

TAUNTON DEANE BOROUGH COUNCIL

LICENSING COMMITTEE – 28TH APRIL 2009

Report of the Licensing Officer

EUROPEAN SERVICES DIRECTIVE

1. Purpose of Report

- 1.1 To inform members that Directive 2006/123/EC of the European Parliament on services in the internal market was adopted on 12th December 2006 and has to be implemented by 28th December 2009. Known as the European Services Directive, it provides that the majority of licensing applications must be capable of being downloaded and submitted together with any payment online.

2. Background

- 2.1 The Directive requires that applicants can transact electronically with regulators; therefore, application forms/notices and registrations, plus any supporting documents (including plans, if any) and fee payments must be capable of being processed electronically. The Local Authority must also have the facility to notify the applicant of success or failure electronically.

3. Purpose and Effect of Directive

- 3.1 The Directive aims to break down barriers to cross border trade in services between countries in the European Union by making it easier for service providers, to offer their services to customers in other European Union countries. It also assists the fundamental freedoms guaranteed in Articles 43 and 49 of the Treaty establishing the European Community – the freedom of establishment and the freedom to provide services across borders. In order to achieve this, the provisions of the Directive aim to simplify administrative procedures, remove obstacles for services activities as well as enhance both mutual trust between Member States and the confidence of providers and consumers in the Internal Market.
- 3.2 The Directive in the context of administrative duties of this Council primarily affects the application processes of the licensing team. It does, however, explicitly exclude a number of services from its scope. These exclusions are optional in the sense that Member states may, if they so wish, apply some of the general principles and arrangements provided in the Services Directive to some or all of the excluded services. It is possible therefore, that although excluded by the Directive, the Government may still choose to include them within the scope of the Act. Such exclusions include Gambling Act 2005 and Hackney Carriage and Private Hire Vehicles and Drivers. Both were originally included within the scope of the directive, however, they were removed due to lobbying by some Member States.
- 3.3 Licence applications, authorisation schemes, approval regimes, regulations and administrative practices must comply with Directive's criteria. They must be **non-**

discriminatory (apply equally to applicants from all EU Countries), **necessary** (justified by some genuine underlying policy objective) and **proportionate** (must not be more stringent or onerous than is necessary to tackle the particular problem it is designed to address). We are therefore scrutinising the relevant policies and applications (where they are not statutory) to ensure compliance; this process may therefore lead to some necessary changes.

- 3.4 The Department of Business, Enterprise and Regulatory Reform (BERR) have been appointed the Point of Single Contact (PSC) for Great Britain by the Government and will require deep links to our website to signpost applicants and also if appropriate, to accept applications on our behalf.
- 3.5 Guidance from BERR states that enforcement costs should not be assimilated with the application fee; this is to forestall the possibility of an unsuccessful applicant seeking legal remedy due to part of his fees having been used to subsidise his successful competitors. Quite how this will be achieved is presently unknown and guidance must be sought from the government at a later stage, therefore, resources should allow for this factor.
- 3.6 Many questions remain unanswered and officers have raised some of these at BERR workshops recently. For example previous advice has suggested that certain applications cannot be made online, as the legislation concerned required original plans to be submitted and the application form to be signed in ink. BERR have committed to amending specific pieces of legislation to remove such obstacles where they exist.
- 3.7 What is clear at this stage is that considerable work is required to provide the mechanism on the Council's website and /or utilising a BERR supported facility through the national "Business Link" website to allow for the full online submission of applications. Appendix 1 contains a list of the types of process currently undertaken by the Licensing Team, which will need to be fully available on line, most of these activities are subject to specific individual legislation and procedures that will need to be addressed in the new system. Please note this list also contains activities that are not currently within the remit of Licensing but fall within the general Environmental Health remit and will be dealt with together.
- 3.8 Discussions are already underway to explore how where practicable this work can be undertaken jointly across all the Somerset Councils. Similarly for TDBC and SCC, early discussions with SW1 in relation to the potential IT solutions available. If SW1 are required to undertake a significant piece of work in relation to this project there may be a cost implication as it is new work for them.

4. Recommendations

4.1 None, this report is provided for information purposes only

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List of Licensing activities in scope of the Services Directive.

Appendix 1.

Procedure

Legislation

Animal boarding establishments

Animal boarding establishments act

	1963
Approved Premises (for Food)	Approved Premises Licence under 853/2004
Caravan and camping site	Caravan Sites and Control of Development Act 1960
Club Premises Certificate	Licensing Act 2003
Cooling tower	Notification of Cooling Towers and Evaporative Condensers Regulations 1992
Dog breeding	Breeding of Dogs Act 1973, Breeding and Sales of Dogs (Welfare) Act 1999
Environmental Permitting	Environmental Permitting (England and Wales) Regulations
Food premises	SI2007/3538
House in multiple occupancy	Housing Act 2004
House to house collection	House to House Collections Act 1939
Motor salvage operator	Vehicles (Crime) Act 2001
Pet shop	Pet Animals Act 1951
Premises Licence	Licensing Act 2003
Riding establishment	Riding Establishments Act 1964
Scrap metal dealer	Scrap Metal Dealers' Act 1964
Sex shop and cinema	Local Government (Miscellaneous Provisions) Act 1982
Street Collection	Section 5 of the Police, Factories, etc. (Miscellaneous Provisions Act 1916, as amended by the Local Government Act 1972 and Schedule 29 of that Act.)
Street Trading	Local Government (Miscellaneous Provisions) Act 1982
Tattooists, piercing and electrolysis (incl Acupuncture)	Local Government (Miscellaneous Provisions) Act 1982 (not London)
Temporary Event Notice	Licensing Act 2003
Zoo licence	Zoo Licensing Act 1981

Game dealing

Game Licences Act 1860