

TO: LICENSING COMMITTEE
DATE: 26th November 2009
SUBJECT: Licensing Function: Compliance with the European Services Directive.
BY: Interim Head of Legal Services/ Executive Member for Community Services
Classification: Unrestricted

Summary: To notify the committee of requirements imposed by the Directive 2006/123/EC and set out arrangements being made by the Licensing Team to ensure Council complies with these requirements.

Implications: Human Resources Implications - None

Finance Implications – None, as meet with existing budget

Legal Implications – Failure to comply with the European Services Directive would leave the authority open to legal challenge within both the UK and European courts. There is also a danger of applicants gaining tacit authorisation under the directive should we fail to implement it correctly.

Crime & Disorder Implications (Section 17) - None

Equalities & Diversity Implications – Easier access will enable the council to discharge its legal obligations under the equalities legislation. An equalities impact assessment would have been carried out by the Department of Culture, Media and Sport.

Sustainability Implications – None specific

Risk and Health and Safety Implications - None

Corporate Plan Implications - Developing local businesses

Decision Required: To note the arrangements being undertaken by the Licensing Department to comply with the European Services Directive.

Introduction/Background

The European Services Directive (2006/123/EC) comes into force on 28 December 2009 and creates significant new opportunities for UK and European Union businesses. It aims to make it easier for businesses to set up in EU countries and to provide services across national borders on a temporary or permanent basis. It may also help to create more jobs and facilitate the cross-border provision of services.

The implications for the Licensing Authority and Licensing Team are set out in Appendix 1.

There will be a minimal impact on the Licensing Department as it is a requirement under Section 8 of the Licensing Act 2003 for all registers to be accurate and accessible. Even though it is not requested that Licensing have to have their registers online, we are taking this opportunity to allow Licensing to be more efficient in the fact that we will have links on the Swale Internet which will allow members of the public to view not only our statutory registers online but others that may be of some interest. We are also arranging for our application forms to be put on the Swale Internet in two different formats (PDF and Microsoft Word) as well as procedure lists for all applications we deal with, thus allowing the public to be better informed. The Department of Culture, Media and Sports "Proposal to Introduce a New Process for Electronic Applications" says

"Service providers will either use the forms provided on businesslink to complete their online applications or will be directed to the relevant competent authority website if it provides its own electronic application facility. BIS has written to licensing authorities to ask if they wish to use businesslink or will offer their own online application process. Most have said that they will use businesslink, but it is likely that more LAs will develop their own online facilities in future. Even if LAs do not have their own online application facilities, they will still need to be able to download submitted applications from businesslink and process fees electronically. LAs will be able to collect submitted applications through a businesslink facility known as the Electronic Licence Management System (ELMS)".

The Electronic Licence Management Systems (ELMS), will make application forms readily available, and allow for applications to be submitted via the ELMS portal. The Licensing Team will be required to check the ELMS portal daily for any new applications submitted via the online process. Applicants will be able to submit their fees using 'Worldpay' which is a new facility being organised by the I.T department.

The council has had a working group for the last year to consider all the requirements and how those requirements will be addressed. The Licensing Team have played a full part in this group. One of the main issues has been what arrangements should be made locally in time for the 28th December 2009 deadline, to complement ELMS. The Licensing Service currently use 'LicenceFlo' (through 'Flovate') for online applications, but that has not been effectively utilised.

Environmental Services and Housing departments currently use M3, which is another information management system. M3 will provide facilities to run, for example, reports on consultees, reports on how many premises of a particular type we have, how many licensed premises we have issued in a particular time frame etc.

Online applications can not currently be made using M3, but the authority can access the Portal provided by ELMS (which is cost free) and upload the information onto M3. There is the possibility of integrating the back office system at a later date to allow M3 to accept applications directly online,

If implemented by the Licensing Department, this will cut training costs and will allow for the transfer of information to be carried out swiftly and in accordance with data protection. The improved management of information within the Council will also contribute to National Indicator 182 (The percentage of business customers satisfied with regulatory services). The other reasons for the transfer to M3 are set out in Appendix 2.

