

**Manchester City Council  
Report for Information**

**Report To:** Licensing Committee – 15 June 2015  
**Subject:** Licensing Update  
**Report of:** Head of Planning, Building Control & Licensing

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**Summary**

The report provides the Committee with information regarding national changes and consultations in respect of licensing legislation and policy related issues. The report also provides the Committee with information regarding local projects and initiatives that could contribute to the Licensing Act 2003 Licensing Objectives.

**Recommendations**

That Members note the report.

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**Wards Affected:**

All

<b>Community Strategy Spine</b>	<b>Summary of the contribution to the strategy</b>
Performance of the economy of the region and sub region	Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the city. The efficient processing of applications as well as effective decision making in respect of them, plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.
Reaching full potential in education and employment	
Individual and collective self esteem – mutual respect	

Neighbourhoods of Choice	The Licensing process provides for local residents and other interested parties to make representations in relation to licensing applications. Representations have to be directly related to the licensing objectives; in relation to the Licensing Act these are the prevention of crime and disorder, the prevention of public nuisance, public safety, and the protection of children from harm.
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**Full details are in the body of the report, along with any implications for:**

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

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**Financial Consequences – Revenue**

None

**Financial Consequences – Capital**

None

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**Background documents (available for public inspection):**

Copies of these documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

Deregulation Act 2015  
Licence Conditions and Codes of Practice (May 2015), Gambling Commission

## **1.0 Introduction**

- 1.1 The report provides the Licensing Committee with a brief overview of topical information relevant to premises licensing functions of the licensing authority.

## **2.0 Licensing Deregulation**

- 2.1 The Legislative Reform (Entertainment Licensing) Order 2014 came into force on 6 April 2015 with the effect that the following forms of entertainment are no longer licensable –

### **2.2 Live Music**

- Live unamplified music between 08:00-23:00 on any premises;
- Live amplified music between 08:00-23:00 provided the audience does not exceed 500;
- However live music can become licensable in on-licensable premises if the licensing authority removes the effect of the deregulation following a licence review.

### **2.3 Recorded Music**

- Recorded music between 08:00 and 23:00 in on-licensed premises provided the audience does not exceed 500;
- However recorded music can become licensable if the licensing authority removes the effect of the deregulation following a licence review;
- Unlike live music, the deregulation of recorded music does not apply to workplaces.

### **2.4 Local Authority premises**

- Live music or recorded music between 08.00 and 23.00 at the non-residential premises of a local authority provided that –
  - (a) the audience does not exceed 500, and
  - (b) the organiser gets consent for the performance on the relevant premises from the local authority concerned
- Any entertainment provided by or on behalf of a local authority on their own premises between 08:00 and 23:00

### **2.5 Hospitals**

- Live music or recorded music between 08.00 and 23.00 on hospital premises provided that
  - (a) the audience does not exceed 500, and
  - (b) the organiser gets consent for the performance on the hospital premises from the healthcare provider concerned

- Any entertainment provided by or on behalf of a health care provider on their own hospital premises between 08:00 and 23:00

#### 2.6 Schools

- Live music or recorded music between 08.00 and 23.00 on school premises provided:
  - (a) the audience does not exceed 500, and
  - (b) the organiser gets consent for the performance on the premises from the school proprietor concerned
- Any entertainment provided by or on behalf of a school proprietor on their own school premises between 08:00 and 23:00

#### 2.7 Community Premises

- Live music or recorded music between 08.00 and 23.00 in a church hall, village hall, community hall or other similar community premises that is not licensed to sell alcohol provided that:
  - (a) the audience does not exceed 500, and
  - (b) the organiser gets consent for the performance from a person who is responsible for the premises.

