



City of Westminster

Licensing Committee Report

Meeting:	<i>Licensing Committee</i>
Date:	<i>14th March 2012</i>
Classification:	<i>General Release</i>
Title:	<i>Changes to Temporary Event Notices under the Police Reform and Social Responsibility Act 2011 coming into effect 6th April 2012.</i>
Wards Affected:	<i>All</i>
Financial Summary:	<i>There are two options available to the Council relating to how it will use the new powers given to it via an amendment to the Act. The first option has a significant impact on resources and current budgeting as there would be a need for a growth bid for two FTE's at £71,527 within the Service. There will also be additional recharges from other services due to the increased costs associated with that option. Option 2 does represent a minimal risk to increasing costs and resources. That option could be managed within existing resources and budgets. There will be no increase in income so any increase in cost or resources would require a growth bid.</i>
Report of:	<i>Operational Director for Premises Management</i>

1. Executive Summary

- 1.1 The report sets out the changes to the Licensing Act 2003 relating to Temporary Event Notices (TEN's) following the enactment of the Police Reform and Social Responsibility Act 2011. The report also outlines the options available to the council relating to how it could administer and consider TEN's from the proposed commencement date of the 6th April 2012.

2. Recommendations

2.1 That the Committee:

2.1.1 notes the changes that are proposed to take effect from the 6th April 2012 relating to Temporary Event Notices under the Licensing Act 2003, and

2.1.2 identifies their preferred option from those set out in paragraphs 5.1 – 5.7 so that the Committee's view can be considered when considering those options with the Cabinet Member for Enterprise and Volunteering.

3. Reasons for Decision

3.1 The report has been put together to inform members of the Committee of the changes to the Temporary Event Notice regime that the Police Reform and Social Responsibility Act 2011 enacts.

3.2 A meeting is being arranged with the Cabinet Member for Enterprise and Volunteering, Chairman of the Licensing Committee and relevant officers within the council to discuss the options contained within the report and the likely implications of them on resources and budgets.

3.3 The Committee's view on the options is being sought so it can be considered by the Cabinet Member and officers of the council. One of the options may have a significant impact on the members of the Committee with regard to the possibility of having to hold additional hearings to consider opposed temporary event notices.