The Licensing Authorities are all waiting for the Department of Business, Innovation and Skills (BIS) to issue specific licensing guidance, in respect of:

- the Legality of licensing qualifications from different EU countries
- Accepting applications without written signatures
- If costs of applications should be reduced/increased

The above is required to be in place before specific applications are received, it is expected that BIS will provide this information in the near future.

Recommendation

That the committee notes the requirements of the Directive and the steps taken to ensure compliance and improve the quality of service offered to applicants.

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Report approved by – Monica Blades-Chase

Date 11/11/09

List of background documents -
DEPARTMENT OF CULTURE, MEDIA AND SPORT'S "PROPOSAL TO INTRODUCE A NEW
PROCESS FOR ELECTRONIC APPLICATIONS – Oct 2009

APPENDIX 1

EXTRACT FROM THE DEPARTMENT OF CULTURE, MEDIA AND SPORT'S "PROPOSAL TO INTRODUCE A NEW PROCESS FOR ELECTRONIC APPLICATIONS"

"Chapter 2: THE EU SERVICES DIRECTIVE

2.1 The EU Services Directive is a flagship European Directive intended to develop the single market for services by breaking down barriers to cross-border trade within the EU and making it easier for service providers within scope to set up business or offer their services in other EU countries. The Department for Business, Innovation and Skills estimates that the Directive is worth £4-6 billion to the UK economy and will create about 80,000 jobs¹. The Directive covers most service sectors including tourism, leisure and food services.

2.2 The Directive requires, amongst other things, that, by 28 December 2009:

- regulations and administrative processes that apply to the providers of services and are unnecessary, disproportionate or discriminatory are removed or amended;
- competent authorities are given facilities, powers and obligations to exchange data about service providers with other EU Member States through the Internal Market Information (IMI) system being set up by the European Commission;
- prospective service providers from the UK and other Member States are given clear and comprehensive information about regulation over the internet and are able to apply, pay for and vary licences and permits online. This is to be delivered through a central information portal which the Directive calls a 'Point of Single Contact'. Every Member State is developing such a facility and each competent authority will need to participate in it. The UK Point of Single Contact - the EAF - will be part of the [www. businesslink.gov](http://www.businesslink.gov) website ('businesslink');
- applications for authorisations required to do business in an EU Member State are processed in a reasonable time by the relevant competent authority. The Directive introduces a concept of 'tacit' consent if an authority fails to respond in the time stated;
- 'Quality of service' to recipients of services, i.e. individual or business consumers is to be enhanced, for example, by requiring businesses to make certain information routinely available to service recipients.

2.3 The Department for Business, Innovation and Skills (BIS) is responsible for coordinating UK compliance with the Directive, including delivering the PSC for the UK and developing and seeking parliamentary authority for the Provision of Services Regulations 2009 which will implement the Services Directive. BIS consulted on the implementation of the Directive in the UK from November 2007 to February 2008 and will shortly be laying the 2009 Regulations in Parliament. Details of the steps that BIS are taking to comply with the Directive can be found on its website at [http://www.berr.gov.¹ http://www.berr.gov.uk/files/file51323.pdf .](http://www.berr.gov.uk/files/file51323.pdf)
uk/

APPENDIX 2

Options that were available

<u>Positive aspects of M3</u>	<u>Negative aspects of M3</u>	<u>Positive aspects of Licence Flo</u>	<u>Negative aspects of Licence Flo</u>
Currently installed within the Council	One off fee for new users £750	Currently in use by Licensing Department	Not complete and up to date
Shared costs of support fees with other departments	No guidance from BERR as to whether Licence Flo would be able to be linked directly to the portal in the future if required.	Costs per month for support fees low	Lengthy process to input a single application
Other council's use this system for Licensing so we would have further support and advice if required	Supports costs expected of Licensing to pay to be finalised.		One off fee for new users £1200
Other departments and consultees of licensing applications would have direct access to view, in detail, the Licensing applications on M3.			No guidance from BERR as to whether Licence Flo would be able to be linked directly to the portal in the future if required.
M3 would allow for statistical and management reports to be created with ease.			