#### 2.8 Travelling Circuses

- Any entertainment (excluding films and a boxing or wrestling entertainment) taking place at a travelling circus, provided:
  - (a) it takes place within a moveable structure that accommodates the audience, and
  - (b) that the travelling circus has not been located on the same site for more than 28 consecutive days

#### 2.9 Olympic wrestling disciplines

- A contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling deregulated between 08:00 and 23:00, provided that the audience does not exceed 1000

#### 2.10 Incidental Film

- An exhibition of moving pictures if it is incidental to some other entertainment activity

2.11 The Deregulation Act 2015 also came into force on 6 April 2015 and brought about further changes to the Licensing Act, the most notable of which was the removal of expiry for personal licences, which previously only had effect for ten years.

2.12 The Act removed the offence of selling liqueur confectionery to children under 16 with effect from 26 May 2015, as well as the requirement to report lost or stolen licences to the police before applying for duplicates. Also, the limit on

the number of temporary events that can be held at single premises will increase from 12 to 15 per year from 1 January 2016.

2.13 The Act included further deregulation for the exhibitions of films in community premises:

2.14 Exhibition of films in community premises

- No licence required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23:00 provided that the audience does not exceed 500 and the organiser:
  - (a) gets consent to the screening from a person who is responsible for the premises; and
  - (b) ensures that each such screening abides by age classification ratings

2.15 The introduction of Community and Ancillary Sellers Notices and changes to Late Night Refreshment licensing, which are also included in the Deregulation Act still require secondary legislation by the new Government and so are currently pending.

### **3.0 New Statutory Guidance under s182 of Licensing Act released**

3.1 The Secretary of State has issued revised guidance to licensing authorities in accordance with section 182 of the Licensing Act 2003 to reflect changes to the regulation of entertainment introduced by the Legislative Reform (Entertainment Licensing) Order 2014 and provisions of the Deregulation Act 2015.

3.2 The main changes to the Guidance reflect the deregulation measures outlined above. It has also been revised to provide further clarification for licensing authorities on how non-contested applications should be dealt with i.e. where representations are made and conditions subsequently agreed, and provides that such matters should not proceed to a hearing. Previously, such applications were dealt with by the authority at 'determination hearings', where no parties were required to attend, unless requested by the committee.

3.3 Accordingly, the process for dealing with such applications has been revised so that where agreement is reached between all parties and all representations withdrawn on the basis that the application is amended to incorporate the agreed conditions. At that point, given there are no representations against the application, the application is granted as amended at officer level. Officers will ensure there are no conflicts between conditions agreed by separate objectors. Additionally, only agreed terms that are more restrictive than provided for in the original application will only be permitted.

3.4 Where any representations remain against the application, the matter proceeds to a hearing as normal.

3.5 The effect of this change is that 'determination hearings' for non-contested applications will no longer be held. Also, where a representation has been

agreed and subsequently withdrawn by an objector, the application is amended in line with the agreement. Therefore, if other representations remain against that application and a hearing is still required, the application should be considered 'as amended' for the purposes of the hearing i.e. if an application was made with an original terminal hour of 2am, but a reduced hour of 1am is agreed with a party who then withdraws their objection on that basis, the committee will consider the application as having a terminal hour of 1am.

#### **4.0 Supreme Court decision in Hemmings v Westminster licence fees case**

- 4.1 On 29 April 2015 the Supreme Court delivered a unanimous decision in the important case of R (on the application of Hemming and Others) v Westminster City Council [2015] UKSC 25.
- 4.2 The case had potentially significant implications for the setting of licence fees under regimes captured by the EU Services Directive, including the Licensing Act 2003, street trading and sex establishments. The case originated from a challenge by Timothy Hemming and six fellow operators of licensed sex shops in Soho against the inclusion of enforcement costs associated with unlicensed premises in the licence fee, which he argued was not permitted in accordance with the Services Directive.
- 4.3 However, in overturning the decision of the Court of Appeal, the Supreme Court has now ruled that licence fees may lawfully include amounts calculated to cover the cost to the licensing authority of regulation and enforcement.
- 4.4 There is a remaining issue to be considered by the European Court of Human Justice in relation to whether such enforcement costs may be charged upfront to all applicants (and refunded to unsuccessful applicants), or whether they are only chargeable upon success of the application.

