

Report of	Meeting	Date
Director of People & Places	Licensing & Public Safety Committee	12 December 2012

LICENSING ACT 2003- REVISED SECTION 182 GUIDANCE

PURPOSE OF REPORT

- To inform Members of the revised guidance pursuant to section 182 of the Licensing Act 2003 issued on 31st October 2012.

RECOMMENDATION(S)

- That Members note the amendments to the guidance issued under Section 182 of the Licensing Act 2003.

EXECUTIVE SUMMARY

- The Guidance was anticipated following the coming into force of the Live Music Act 2012 (the 2012 Act) on the 1st October, along with provisions of the Police Reform and Social Responsibility Act 2011 concerning Early Morning Restriction Orders (EMRO's).
- In addition to these new changes, the Home Office and DCMS have also revised the Guidance generally and Members are invited to also note these.
- The revised guidance can be found: <http://www.official-documents.gov.uk/document/other/9780108512049/9780108512049.pdf>. There is an explanatory memorandum at the rear of the document which details the changes that have been made.
- The Home Office further issued a correction note on 13th November 2012 as they inadvertently included Saturdays as a "Working Day". This note is attached as appendix 1 and should be read in conjunction with the amended Guidance referred to above.

Confidential report Please bold as appropriate	Yes	No

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	X

BACKGROUND

8. Members will be aware that from July to September 2010 the Home Office conducted a public consultation exercise to “rebalance” the Licensing Act 2003 (the Act). The proposals outlined in the consultation were implemented by the Police Reform and Social Responsibility Act 2011 (the PRSR Act), which received Royal Assent on 15 September 2011.
9. Members will also be aware that recent changes to the Licensing Act 2003 came into effect in April 2012 enabling some greater scope for representations to be made at the licensing application stage and suspend licences where fee payment is not received. This was reported to Members at the meeting of this same committee on 20th June 2012.
10. A further revision of the guidance was anticipated following the coming into force of the Live Music Act 2012 on the 1st October, along with provisions of the Police Reform and Social Responsibility Act 2011 concerning Early Morning Restriction Orders (EMRO’s) which came into force on 31st October 2012.

CHANGES TO THE GUIDANCE ISSUED ON 31st OCTOBER 2012

LIVE MUSIC ACT 2012

11. The 2012 Act came into force on 1st October 2012. Its aim is to deregulate live music performances in “low risk” premises whilst promoting economic growth and removing unnecessary regulation on business
12. The following public performances of live music taking place between 8am and 11pm are no longer licensable activities:
 - Unamplified live music in any location and which, in certain circumstances, is not precluded by review conditions;
 - Amplified music in premises authorised to supply alcohol for consumption on the premises by a premises licence or club premises certificate under the 2003 Act where the live music is performed, at a time when the premises are open for the supply of alcohol for consumption on the premises, to audiences of 200 or less; and
 - Amplified music in other workplaces which are not licensed under the 2003 Act (or those only licensed for the provision of late night refreshment) where live music is performed to audiences of 200 or less.
13. In addition the 2012 Act amended Schedule 1 to the 2003 Act to remove definition of “provision of entertainment facilities” and extended the exemption relating to music accompanying Morris dancing (or similar activities) to apply to the performance of live or recorded music which forms an integral part of that activity.

EMRO’S

14. As part of the Government’s commitment to overhaul alcohol licensing to tackle alcohol-related crime and disorder and resulting harms, a number of relevant measures were introduced or amended by the Police Reform and Social Responsibility Act 2011. These included Early Morning Alcohol Restriction Orders (EMROs).
15. EMROs are a tool which licensing authorities can use to address recurring problems caused by the late night supply of alcohol in their areas at specific times. Licensing authorities will be able to use EMROs to prohibit sales of alcohol in the whole or a part of their areas for any

specified period between 12 midnight and 6am, if they have evidence of specific problems and consider that making the EMRO is appropriate for the promotion of the licensing objectives.

16. Authorities should consider and be able to demonstrate that other measures which may address the problems have been utilised.
17. A proposal for an EMRO must be advertised for 42 days and a notice should be sent to all 'affected people' in its area, which includes premises licence holders to which an EMRO would apply. This should include a short summary of the evidence on which the proposal is based.
18. Representations may be made within the 42 days consultation period which the guidance indicates must be about the likely effect on the promotion of the licensing objectives.
19. If representations are received, a hearing must be commenced within 30 working days of expiry of the representation period, with a determination within 10 working days of the conclusion of the hearing.
20. That determination can adopt the proposed EMRO, decide it is not appropriate or modify the proposal. If a modification is proposed, the whole adopting process has to start again.
21. If the determination is to adopt the proposal, that determination must be put to the full council for its final decision. Within 7 days of council approval, all affected parties must be notified.
22. Although the effectiveness of an EMRO should be kept under review, the Authority is not obliged to do so nor to remove it if it is deemed not to be effective.
23. EMROs will not apply on New Year's Eve.
24. Any Authority who is considering the adoption of an EMRO, should scrutinise it's process at the earliest opportunity, lobbying (outside the formal process) should take place as to the likely economic effects and a robust approach taken to the application process itself.
25. There are not currently any areas within Chorley that present such issues that an EMRO is likely to be considered.

ADDITIONAL CHANGES

26. In addition to these new changes, the Home Office and DCMS have also revised the Guidance generally. Not all variations are pertinent but the following are some of the interesting points:
 - Paragraph 1.16 – This is a new paragraph concerning the drafting and application of licence conditions. It sets out a number of principles in the drafting of conditions. Recent case law regarding the lack of clarity and therefore unenforceability of licence conditions has become a more and more common issue.
27. This also advises that; *Licence conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff.*
 - Paragraph 1.18 – This confirms that only Guidance issued in accordance with s.182 of the Licensing Act (as this is) carries any statutory weight. Other 'Guidance' such as that issued by the Home Office in connection with Expedited Reviews is not Guidance to which Licensing Authorities must have regard.
 - Former paragraph 2.2 – This former paragraph set out the Government's expectation of the role of the Police in a number of tasks. This has now been

removed. A general shift of responsibility towards the Licence Holder can be detected throughout the amended Guidance.

- Chapter 2 has been broadly redrafted. Guidance concerning the requirement for radio link (or similar) systems in city centre bars, pubs and nightclubs (paragraph 2.4) is now much more overt and seems to clash with earlier paragraphs such as 1.17, which states that “each application must be considered on its own merits”.
- Paragraph 7.21 states that late Temporary Event Notices (TEN) can be given in any circumstances instead of only in exceptional circumstances which was not defined.
- Paragraphs 7.37 & 7.39 – These provided previously absent advice regarding the application of conditions to TENs, as was provided for with the changes to TEN law that came into force April this year.

28. There are numerous other amendments not covered above, which in officers opinion are simply changes to process.

IMPLICATIONS OF REPORT

29. This report has implications in the following areas and the relevant Directors’ comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE MONITORING OFFICER

30. The legal implications are set out in the report.

31. Section 182(3) of the Licensing Act 2003 gives the Secretary of State the power to revise the guidance from time to time.

32. Members are asked to note the summary of substantive changes and additions made to the revised guidance issued under the Licensing Act 2003.

JAMIE CARSON
DIRECTOR OF PEOPLE & PLACES

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Mr Paul Carter	5738	27/11/12	***