4. Background

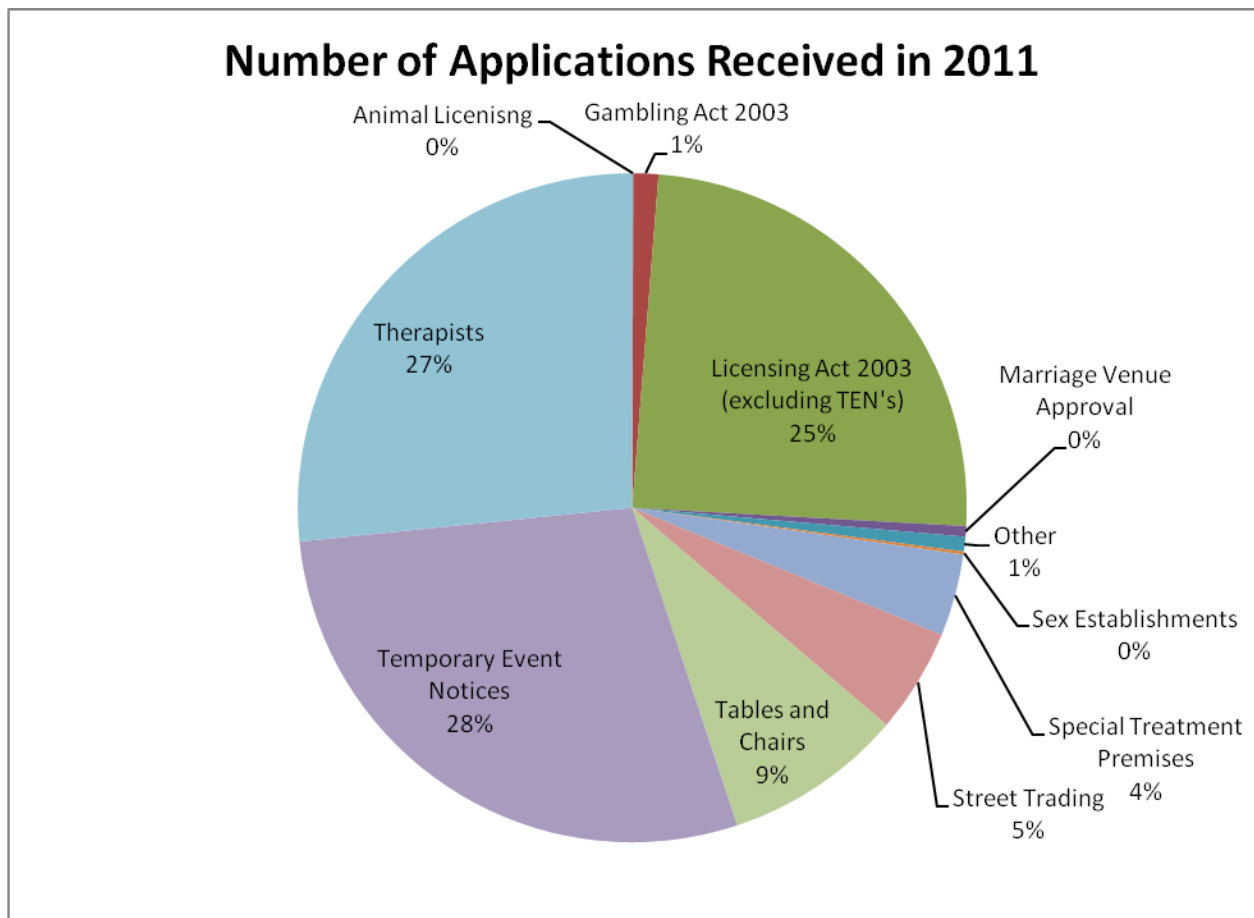
4.1 Following a consultation period the government incorporated changes to the Licensing Act 2003 within the Police Reform and Social Responsibility Bill. The Bill amongst other proposed to amend the current Temporary Event Notice regime in response to the comments it had received during the consultation phase.

4.2 The Bill was given Royal Assent on the 15th September 2011 and became the Police Reform and Social Responsibility Act 2011. The changes to the Licensing Act 2003 relating to Temporary Event Notices (TEN's) are detailed in Appendix 1 of this report.

4.3 One of the main changes to the regime is that Environmental Health will become a responsible authority in relation to TEN's. Previously only the Police could object to a TEN under the licensing objective of preventing crime and disorder. Environmental Health Officers will be able to consider the remaining three

licensing objectives (public safety, preventing public nuisance and protecting children from harm) and make an objection if it is believed that the event will not promote one or more of these objectives.

- 4.4 Enabling Environmental Health Officers the ability to consider these objectives and if necessary object to TENs will permit the Licensing Authority the opportunity to promote the Statement of Licensing policy in respect of events authorised by TENs for the first time, particularly the special policy on cumulative impact.
- 4.5 It should be noted that Temporary Event Notices do form a significant part of the total applications received within the Licensing Service. The number of TEN's compared to other applications received within the 2011 calendar year is clearly shown in the pie chart below.



- 4.6 The Council received a total of 2672 TEN's during the 2011 calendar year. This was made up of 412 that were made by non Licensing Act 2003 personal licence holders and 2260 that were holders of personal licences. Out of the total number of TEN's received within 2011 half of them were TEN's for premises within the council's established stress areas.

The largest proportion of TEN's started between 00:00 and 00:30 (620 TEN's) and the most popular finishing times for licensable activities was 03:00 (609 TEN's)

TEN's with a capacity between 476 – 499 people were the most common (418 TEN's)

One day events were most popular at 46% (1233 TEN's) closely followed by 2 day events at 38% (1004 TEN's).

90% (2413 TEN's) of all TEN's received had alcohol as a licensable activity. On sales were the most popular, accounting for 1956 of the 2413 TEN's with alcohol. Only 465 TEN's had alcohol on its own without any other regulated entertainment and of that 305 were for on sales, 52 off sales and 106 were for both on and off. All three types of licensable activities (sale of alcohol, regulated entertainment and late night refreshment) were the most popular at 1441 TEN's.

