



AGENDA ITEM: 6

SUMMARY

Report for:	Licensing Health & Safety Enforcement Committee
Date of meeting:	29 April 2014
PART:	1
If Part II, reason:	

Title of report:	Legislative Changes to Licensing Schemes
Contact:	(1-9) Sally Taylor – Lead Licensing Officer, Legal Governance (10) Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To update the Committee on forthcoming legislative and other changes and their impact on Licensing service functions
Recommendations	That the Committee note the contents of the report.
Corporate objectives:	Dacorum Delivers <ul style="list-style-type: none"> • Efficiencies
Implications:	<p><u>Financial</u> Some of the proposed deregulations may take businesses outside of the scope of licensing, resulting in them surrendering their licences and an attendant loss of revenue. At this time, the relevant amount cannot be estimated.</p> <p><u>Risk</u> The proposal to enable cross-border sub-contracting of private hire work may see a greater number of drivers migrating to other areas where it is perceived as being easier to obtain licences, thus reducing the number of drivers licensed by Dacorum. If those drivers were subsequently subcontracted to undertake pre-booked work in Dacorum, as the proposal stands they would be outside of the enforcement powers available to DBC officers.</p> <p><u>Value for Money / Equalities / Health And Safety</u> None</p>
Consultees:	Not applicable

Background papers:	
Glossary of acronyms and any other abbreviations used in this report:	

1. BACKGROUND

- 1.1. This report details several of the current legislative and policy changes currently being promoted by the Government, which affect local authority licensing functions.
- 1.2. Many of the changes relate to the Licensing Act 2003 for alcohol, entertainment and late night refreshment licensing. Since its commencement in 2005, there have been numerous changes to both the primary and secondary legislation, resulting in varying degrees of deregulation of regulated entertainment under the Act.
- 1.3. Changes are also proposed to taxi licensing legislation. These changes have come somewhat out of the blue, as we are still awaiting the Law Commission's report on a comprehensive overhaul of the legislation (now expected in late May) with its accompanying proposals for legislative change.

2. DEREGULATION BILL

- 2.1. The Deregulation Bill is a Government-sponsored Bill, which aims to reduce red tape in a number of different areas. At the time of writing, the Bill has completed scrutiny by a Commons Committee, and is expected to progress to the Lords shortly. The following paragraphs set out the major provisions affecting Licensing.
- 2.2. **Temporary event notice quota** – It is proposed to increase the maximum number of temporary event notices for any single premises from 12 to 15 in any calendar year. The current cap permitting events on no more than 21 days per year would remain unchanged. This increase would take effect from 2016 onwards.
- 2.3. **Personal Licence duration** – To remove the requirement to renew personal licences after ten years. Therefore, all personal licences in force on the date of commencement, or issued thereafter, would have indefinite effect. This has been included in the Bill following a consultation exercise by the Home Office during the latter part of 2013 on the abolition of personal licences entirely, a response to which was considered and endorsed by the Committee. Based on the consultation responses received, the proposals were amended to retain personal licences but to remove the present requirement to renew them after ten years.
- 2.4. **Sale of liqueur confectionary to children under 16** – To repeal the current offence of selling liqueur chocolates to children under the age of 16 (no licence is required to sell such, the offence currently exists as a standalone clause).

2.5. **Exemption from late night refreshment licensing requirement** – Any supply of hot food or hot drink between 11pm and 5am currently requires a licence, unless it falls within an exemption stipulated in the legislation (supply by a charity, supply at a workplace canteen, etc). The proposed amendments will enable licensing authorities to designate geographic areas, classes of premises or operating periods for which the provision of late night refreshment would be wholly exempt from licensing requirements. Any order made by a licensing authority would have to be consistent with regulations, and published according to statutory requirements. Orders could subsequently be varied or revoked by the licensing authority.

2.6. **Reporting theft or loss of premises licence, club premises certificate, personal licence or temporary event notice** – Where licences are lost or stolen, this must currently be reported to the police and a crime reference number obtained before the licensing authority may issue a replacement licence. As police public counters have closed, this has become more difficult to comply with, and many authorities have already begun taking a pragmatic approach. The proposal is to remove the current requirement to report the theft or loss, allowing a simple statement to be given to the licensing authority instead.

