

Police Reform and Social Responsibility Act 2011

Suspension for non-payment of fees

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 Government is committed to reducing the burden and bureaucracy of licensing, as well as striking the right balance between the requirements on businesses and the costs to the taxpayer. The aim of this policy is to ensure that licensing authorities do not face additional costs as a result of licence holders not paying their annual fees.

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

The 2011 Act has amended the 2003 Act to require the licensing authority to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due.

How should licensing authorities prepare for these changes?

Licensing authorities should note that the requirement does not apply immediately if the payment was not made before or at the time of the due date because of an administrative error, or because the holder disputed liability for the fee before or at the time of the due date. In either of these cases, there is a grace period of 21 days. This period is intended to allow the licensing authority and the licence or certificate holder an opportunity to resolve the dispute or error. If the dispute or error is not resolved during this 21-day period, the licence will be suspended.

The 2003 Act describes a dispute as one relating to liability to pay the fee at all or relating to its amount. In either case, the licence or certificate holder

must notify the licensing authority of the dispute on or before the date on which the fee to which it relates becomes due.

There is no definition of “administrative error” in the 2003 Act, but it can include an error on the part of the licensing authority, the licence or certificate holder, or any other person. Therefore, “administrative error” will be given its plain, ordinary meaning. An example might be where post has been misdirected.

If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the day the authority gives the notice. It should be noted that this is the minimum period only, and licensing authorities should consider applying longer periods. The authority may wish to inform the police and other responsible authorities that the licence or certificate has been suspended.

A suspension ceases to have effect on the day on which the licensing authority receives payment of the outstanding fee from the licence or certificate holder. To enable the licence holder to demonstrate that the licence has been reinstated, the licensing authority is required to give the holder written acknowledgment of receipt as soon as practicable following receipt, and:

- a) If payment was received on a working day, no later than the end of the next working day, or;
- b) If payment was received on a day when the authority is not working, no later than the end of the second working day after the day on which the fee was received.

Licensing authorities may wish to consider requesting, in the notice of suspension mentioned above, that subsequent payment of the outstanding fee may be made in such manner as would most expeditiously bring it to the attention of the authority. The licensing authority may also wish to inform the police and other responsible authorities that the licence or certificate has been reinstated.

A premises licence or certificate that has been suspended does not have effect to authorise licensable activities. However, it can for example be subject to a hearing or, in the case of a premises licence, an application for transfer. The licence will nevertheless only be reinstated when the outstanding fee has been paid. Formally, the debt is owed by the holder who held the licence at the time it was suspended. However, it may be more likely in practice that the new holder will actually make the payment.

In the case of a licence or certificate where more than one payment year has been missed (since the coming into force of sections 55A and 92A of the 2003 Act) payment of the outstanding fee in relation to each year will be required to reinstate the licence.

How should businesses prepare for these changes

Businesses which are licence holders under the 2003 Act should be aware of these changes. They should be aware of the incentive to pay licensing fees in a timely manner and save licensing authorities the time and cost of pursuing non-payment. This new measure will not impact on responsible businesses that pay their licence fees on time.