- 4.7 Each year since the introduction of the Licensing Act 2003 the pattern of TEN's has been reasonably consistent. There are peaks around Easter, for the summer and run up to Christmas and New Year. A graph showing the peaks for the last three years is attached to this report at Appendix 2. This year in particular with the Diamond Jubilee celebrations and the Olympics it is envisaged that the Council will receive a substantial increase in TENS being submitted
- 4.8 Each TEN has a statutory fee of £21 which is non refundable. The total income for the 2011 calendar year was £56,112. There are no indications that the fee for TEN's will be increased before the changes take effect. If the fee is to be changed it may not occur until 2013.
- 4.9 At present the council is in discussions with the Home Office relating to fees for the Licensing Act 2003. One of the other changes brought in by the Police Reform and Social Responsibility Act 2011 is the ability for licensing authorities to recover the costs of carrying out the Licensing Act 2003 functions. It is hoped that the work that is being carried out with the Home Office will lead to the ability for the authority to recover all of its costs. However, this is unlikely to be brought in until 2013.

5. Options

- 5.1 Officers have considered the options available to the authority in relation to how it proceeds with managing the regime from the implementation of these changes. The options below set out the two options available to the authority and the possible risks relating to them.

Option 1 – All TEN's considered against existing licensing policy

- 5.2 The Environmental Health Consultation Team will consider and respond to all TENS that are received. Those TEN's will be considered inline with the council statement of licensing policy for the Licenisng Act 2003. This would be an extension to what is currently done for premises licences and club premises certificates under the statement of licensing policy.
- 5.3 Any objections to TEN's will have to be made within 3 working days from receipt of the TEN. It is possible that in peak times more resources will be required to review every TEN. That could then impact on the services other functions and statutory requirements.
- 5.4 There is a risk that there may be more reviews sought against the decision of the licensing authority if each TEN that is outside of the council's policy is issued a counter notice. At present there are very few TEN's that go before the Licensing Sub-Committee and those that do have a significant objection from the Police relating to crime and disorder. The vast majority of TEN's do go ahead with no identifiable issues or incidents.

Option 2 – A triage approach to assessment of TENS

- 5.5 The licensing service will assess all TENS received against a pre-approved criteria (eg. Stress area, currently licensed or not, hours requested, S.80 notices served, previous noise history, previous licensing history if any, duration of the TEN, outdoor events etc) and triage as appropriate. An Environmental Health Officer would then review those TEN's that are outside of the agreed criteria. Following that review the Environmental Health Officer will determine which TEN's should have an objection raised against them. The Environmental Health Officer will then consider those opposed TEN's and start discussions with the applicant as to whether any agreement can be reached.. The remaining TEN's that are not opposed will be acknowledged and will go ahead.
- 5.6 During peak times there may be a need for additional Environmental Health Officers to review those applications that do not fit within the agreed criteria. However, the impact on the service will be far less than option 1 as a large proportion of TEN's will have been considered under the triage process and those TEN's that are outside of the agreed criteria are then going to be considered thoroughly by the Environmental Health Officer.
- 5.7 This option will enable officers to use their own proffessional judgement and consider each application on its own merits. This option has the least number of risks and cost implications.

6. Financial Implications

- 6.1 The Council currently receives £21 per TEN. This is a statutory fee that the council cannot increase to cover the reasonable costs of this function. The

council receives on average £52,500 annually which covers the cost of one Licensing Support Officer and associated costs relating to hearings. As stated above there are no indications of an increase in fees for these notices.

- 6.2 Option 1 has a significant cost and resource implication. It is anticipated that to consider the estimated 2500 TEN's a growth bid will be required for an additional Licensing Support Officer to prepare reports, and consultation with the police and environmental health. In addition to this Licensing Support Officer an additional Environmental Health Officer would be required within the Environmental Health Consultation Team to consider the TEN's in line with the council's policy. This amounts to a growth bid of £71,527 in addition to the current resources which are funded by fee income.

