



REPORT OF:	HEAD OF COMMUNITY SAFETY & ENVIRONMENTAL HEALTH
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TO:	LICENSING COMMITTEE
DATE:	25 MAY 2010

AGENDA ITEM NO:	9	WARD(S) AFFECTED:	ALL
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SUBJECT:	LICENSING ACT 2003: DELEGATION OF NEW STATUTORY POWERS
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RECOMMENDATIONS:

1. That the Committee notes the attached summary and confirms that the Committee would commend the delegation of statutory powers to officers and the Licensing Sub Committee specifically,
 - i) officer delegation to determine minor variation applications for premises licenses and club premises certificates, including the decision whether to consult with the responsible authorities under sections 41A to 41C and 86A to 86C of the Act; and
 - ii) officers delegation to determine applications for community premises that wish to apply to sell alcohol without a Designated Premises Supervisor and Personal Licence holder under sections 25A and 41D of the Act, where no relevant representations have been received; and
 - iii) where representations are received in respect of applications under sections 25A and 41D of the Act, the matter to be delegated to the Licensing Sub-Committees for determination.

2. The Committee makes a formal request to the Council's Monitoring Officer to ask the Executive to note the comments from this Committee supporting the proposed delegation of new statutory powers to officers and the Licensing Sub Committee as set out in recommendation 1.

SUMMARY

1. Amendments to the Licensing Act have introduced new application processes for making minor variations to premises licences and club premises certificates, and for removing the designated premises supervisor requirement in relation to community premises.

2. The Licensing Committee Terms of Reference as listed in the Councils Constitution do not currently allow the Committee to determine or delegate any matters other than those currently listed. These terms do not provide the

Committee with the flexibility to respond to legislative changes and are therefore the subject of a further report on this agenda.

- 3. Guidance from the Department for Culture Media and Sport (DCMS) recommends that licensing authorities delegate decision-making on minor variation applications to licensing officers. This would ensure that the Council can deal with minor variation applications within the 15-working day period.**
- 4. Applications to remove the mandatory requirement regarding selling alcohol without a Designated Premises Supervisor and Personal Licence holder from community premises follow the timescales applied to existing variation applications, it is therefore proposed that they should be delegated in a similar manner.**

STATUTORY POWERS

1. The Licensing Act 2003 (Act) has been amended by;
 - (i) The Legislative Reform (Minor Variation to Premises Licences and Club Premises Certificates) Order 2009.
 - (ii) The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009.
2. These changes came into force on 29th July 2009 and in the absence of any specific delegation will remain the responsibility of full Council.
3. Various Regulations prescribing application forms, advertising periods, fees and public register requirements in connection with the above have been amended by The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Miscellaneous Amendments Regulations 2009.

ISSUES

Minor variation Process

4. New simplified provisions have been established to vary premises licences and club premises certificates in cases where the licensing authority considers that none of the variations proposed by the holder of the licence or certificate could have an adverse effect on the promotion of any of the licensing objectives as set out in section 4(2) of the Act.
5. The Department of Culture Media and Sport (DCMS) has issued detailed guidance on the process and envisages the following four main types of minor variation application arising:
 - (i) Minor changes to the structure or layout of a premises;
 - (ii) Small adjustments to licensing hours;
 - (iii) Removal of out of date, irrelevant or unenforceable conditions, or
 - (iv) addition of volunteered conditions; and

(v) Adding certain licensable activities.

6. Minor variations are limited to changes which will not:
- extend the period of the licence;
 - transfer the licence from one premises to another;
 - substantially vary the premises;
 - change the premises supervisor;
 - add the supply of alcohol to the licence;
 - authorise the sale of alcohol between 11:00 pm and 7:00 am; or
 - increase the time on any day during which alcohol may be sold or supplied.

If an application does seek to make any of the above changes then it must be rejected and a full variation must be applied for instead.

7. Where it is felt that an application could have an adverse impact on the licensing objectives, then the Licensing Authority must consult with the Responsible Authorities it considers appropriate. For example, where the Licensing Authority considers that a variation could impact adversely on the crime and disorder objective, it follows that it must consult with the Police. However, the Licensing Authority is not required to consult with every responsible authority on each application.
8. Minor variation applications must be determined within 15 working days of receipt. The first ten working days of this period constitute the consultation period within which the Interested Parties may make representations to the Licensing Authority. If applications are not determined within this period they are deemed to have been rejected and, in such circumstances, the application fee must be returned.
9. The statutory process does not trigger a hearing following the receipt of a representation as it would with a full variation application. A procedure is therefore required to ensure that the application can be determined within the 5 working days following the consultation period. DCMS statutory guidance states the Government recommends that decisions on minor variations should be delegated to licensing officers.

Supervision of alcohol sales in church and village halls.

10. In order to obtain a Premises Licence it is usually necessary to have a Designated Premises Supervisor (DPS) who must themselves be the holder of a Personal licence. Personal licence holders are required to have passed a designated qualification in licensing. Many church and community premises are run as a charity or else with a volunteer management committee. The Government has recognised that the need to have a DPS with a Personal licence has proved to be a considerable deterrent to those running church or community halls.
11. The recent amendments to the legislation allow such categories of premises to make an application to disapply the requirement in the Act for all sales of alcohol to be made only where there is a DPS in place under the Premises Licence. Instead it becomes a condition of the licence that every supply of alcohol is made or authorised by the management committee.

12. There is provision made for the Police to object to these alternative arrangements, within 28 days, where they are of the opinion that the crime prevention objective would be undermined, otherwise the application is automatically granted. Where the mandatory conditions are removed by this process, they may be reinstated if concerns arise over the promotion of any of the licensing objectives. Any interested party or responsible authority may apply to the authority for a review of the licence which will be dealt with under the normal review provisions in the legislation.
13. The current Scheme of Delegations determines that various types of applications which receive representations and therefore require a hearing are dealt with by the Licensing Sub Committee, whilst those with no representations are granted by officers. It would therefore be consistent to extend the delegated powers to deal with these church and village halls exemptions in a similar way.

LEGAL IMPLICATIONS

14. There is no statutory right of appeal against a decision in respect of a minor variation application, and appeals in respect of the community premises provisions follow the appeal procedures already contained in the Act.

FINANCIAL IMPLICATIONS

15. The existing statutory fee for a variation is set between £100 to £635 depending upon the rateable value of the premises. The new minor variations procedure attracts a statutory fee of £89, which is unlikely to cover the true cost of administering each application.
16. It is not possible to quantify the number of likely new-style applications. The number of minor variation applications may be matched by a corresponding decrease in some standard variation applications. Alternatively there may be an increase in minor variation above the standard level as the trade may be encouraged to use the simplified process to make minor changes or regularise changes that have already taken place.
17. There is only 1 community premises currently licensed within the Borough that would be eligible to make an application to disapply the requirements of the Act. Where this is the only variation sought the application fee is £23. The ability to be able to disapply the mandatory condition may encourage Community premises to make an application to authorise the sale of alcohol for the first time for which the standard new or variation fee dependant on rateable value would apply.

Background Papers: None

Annexes: None