#### **5.0 Home Office abandons plans to introduce cost recovery licence fees**

- 5.1 The government announced in February that it would not be introducing cost recovery licence fees under the Licensing Act 2003 as local authorities had failed to provide sufficient evidence to justify the new regime.
- 5.2 A proposal to introduce a single date for payment of annual fees for licences and certificates would also not be taken forward.

#### **6.0 Revision to the Statement of Policy under the Licensing Act 2003**

- 6.1 Our Policy is due to be revised from January 2016 in order to comply with the statutory duty under the Licensing Act to publish a policy every 5 years. The revised draft policy will be considered by the Policy Committee in July before going out to public 12-week consultation.
- 6.2 The major changes recommended are a simplification of the format through and enhanced Standards expected of licensed premises.

6.3 As part of the preparatory work, a request has been made for a special policy in relation to (part of) Moston Lane. This will be put to the Policy Committee for consideration and, if agreed, the proposed special policy would be subject to a separate consultation process with a view to it being incorporated in the version of the Statement of Policy in January 2016, subject to final approval following the consultation.

6.4 A further report will be brought to the Licensing Committee providing details of the proposed revisions to the Policy as approved by the Policy Committee.

## **7.0 Gambling Commission updates the Licence Conditions and Codes of Practice (LCCP) for gambling operators**

7.1 The Gambling Commission has now revised its Licence Conditions and Codes of Practice to require that:

- All non-remote licensees 'must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy' (social responsibility (SR) code 10.1.1).
- Local risk assessments must be reviewed when there are significant changes in local circumstances (including those identified in a licensing authority's statement of licensing policy) or at the premises, or when applying for a new licence or variation of a licence (SR code 10.1.2).

7.2 This new requirement is a social responsibility code provision and therefore constitutes a mandatory requirement for licensees. The new requirement is supplemented by an ordinary code provision which states that '...licensees should share their risk assessment with licensing authorities when applying for premises licence or applying for a variation to existing licensed premises, or otherwise on request'.

7.3 The changes to the LCCP relating to local risk assessment take effect from 6 April 2016.

7.4 This is to ensure that operators are able to make reference to a licensing authority's own local area profile and the new statement before conducting their premises specific risk assessment.

## **8.0 Revision of Statement of Policy under Gambling Act 2005**

8.1 It is proposed to re-instate on an interim basis the existing version of the policy to take effect from January 2016 in order to ensure the authority complies with its statutory duty under the Gambling Act to publish a policy every 3 years. The policy will be considered by the Policy Committee in July before going out to public consultation.

8.2 However, the intention is to develop a fully revised version of the policy incorporating a local area profile upon completion of the jointly-commissioned research project with Westminster to establish local risk factors associated with vulnerability and gambling-related harm.

8.3 As the completion of the project would not allow sufficient time to enable a full 12 week consultation to enable the authority to have a revised policy in place by January 2016, which is why an interim approach is required and recommended.

8.4 The fully revised version of the policy will be taken to the Policy Committee later this year. We will be working closely with colleagues at Westminster in the development of our respective policy statements having regard to the research project findings.

## **9.0 Contributing to the Community Strategy**

**9.1 Performance of the economy of the region and sub region**

**9.2 Reaching full potential in education and employment**

**9.3 Individual and collective self esteem – mutual respect**

**9.4 Neighbourhoods of Choice**

## **10.0 Key Policies and Considerations**

10.1 The report deals with revisions to the Council's Statements of Policy under the Licensing Act 2003 and Gambling Act 2005.

## **11.0 Conclusion**

11.1 The report provides information to the Committee on current issues relevant to premises licensing. It is envisaged that the availability of this information will assist decision making and local policy formation in respect of licensing issues.

11.2 The Committee is asked to note the report.