2.7. **Exhibition of films in community premises** – To remove the requirement to obtain a licence for showing films in community premises, as long as the following conditions are met:-

- The Management Committee of the community premises (or owner / occupier) has consented to the use of the premises for showing the film;
- The film is not being shown with a view to making a profit;
- The film is shown to an audience of no more than 500 persons;
- Films are shown only between 8 am and 11 pm on the same day; and
- Admission of children to films is to be restricted in accordance with the BBFC certificate or the recommendation of the licensing authority.

In all cases, permission would still be required from the film's distributor, to avoid a breach of copyright law, which may involve the payment of royalties.

2.8. Expected clauses in respect of the deregulation of entertainment at schools, hospitals and local authority-owned buildings/public spaces have not been included in this Bill, although it is understood that the Government intend to make these changes at a later date. The partial deregulation of recorded music, to match live music deregulation, has also not been included.

2.9. **Leisure use of private hire vehicles** – To permit unlicensed drivers to use licensed private hire vehicles for social, domestic or pleasure purposes. At present, it is an offence for anyone other than a licensed private hire driver to drive a licensed private hire vehicle for any purpose, even if the vehicle is not in use as such. This amendment would allow relatives and friends to utilise the vehicle, so long as it was not being used for private hire purposes. The amendment does not affect hackney carriages, which would remain drivable only by licensed hackney carriage drivers for whatever purpose.

2.10. **Taxi licence duration** – The current legislation allows councils to determine the standard duration of licences for licensed drivers and operators – up to 3 years for drivers, and 5 years for operators. This proposal

would amend the legislation to make clear that these are default durations, and councils may only issue shorter duration licences if justifiable in a particular case (e.g. if earlier renewal was considered necessary on medical grounds). Dacorum already issues drivers licences for a standard 3 years duration, although operators licences are currently issued for a standard 2-3 years only (recently increased from 1 year).

- 2.11. **Cross-border sub-contracting** – At present, the legislation (as affirmed by case law) does not allow a private hire operator in Dacorum to sub-contract a booking to an operator outside of the borough, although they could pass it to another Dacorum operator to fulfil. The Council has brought several recent legal actions in respect of cross-border hirings, and complaints continue to be received on a regular basis about out-of-area vehicles attempting to attract trade within our borders. This new provision would enable operators to lawfully sub-contract bookings to a licensed operator based in any other area, including to other licensed branches of their own business in different areas. Bookings may then be fulfilled by drivers and vehicles licensed by the council for the sub-contractor's area. There would be no duty to inform the customer that their booking had been sub-contracted, and this change could well mean that bookings end up being fulfilled by drivers from other areas with no knowledge of the locality, who may not be capable of obtaining a licence from the first authority. It is also possible to envisage a sharp increase of driver migration to the council area with the lowest fees and/or least stringent licensing requirements, as they will lawfully be able to obtain licences elsewhere and return to the original area to fulfil sub-contracted bookings. Although this proposal was one mooted by the Law Commission during their recent review of taxi legislation, that was accompanied by suggestions for greatly-enhanced enforcement powers, which have not been included within the proposed change at this time. As such, if this change were to go ahead, councils would have almost no enforcement powers available to them to control sub-contracted bookings, and if licence migration took place, less income with which to fund enforcement work.

3. BANNING BELOW-COST ALCOHOL SALES

- 3.1. Following the publication of the Government's response to consultation on its Alcohol Strategy, draft legislation and guidance was published early in 2014 to enact a ban on below-cost sales or supplies of alcohol (cost taken to be the value of excise duty and VAT on a particular product). This was to be introduced by way of a new mandatory condition on every premises licence and club premises certificate, and as such breach would be a criminal offence under section 136 of the 2003 Act, with a maximum penalty on summary conviction of a £20,000 fine and/or 6 months imprisonment.
- 3.2. Licensing authorities were advised to prepare for introduction of the new condition on Sunday 6th April 2014, and appropriate preparations were made by officers for this. In particular, a letter explaining the introduction of the mandatory condition, how minimum prices for different strengths and types of drinks are to be calculated, and how compliance with the condition is to be enforced was sent to all premises that hold a premises licence or club premises certificate in late March. This condition is an addition to the existing mandatory conditions placed on licences in respect of on and off sales of alcohol, use of security at premises, and classification of films.

3.3. Officers were advised indirectly on Friday 4th April that the new legislation would not take effect on the 6th April after all, due to an error made in the Parliamentary process for approval of the new secondary legislation. The Home Office have since restarted the process, and commencement is now expected in May.

