

POLICING AND CRIME ACT 2009

ADVISORY NOTE

On 12 November 2009, the Government gave Royal Assent to the Policing and Crime Act which introduces a number of amendments to a variety of legislation regularly used by the Council.

One of the most significant changes is that it has amended the **Licensing Act 2003** to the extent that Members of the Licensing Authority (Eastbourne Borough Council) are now included as interested parties under the Act.

Until now, Members have been unable to make representations unless they were asked, as Ward Councillor, to speak on behalf of a person living in the vicinity of a venue who made representations (opposed) against the application. A Member could also make representations if they lived near the venue themselves.

This change now allows "any member of a Licensing Authority," namely Councillors to make representations (objections) about an application in their area. Members can make relevant representations in respect of any Licensing Act Premises Licence or Club Premises certificate, or any variation of an existing Licence or Certificate, and to request a Review of the premises licence at any time.

It is important to understand the law surrounding representations that can be made. The Licensing Act 2003 sets out four licensing objectives:

- ❖ Prevention of Crime and Disorder
- ❖ Prevention of Public Nuisance
- ❖ Public Safety
- ❖ Protection of Children from Harm

A notice on the premises and in a local paper will identify applications. Additionally, the Licensing Team send a weekly e mail to all Councillors to advise them of applications received, as well as information being included on the Public Register at <http://www.eastbourne.gov.uk/business/licences/beer-entertainment/view-applications/>

Any representation (objection) that is made to an application under the Licensing Act 2003. The representation must link to the relevant Licensing Objective(s) and be based upon existing evidence/examples, not speculative concerns where no crime or nuisance currently exists.

Representations must be made in writing or e-mail within the relevant period, that being 28 days from the date on which the application is made to the Authority. There is no facility for the acceptance of late representations. Any Member considering making such a representation may wish to discuss the matter in advance of such with the Licensing Manager on 01323 415937. Representations which are considered to be irrelevant, frivolous or repetitive can be rejected.

Where representations are made, where appropriate, the Licensing Team will attempt to mediate between the applicant and all "interested parties. Where matters cannot be resolved through mediation, the matter will proceed to a hearing before a Licensing Sub Committee, comprising of 3 Licensing Councillors.

Interested parties will be sent an invitation to the meeting along with the agenda papers which will identify the Panel Members. Members are advised not to discuss the matter with the Panel Members beforehand, and on the day of the hearing, Members are advised not to speak to Panel Members outside of the requirements of the hearing.

All interested parties are entitled to address the Committee at the relevant time outlining the reasons behind their representation. The formal notices enclosed with the agenda papers explain the rules on evidence, and conduct at the hearings.

Once the Home Office has completed its analysis of responses to its recent consultation, it will use its powers under the Act to introduce nine new mandatory conditions for premises that sell alcohol, likely to call an end to irresponsible drinks promotions and a requirement to provide free drinking water for patrons, One of the more controversial proposals, for Licensing Authorities to unilaterally impose additional operating conditions two or more pubs or clubs where they are linked to crime and disorder has been dropped.

If any Member requires guidance, please contact the Licensing Manager, Kareen Plympton, on 01323 415937 to discuss the procedures involved.

SEX ENTERTAINMENT VENUES

Despite opposition from the Lap Dancing Association and following concerted campaigns, primarily by Object and the Fawcett Society, have led to changes in the licensing of lap-dancing have led to changes in the licensing of such.

Councils will be able to resolve whether to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, which has been amended to include the estimated 150 lap-dancing clubs in England and Wales.

If the Authority do adopt the schedule, they will have all the same powers to consider licensing such venues as they do for sex shops. These powers are wider than the grounds contained in the Licensing Act 2003 which presently controls these clubs.

These wider powers include the ability to consider the applicant's suitability; the nature of the premises; the character of the local neighbourhood; how many premises may be suitable for a particular area; and other relevant matters. Where adopted, this will be incorporated into the Authority Policy governing the operation of lap dancing venues.

A late amendment to the Bill requires Councils that resolve not to adopt the resolution to consult with local people a year later to ensure that this reflects the wishes of the local community.

Whilst the Bill still allows sexual entertainment to be provided in premises on no more than eleven occasions a year, with at least a month's "other" entertainment in between, a further amendment gives Government Ministers the power to amend those limits, albeit not to shorten the intervals or increase the numbers allowed.

Entertainment provided at lap-dancing clubs which is 'integral' to the provision of the lap-dancing, such as music and dancing, will not be regarded as regulated entertainment under the Licensing Act 2003.

Regulations relating to this revision are yet to be published and will set out the transitional arrangements, in particular how Councils are to treat existing lap-dancing clubs.

OTHER MEASURES

The 'three strikes' measure in Section 147A(1)(a) of the Licensing Act 2003 introduced by the Violent Crime Reduction Act 2006 targeting irresponsible retailers who sell alcohol to under 18s has been amended. Two underage sales within three months which could lead to an enforced cessation of alcohol sales for 48 hours, or a prosecution with a maximum fine of £10,000.

Other powers increase the police's ability to confiscate alcohol from young people in public places. A new offence of being under 18 and in possession of alcohol in a public place on three or more occasions within 12 consecutive months carries a maximum Level 2 fine.

Police powers under Section 27 of the 2006 Act to order individuals believed to be involved in alcohol-related disorder to leave a public place can be directed to those over 10 years old, rather than those over 16 as at present. The police may remove young people to a place of safety in those circumstances

It will be for the Home Secretary to decide when to introduce the alcohol and licensing related elements of the statute. It is expected the parts relating to sex entertainment venues will be implemented early in 2010, and those relating to the mandatory code before the General Election.