Resource	Cost
Current staffing	£52,500
New resource	Additional costs
Licensing Support Officer	£27,779
Environmental Health Officer	£43,748
Total known cost for Option 1	£124,027
Additional costs for additional hearings	Unknown

- 6.3 In addition to the additional staffing costs there would be a significant cost incurred for arranging and holding Licensing Sub-Committee hearings. It is anticipated that half of all TEN's would be opposed and would therefore be required to be considered by the Licenisng Sub-Committee. It would be likely that there would be the need to run one hearing a week just for TEN's. That's in addition to the Licensing Sub-Committee hearings held for premises licence applications and reviews. In peak times, such as the run up to Christmas there would be the need to hold a number of hearings a week to which could run to 2 scheduled hearings during peak times.
- 6.4 It is not possible to establish the exact cost for this but it is likely to be a considerable figure as Committee Services and Legal recharges would increase to take into account the additional resources and costs in those areas servicing the Committees.
- 6.5 Option 2 could be managed within existng resources following the implementation of other service improvements, such as therapist registration changes. The proposed changes within the therapist registration scheme would see a significant reduction in volumes of those applications which would free up capacity within exisitng resources to enable them to take on any increase through these changes. There may be a small increase in the number of TEN's opposed and as such the costs for determining those TEN's should be minimal. It is likely that the majority of opposed TEN's would be considered at the standard weekly Licensing Sub-Committee without the need for additional hearings or additional costs.

Resource	Cost
Current staffing	£52,500
Total known cost for Option 2	£52,500

6.6 There will be no increase in fees this year and the income should remain steady along with the number of TEN's each calendar year going forward. If, however there was any need to add additional resources, those costs would have to be met through a successful growth bid or via further savings within the service.

7. Legal Implications

7.1 Although decisions as to the exercise of functions under the Licensing Act 2003 are a matter for this Committee, decisions with respect to resourcing are a matter for the Cabinet Member.

7.2 The Environmental Health service has a discretion as to whether or not to oppose a Temporary Event Notice, and both of the proposed options are lawful.

7.3 Experience suggests that when an objection to a TEN is made by the police and upheld by the Sub-Committee, an appeal often results. Such appeals usually have to be dealt with in a very short timescale given the proximity of the date of the proposed event. The number of such appeals is likely to significantly increase (whichever option is adopted) and this will also have resource implications.

8. Consultation

8.1 Officers will be requesting that a meeting is held between the Cabinet Member, Licensing Committee Chairman and officers of the council to determine the best option for the authority. At that meeting the views of the Licensing Committee will be available along with any comments or suggestions.

Appendices

Appendix 1 - Breakdown of the existing functions for temporary event notices and how it will change on the 6th April 2012 under the Police Reform and Social Responsibility Act 2011.

Appendix 2 - A chart showing the number of TEN's received by the council per month in the last 3 years.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Ms Deirdre Hayes on 020 7641 3189 or email her at dhayes@westminster.gov.uk.