3.4. When calculating the minimum price the differing duty rates for different types and strengths of drinks must be factored in. The responsibility for ensuring compliance with the mandatory condition lies with the premises licence holder, designated premises supervisor, or any holder of a personal licence responsible for authorising the sale of alcohol, and for the supply of alcohol, holders of club premises certificates. To assist, a number of example prices were included on the mailshot issued to premises, as follows:

Example minimum prices (reflecting changes made by the 2014 Budget)		
Beer	Pint of 4% ABV ale	£0.52 minimum
	330ml bottle of 5% ABV lager	£0.38 minimum
	500ml can of 9% ABV super-strength lager	£1.30 minimum
	4 x 500ml cans of 9% super-strength lager	£5.20 minimum
Cider	Pint of 5% ABV still or sparkling cider	£0.28 minimum
	2 litre bottle of 7.5% ABV sparkling cider	£6.36 minimum
Wine	175ml glass of 10% ABV still wine	£0.58 minimum
	750ml bottle of 12% ABV still wine	£2.46 minimum
	125ml glass of 15% ABV sparkling wine	£0.53 minimum
	1.5 litre magnum of 12% ABV champagne	£6.31 minimum
Spirits & mixed drinks	25ml / 35ml shot of 40% ABV vodka	£0.34 / £0.48 minimum
	50ml / 70ml of 40% vodka with energy drink	£0.68 / £0.95 minimum
	330ml bottle of 5% ABV pre-mixed drink	£0.56 minimum
	1 litre bottle of 17.5% ABV liqueur	£5.93 minimum
	700ml bottle of 37.5% ABV spirit	£8.89 minimum
	700ml bottle of 40% ABV spirit	£9.49 minimum
	1 litre bottle of 40% ABV spirit	£13.55 minimum

4. RELAXATION OF LICENSING HOURS FOR WORLD CUP GAMES

4.1. A Government consultation on proposals to relax licensing hours during the World Cup finals that are taking place in June and July 2014 has recently concluded, with an announcement that a national relaxation order will be made for matches involving England throughout the tournament. With the exception of the first match (England v Italy, 14th June, kick-off 11 pm BST), which is subject to a two-hour relaxation, all England matches with 8 pm or 9 pm BST kick-off times will be subject to a four-hour relaxation from kick-off.

4.2. The effect of the relaxation will allow on-licensed premises across England to continue to supply alcohol for consumption on the premises only, throughout the relaxation period, even if their licensed times would normally finish before the end of the period.

4.3. The relaxation does not apply to any non-alcohol licensed premises (e.g. late night food outlets) or off-licences, nor to premises with licensing times which finish before a match's kick-off time. The relaxation also does not apply to any other licensable activities, such as off-sales of alcohol, music or dance, or late night refreshment. If premises wish to engage in any of these

activities, or to trade beyond the relaxed hours, and their premises licences do not support this, they will need to give a temporary event notice to authorise this.

4.4. National relaxation orders have previously been used to mark the Diamond Jubilee and the Royal Wedding – this will be the first time the power is used in respect of a sporting event. Officers will be working with the police and the Council's anti-social behaviour team to collate information on the premises which intend to utilise the relaxed hours, and to assist in ensuring that all such events pass off successfully.

5. ANTI SOCIAL BEHAVIOUR, CRIME AND POLICING ACT

5.1. In recent years Dacorum Borough Council have designated the following areas with 'Designated Public Place Orders' (DPPO) under the Criminal Justice and Police Act 2001:

- Gadebridge Park and Hemel Hempstead High Street;
- Marlowes, and the Market Square in Hemel Hempstead town centre;
- Boxmoor;
- Bovingdon;
- Berkhamsted town centre;
- Durrants Hill Recreational Field, Durrants Hill Apsley; and
- Evans Wharf, Hemel Hempstead

5.2. Designation gave powers to the police, police community support officers and community safety scheme accredited persons to control the consumption of alcohol within those designated areas, and to confiscate and dispose of it from persons causing a nuisance.

5.3. The Anti-Social Behaviour, Crime and Policing Act received Royal Assent on 13th March 2014, and includes provisions to replace DPPO's with a new power to pass Public Space Protection Orders (PSPO). These will work in a similar way as DPPOs, enabling the local authority to make orders to restrict nuisance associated with the consumption of alcohol in a public place within its area. However, the new power is much wider-ranging and will also be used in respect of other types of specified nuisance, replacing other extant powers such as gating orders under the Highways Act 1980, and dog control orders under the Clean Neighbourhoods and Environment Act 2005.

