises sits, such as social/demographic characteristics, specific crime and disorder issues and awareness of the local environment. An example would be a pub aimed at a young clientele that is located in a quiet area with a high proportion of mature residents.

3.03 **Extending Early Morning Restriction Orders** - These exist as an uncommenced power covering the period 03:00 am to 06:00am. The

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proposal is to make them effective and cover the period of midnight to 06:00am. The Licensing Authority could make an order in respect of a premises or area which would prevent the sale of alcohol during these times. The Licensing Authority would have to publicise the Order and hold a hearing to consider any representations made.

- 3.04 **Flexible Closing Times** - Licensing Authorities were discouraged from imposing anything to affect this flexibility. Guidance is to be amended to make it clear that Licensing Authorities can make decisions about the most appropriate licensing strategy for their area, including measures such as fixed closing times, staggered closing times and zoning (e.g. no premises in a residential area to open after midnight). Strategy to be based on local evidence.
- 3.05 **Late Night Levy** - These will be at the discretion of the Licensing Authority, collected annually and shared between the Licensing Authority and the Police to pay for extra enforcement costs. They will apply to all premises licensed to sell alcohol during the hours to which the levy applies (between midnight and 06:00am). Premises would need to decide whether to stay open and pay the levy or change their licence and no longer sell after midnight. Possible reductions and exemptions will be consulted upon.
- 3.06 **Making Health Bodies Responsible Authorities** - The concept here is that the Local Health Boards will be able to assess the impact of new applications and variations to existing licences on services such as Accident + Emergency Depts and the Ambulance Service. The prevention of harm to health is not to be made a fifth licensing objective at this time, though will be considered in future.
- 3.07 **Making Licensing Authorities Responsible Authorities** - This proposal will mean that officers of the Licensing Dept will be able to make representations about applications and instigate reviews of licences. They will no longer need to rely upon other Responsible Authorities such as the Police or Pollution Control to commence action. The guidance will be amended to ensure that there is no conflict of interest between those instigating the review process and those determining it in the Licensing Sub-committee.
- 3.08 **Persistent Sales of Alcohol to Children** - the maximum fine for underage sale of alcohol will double to £20,000. Premises that persistently sell to children (defined as 2 or more times in a 3 month period) can potentially be shut down. The guidance will change to say that review will follow all cases of persistently selling and the presumption at review will be that the licence will be revoked.
- 3.09 **Police Representations** - this will increase the weight that must be given by the Licensing Authority to Police representations. The statutory guidance will be changed to say that the Licensing Authority must accept all Police

representations and objection notices and adopt all Police recommendations unless there is clear evidence that these are not relevant.

- 3.10 **Reducing the Burden of Proof** - the current wording is that everything must be 'necessary' for the promotion of the Licensing Objectives. This will change to 'appropriate' which effectively lowers the evidential threshold. New guidance will explain this further. Determinations by Licensing Sub-committees will still need to be evidence based and limited to the Licensing Objectives.
- 3.11 **Suspending Licences due to the Non-payment of Fees** - This will prompt businesses to pay on time and reduce the local authority costs of pursuing non-payment. There will be a grace period of 21 days and reinstatement of the licence as soon as the fee is paid. Suspension won't occur in the case of genuine administrative errors or disputes about liability to pay.
- 3.12 **Temporary Event Notices** - At present only the Police can object to these and only with regard to the crime & disorder licensing objective. The proposal is to extend this to include Environmental Health (primarily Pollution Control) and to allow objections in relation to all four licensing objectives. It is proposed that a single TEN will last up to 168 hours in future and the allowance for a single premises will go up from 15 to 21 occasions per year.
- 3.13 **Removing the Vicinity Test for Interested Parties** - The concept of 'in the vicinity' will become redundant and the term 'interested party' will be removed from the Act. Anyone can therefore make representations but these will still need to be relevant and relate only to the licensing objectives. Frivolous, vexatious and repetitive representations can still be refused.
- 3.14 **Cumulative Impact Policies** - the statutory guidance will be changed to reduce the evidential requirement for Licensing Authorities to bring these in.
- 3.15 **Licence Fees** - these were originally set by Government in 2005 and have not been increased since. The existing fee structure will remain i.e. fees set within bands dependent upon non-domestic rateable value, but each Licensing Authority will be able to set fees within the bands based on the full cost recovery of exercising their functions under the Licensing Act (though subject to a nationally set maximum). The fees are not to include the costs of managing the late night economy or Policing. There will be a consultation process first with regulations brought forward in Autumn 2012.

4.00 RECOMMENDATIONS

- 4.01 That Members note the proposed changes to the Licensing Act 2003

5.00 FINANCIAL IMPLICATIONS

5.01 The full costs of the Licensing Act functions will need to be determined accurately in order to justify any fee increases that may be brought in.

5.02 The proposal to suspend licences due to the non-payment of fees will considerably reduce the costs of pursuing outstanding debt.

5.03 Decisions will need to be taken about the imposition of the Late Night Levy once more information about the proposal is forthcoming.

6.00 ANTI POVERTY IMPACT

6.01 None

7.00 ENVIRONMENTAL IMPACT

7.01 Extending the right of objection in relation to Temporary Event Notices to include Pollution Control and the prevention of public nuisance licensing objective will help reduce environmental impact. Imposition of Early Morning Restriction Orders and the Late Night Levy would also contribute to this.

8.00 EQUALITIES IMPACT

8.01 None

9.00 PERSONNEL IMPLICATIONS

9.01 None

10.00 CONSULTATION REQUIRED

10.01 None

11.00 CONSULTATION UNDERTAKEN

11.01 None

12.00 APPENDICES

12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 BACKGROUND DOCUMENTS

Licensing Act 2003 and associated Guidance to Local Authorities
Police Reform and Social Responsibility Bill (see Home Office website)

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