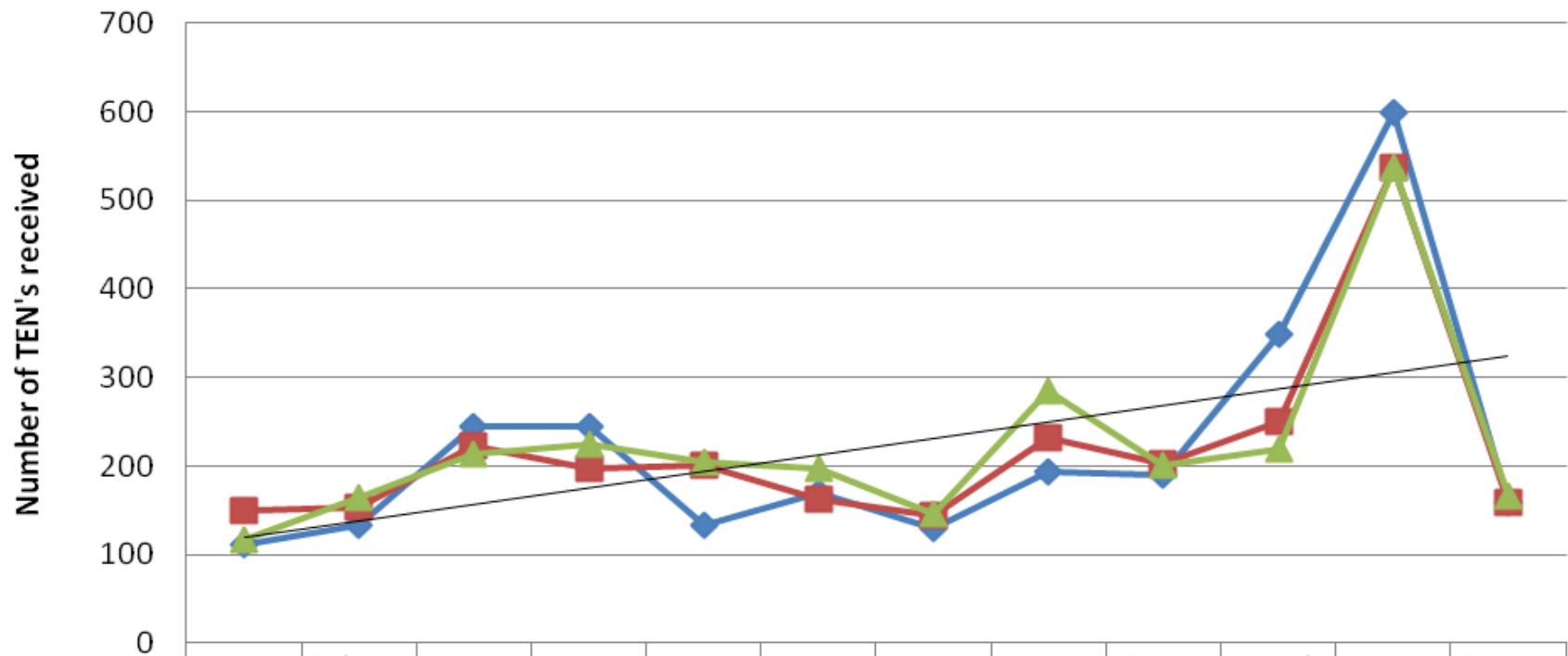
BACKGROUND PAPERS

Police Reform and Social Responsibility Act 2011
Licensing Act 2003

Breakdown of the existing functions for temporary event notices and how it will change on the 6th April 2012 under the Police Reform and Social Responsibility Act 2011.

Existing	Proposed
Police are the only responsible authority able to object to a TEN and only under the licensing objective of crime and disorder.	Police and EHOs will be able to object to TENS where they consider that the proposed activities are likely to undermine a licensing objective.
No conditions are placed on a TEN	Conditions may be applied to TENS if the authority considers it appropriate for the promotion of the licensing objectives to do so, providing the conditions are also imposed on a premises licence or club premises certificate that has effect in respect of the same premises, or any part of the same premises, as the temporary event notice, and the conditions would not be inconsistent with the carrying out of the licensable activities under the temporary event notice.
No such provision exists for 'late TENS' to be submitted	Provision has been made for 'Late TENS' which can be submitted up to 5 days in advance of the proposed event.
Where a TEN is served electronically on the licensing authority, they will be required to forward to the Police by no later than the end of the first working day after the day on which the original notice was given to the authority.	The Licensing Authority will now be required to also serve a copy of the electronic application on EHO in addition to the Police.
Duration of activities under a TEN can be up to 96 hours (4days) However premises cannot have temporary event periods that exceed 15 days in the calendar year.	Time limits relating to TENS have been relaxed, the duration of activities will increase to 168 hours (7 days). The restriction on temporary event period days has been increased to 21 days
A personal licence holder is limited to 50 temporary event notices in a calendar year	They are now permitted either a maximum of 50 temporary event notices or 10 late tens per calendar year
A non personal licence holder is limited to 5 temporary event notices per calendar year	They are now permitted a maximum of 5 temporary event notices or up to 2 late tens per calendar year.
The time for the police to object to a notice is currently 2 working days	The time for Police and EHOs objecting will increase to 3 working days

Temporary Event Notices received in last 3 years



	January	February	March	April	May	June	July	August	September	October	November	December
◆ 2009	111	133	245	244	133	170	130	194	189	349	599	158
■ 2010	149	153	222	198	200	162	145	232	202	250	537	158
▲ 2011	117	164	214	224	204	197	146	284	200	220	536	166