5.4. All existing DPPOs will continue to have effect for three years from the date of commencement of the Act, after which time, if they are still in force, they will become PSPOs. A full review of the order must take place prior to this conversion, and the authority may only retain it if a need for the power can be demonstrated. Any new or continued orders will also be subject to a triennial review requirement.

5.5. The Act also repeals and replaces the powers of premises closure available to the police under the Licensing Act 2003. Under the new provisions, both police and local authority will be able to order the immediate closure of premises which are subject to ongoing or imminent nuisance or disorder, where such action is necessary. The maximum duration of a closure notice is 24 hours (48 hours with the consent of a police superintendent or the authority's chief executive). Closure notices are subject to a review process

by a magistrates court, and if upheld (with the result that a closure order is issued), will trigger a review of the premises licence(s) in force for the premises.

6. CCTV IN TAXIS/PRIVATE HIRE VEHICLES

- 6.1. Following the murder of a taxi driver in his constituency, the Member of Parliament for Bedford has submitted a Private Members' Bill to Parliament, which is currently under consideration. If enacted, the Bill would require every licensed taxi and private hire vehicle proprietor in the country to install and operate a closed circuit television system, with in-car cameras and a tamper-proof recording device.
- 6.2. Private Members' Bill traditionally struggle to survive the Parliamentary scrutiny process, with very few becoming law. Officers will monitor any further progress by this Bill, and report further if the need arises. There is no word on how a CCTV requirement would be funded – with 231,000 licensed vehicles in England and Wales, it is unlikely that significant funding will be made available, either from central Government or from local community safety funding, and the cost would likely fall to individual proprietors.
- 6.3. A small number of local authorities have imposed local requirements for in-car CCTV previously, most notably Southampton, whose policy requiring constant audio and video recording in every vehicle fell foul of data protection and human rights laws. Through a community safety grant, Dacorum has previously trialled a small number of panic-button operated in-car stills cameras for licensed vehicles, but little practical benefit was realised from these.

7. LOCALLY-SET FEES FOR ALCOHOL/ENTERTAINMENT LICENCES

- 7.1. A Home Office consultation on commencing provisions of the Licensing Act 2003, to enable licensing authorities to set their fees on a local costs recovery basis, has recently closed.
- 7.2. At the present time, all fees payable in connection with alcohol, entertainment and late night refreshment licences are prescribed nationally in regulations. These fees were set upon the commencement of the Act in 2005 and have not varied since, despite repeated calls from local government to address the rising shortfall between costs and fees, which was recently estimated by the LGA at £1.5m nationally per month.
- 7.3. Powers for the Secretary of State to introduce local fee-setting were added to the Act in 2011, but have not to date been utilised. The Home Office have now consulted on a range of different options, including retaining the existing fee structure (based on national non-domestic rateable values) with a simple increase in the prescribed fees, scrapping the use of NNDR and centrally prescribing a flat fee, enabling councils to calculate and set fees based on the NNDR structure, or enabling councils to calculate and set flat fees with optional surcharges for late licences and primary alcohol consumption use.
- 7.4. While the former options are likely to be the simplest and least costly from the viewpoint of licensing authorities, they are likely to be incompatible with EU legislation, which requires fees for service-based authorisations across all member states to be equivalent to the costs of determining the application

for authorisation only. Due to disparate costs across the country, no single set of fees could correctly reflect the costs of every licensing authority, leading to overcharging in some areas, and undercharging elsewhere. The latter options would cause licensing authorities to incur extra costs in calculating their costs, and would open individual authorities to judicial examination and challenge over their fee-setting processes, but is likely to be the only lawful way for fees to be established.

7.5. The licensing team leader has lodged an individual submission to the consultation, and the Government's response is now awaited. Further reports will be presented as and when the issue develops.

8. REHABILITATION OF OFFENDERS ACT

8.1. Changes to the Rehabilitation of Offenders Act took effect in March 2014, generally reducing the periods for offences to become 'spent' and thus disregarded from official consideration, such as in licensing applications.

8.2. The rehabilitation period for custodial offences is now determined from the end of the sentence, rather than conviction date as previously. A 6-month custodial sentence will now remain visible on official records for 2 years from the end of sentence, rather than the previous 7 years from date of conviction. Only custodial sentences of 4 years or more will now never be considered spent, increased from the previous 2½ years threshold.

8.3. The rehabilitation periods for most non-custodial sentences have also decreased. Offences resulting in fines or community orders will now become spent after 1 year (previously 5 years). Conditional discharges and bind over / care / supervision orders will now become spent when the order expires. Absolute discharges and cautions will become spent immediately.

