

Police Reform and Social Responsibility Act 2011

Licensing authorities as responsible authorities

Preliminary guidance: April 2012

Introduction

The content of this document is provisional, and its publication at this stage is intended to assist licensing authorities in their preparation for changes to the Licensing Act 2003 being introduced by Part 2 of the Police and Social Responsibility Act 2011. The content of this document broadly reflects, but is not the statutory guidance (or a revised version of it) issued by the Secretary of State under section 182 of the Licensing Act 2003; as such, there should be no reliance upon it for any purpose. Revised statutory guidance will be laid in Parliament and available on the Home Office website on 25 April 2012, the date on it will come into force.

What is the policy aim?

The Police Reform and Social Responsibility Act 2011 added licensing authorities to the list of responsible authorities under the Licensing Act 2003. The aim of this policy is to ensure that licensing authorities are better able to respond quickly to the concerns of local residents and businesses by taking actions they consider appropriate to tackle irresponsible premises without having to wait for representations from other responsible authorities.

What are the key changes being made to the Licensing Act 2003?

Following the commencement of this measure, licensing authorities will be empowered to fulfil the same functions as other responsible authorities under the Licensing Act 2003 including:

- Making relevant representations relating to new licence applications and licence variations
- Requesting that the licensing authority review an existing licence
- Making representations regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impact.

How should licensing authorities prepare for these changes?

From 25 April 2012, licensing authorities will be included in the list of responsible authorities under the Licensing Act 2003. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes.

It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these bodies have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.

It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority. In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority.

The officer acting for responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. An *illustration* of how this delegation of responsibilities may occur is provided below. This is an example of how the process could work, but it is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.

Demonstrating separation of roles - illustration:

- At the outset, the licensing authority may decide to allocate the function of responsible authority to its corporate director, for example. The corporate director delegates this function to the licensing manager who allocates a principal licensing officer within the authority to exercise the function of responsible authority. The principal licensing officer is not involved in the application process but sets up a separate file to consider the application for the authority in its capacity as responsible authority, engaging with other responsible authorities where appropriate and determining whether the authority acting as a responsible authority wants to make a representation.

- A separate licensing officer will receive and process applications. Communication between the officer exercising the function of responsible authority and the officer processing the application should remain formal and consistent with how communications would be with other responsible authorities. At the hearing, to ensure that the public perception of a, and an actual, separation of roles, the officer acting as the responsible authority should be seated with the other responsible authorities.

For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.

How should businesses prepare for these changes?

Businesses should be aware of these forthcoming changes but do not need to do anything to prepare.

How do these changes affect other parties?

These changes should not affect other parties who will continue to fulfil their functions under the 2003 Act in the normal way. It is not expected that licensing authorities will normally act as responsible authorities upon request on behalf of other parties, such as local residents or community groups. These parties will be entitled to make relevant representations to the licensing authority in their own right if they have grounds to do so and it is reasonable that the licensing authority will expect these parties to make representations themselves where they are able to.