8.4. These changes are particularly relevant to licence processes where only 'unspent' criminal convictions may be taken into account in establishing the fitness of an applicant, such as personal alcohol licences and scrap metal dealer licences, and are likely to reduce the number of referrals of applicants with unspent convictions (e.g. a personal licence applicant who was fined for a drink driving offence will now be able to apply one year after conviction and police will be unable to object – previously it had to be at least 5 years). However, it should be noted that taxi and private hire drivers are specifically exempted from the ROOA provisions, and as such 'spent' convictions may still be taken into account when considering the issue of a driver's licence.

9. GAMING MACHINE STAKES AND PRIZES

9.1. A triennial review of stakes and prize limits for gaming machines was concluded in January 2014, resulting in an increase in the maximum prizes payable by category C machines (most often provided in pubs and bars) and category B3/B3a/B4 machines (provided in members' clubs and arcades). An inquiry into the use of category B2 (FOBT) machines in betting shops is ongoing, and expected to report to the Government later this year.

10. REWIRING LICENSING

- 10.1. It is hoped that this report and the preceding one give Members a useful summation of the current position of the Licensing service, and a snapshot of some of the recent and impending legislative changes and other issues that the service faces in the coming months.
- 10.2. The Licensing service deals with a very wide range of business activities and regulatory schemes, many of which were simply not designed for use in the 21st century. For example, taxis are still licensed and regulated primarily under a piece of legislation drafted almost 170 years ago, from an age when the horsepower of a hackney carriage was defined in a very literal sense. Promoters of charity collections are still required to confirm whether they are collecting on behalf of a war charity, reflecting the drafting in 1939 of that particular piece of legislation. Although these have been supplemented by newer legislation (for example, the requirement introduced by the Provision of Services Regulations 2009 that most service-based licences must be available to apply for online), the base legislation often causes difficulties for authorities in applying outdated requirements and business in complying with them.
- 10.3. Each licensing scheme that the Council administers has its own particular requirements, with one common link – the lack of interoperability of the various schemes. This carries through to regulated businesses, who, dependent upon their activities carried on, may have to approach the licensing team multiple times over the course of a year for different licences. This increases both the compliance cost to the business, and the processing costs incurred by the authority.
- 10.4. By way of an example, a (theoretical) new hotel and spa complex being opened in the borough may require all of the following licences, in addition to the requisite planning consent, building regulations approval, health and safety and fire safety risk assessments and policies:
- A premises licence for its bar, restaurant, minibars in rooms, and any entertainment offered; and personal licences for senior bar staff;
 - A gaming machine permit for machines in the bar; and temporary use notices for occasional casino nights it may hold at its premises;
 - A skin piercing registration for acupuncture and electrolysis treatments offered in its spa;
 - Private hire operator, vehicle and driver licences for any car service;
 - Food premises registration (environmental health);
 - A sex establishment licence for any adult entertainment at private functions (e.g. stag and hen parties);
 - Approval of premises for civil marriage and civil partnership ceremonies (Herts CC).
- 10.5. The Local Government Association (LGA), as part of its ‘Rewiring Public Services’ campaign to simplify and streamline the provision of regulatory and other public services in the face of reduced funding from central government, has recently published a discussion paper entitled “**Open for Business: Rewiring Licensing**” (attached at **Annex A** to this report). This document highlights many of the difficulties facing local

authorities in delivering modern and efficient licensing services, and, in calling for full reform of the existing licensing framework, proposes a number of radical solutions to the issues identified.

10.6. As the document sets out, many of the proposals would require Government to fully review and reform the legislative framework under which Licensing operates, and in the absence of Government action, local authorities are obliged to continue with the existing systems. However, there are a number of steps which can be taken locally to streamline licensing services, and which Dacorum has been working towards for some time, including:

- Increased joint working with other regulatory regimes (e.g. information sharing between Licensing and Planning, joint visits and meetings with other services to reduce unnecessary or duplicative visits);
- Simplification of administrative processes (revising application forms to remove outdated questions or irrelevant questions, clearly setting out and adhering to the processes to be followed in determining applications); and
- Improving communication with business (publishing better & clearer guidance and policies, clearly stating compliance requirements following inspections and visits, facilitating online applications and reporting).

10.7. The LGA document has been attached to this report for the information of Members, and with the aim of promoting discussion and consideration as to how the Committee wishes the Council's Licensing functions to be delivered in future.