

LICENSING AND REGULATION COMMITTEE

6 October 2009

SCHEME OF DELEGATIONS – MINOR VARIATIONS – LICENSING ACT 2003

REPORT OF HEAD OF LEGAL SERVICES

Contact Officer: John Myall Tel No: 01962 848 443

RECENT REFERENCES:

LR111 - Licensing Act 2003 – Delegation Arrangements – 14 December 2004

EXECUTIVE SUMMARY:

The Licensing Act 2003 requires the City Council to appoint a Licensing Committee, to carry out the functions set out in the Act. The Council's Constitution has already been amended to provide for the Licensing and Regulation Committee to be the statutory Committee for the purposes of the Act. In addition, the Constitution provides for the appointment of a Licensing Sub-Committee to deal with certain applications under the Act, and for certain powers under the Act to be delegated to the Head of Legal Services.

On 29 July 2009 new Regulations came into force allowing holders of premises licences and club premises certificates, held under the Licensing Act 2003, to apply to make minor variations to their licences and certificates. This procedure was designed to simplify the process and cut down on bureaucracy. This also gives the power to authorised officers of the Council to determine the applications when there are representations, without them being referred to the Licensing Sub Committee.

Regulations permitting applications to relax the requirements relating to the sale of alcohol at community premises also came into force on the same day.

This report gives details on both Regulations, and proposed amendments to the scheme of delegation to deal with such applications.

RECOMMENDATIONS:

1. That the scheme of delegation to officers be amended, as set out in Appendix 2 to the report, to delegate authority to the Head of Legal Services to determine minor variation applications in accordance with the Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009.
2. That the scheme of delegation be amended, as set out in Appendix 2 to the report, to delegate authority to the Head of Legal Services to determine applications to disapply the requirement for a designated premises supervisor at community premises selling alcohol in accordance with the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009.
3. That the appropriate amendments to the Constitution be made in due course, as part of the annual review of the Constitution.

LICENSING AND REGULATION COMMITTEE

6 October 2009

SCHEME OF DELEGATIONS – MINOR VARIATIONS – LICENSING ACT 2003

Report of Head of Legal Services

DETAIL:

1 Introduction

- 1.1 The Licensing Act 2003 provides for district councils to act as the licensing authority for its area, and to discharge the functions allocated to the licensing authority.
- 1.2 A scheme of delegation is included in the Statement of Licensing Policy (see Appendix 1). This sets out which applications will be dealt with by a Sub-committee, and which would be dealt with by officers (the Head of Legal Services).
- 1.3 When a holder of a premises licence or a club premises certificate wishes to alter the terms or conditions of the licence or certificate, or alter the layout of the premises, they must apply to the licensing authority for a variation. This involves completing an application which must be copied to the six responsible authorities.
- 1.4 The application also has to be advertised at the premises for 28 days and by a public notice in a local newspaper.
- 1.5 After the 28 day period has expired, if there are no relevant representations, the application for variation must be granted.
- 1.6 In the event of relevant representations being received, the application is referred to the Licensing Sub-Committee within 20 working days of the expiration of the consultation period.
- 1.7 It has been recognised that this process is time-consuming and expensive and, as a result, Regulations have been issued which simplify the procedures for minor variations.

2. New Procedure for Minor Variations

- 2.1 The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009 provide for a simplified procedure in the case of a minor variation, such as minor internal alterations, removal, addition or amendment of conditions, changes in activities or operating hours.
- 2.2 Given the type of variations which the new process covers, the Government recommends that decisions on minor variation applications are delegated to officers (which in this case would be to the Head of Legal Services).
- 2.3 This procedure removes the requirement to copy the application to all of the responsible authorities. Instead, a copy is only to be sent to the Police.

- 2.4 The applicant must advertise the application by way of a notice at the premises, to be displayed for ten working days (starting the day after the authority receives the application). During this period, the Police and any interested parties (i.e. residents/businesses in the vicinity, and representative bodies of such persons/businesses) may submit representations on the application.
- 2.5 When the application is received by the Council, officers will check to ensure whether the variation would adversely impact on any of the licensing objectives. Consultation would take place with the relevant responsible authorities where this issue is unclear. If it is considered that the application would adversely affect the licensing objectives, the application should be refused.
- 2.6 The Council must determine the minor variation application within 15 working days, and take into account any relevant representations received. There is no right to a hearing by the Licensing Sub-Committee.
- 2.7 If the application is not determined within 15 working days it is deemed to have been refused. In the event of a deemed or express refusal, the applicant could then submit a full variation application (whereby the usual advertising requirements and hearing provisions would apply).
- 2.8 This procedure cannot be used to:
- Extend the period for which the licence or certificate has effect
 - Transfer the licence or certificate from one premises to another.
 - Vary the designated premises supervisor
 - Add the sale or supply of alcohol
 - Authorise the sale or supply of alcohol at any time between 2300 and 0700
 - Increase the hours for the sale or supply of alcohol
 - Vary the licence for a village hall to sell alcohol without a designated premises supervisor.

3 Community Premises and Designated Premises Supervisors

- 3.1 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 allows for the management committees of community premises from which alcohol is sold to make application to the licensing authority to disapply the mandatory condition requiring the premises to have a designated premises supervisor (DPS).
- 3.2 Applicants must be the management committee or board that holds the licence, and must demonstrate how the premises and the sale of alcohol will be managed.
- 3.3 The process is similar to that of varying the DPS. The applicant must send a copy of the application to the Police. In exceptional circumstances the Police

may object to such an application on the grounds of crime and disorder. In these circumstances the authority must hold a hearing to determine the application.

- 3.4 As with all other cases under the minor variations procedure, Government guidance suggests that decisions on such applications should be made by an authorised officer for the purpose (which in this case would be the Head of Legal Services).

4 Constitution Issues

- 4.1 The current Scheme of Delegation scheme to officers, as set out in the Constitution, was formulated when the Licensing Act was brought into force. As the matters set out in this report were not included in the original scheme, additional delegated powers are required to ensure that these applications are dealt with within the timescales included in the Regulations and in accordance with Government guidance.
- 4.2 Appendix 2 sets out the additional delegations which are proposed, and how the Constitution would be amended as a result. The Constitution is reviewed on an annual basis, and the changes set out in the Appendix would be included in the next annual review to ensure that the published Constitution is up to date.

OTHER CONSIDERATIONS:

5 SUSTAINABLE COMMUNITY STRATEGY AND CORPORATE BUSINESS PLAN (RELEVANCE TO):

- 5.1 This report covers issues which affect the principles of “safer and more inclusive communities” and “safeguarding our high quality environment for the future.”

6 RESOURCE IMPLICATIONS:

- 6.1 The fees for minor variations and the disapplication of the DPS are fixed by the Regulations at £23 each. This is to cover the administration of each process.

7 RISK MANAGEMENT ISSUES

- 7.1 None

BACKGROUND DOCUMENTS:

Supplementary Guidance issued by DCMS July 2009

APPENDICES:

Appendix 1 – Current Scheme of Delegation

Appendix 2 - Amendments to Constitution, Part 3 Section 6 (Responsibility for Functions – Scheme of Delegation to Officers)

Appendix 1

Current Scheme of Delegation**CORPORATE DIRECTOR (GOVERNANCE)****A) HEAD OF LEGAL SERVICES**

1. To deal with applications under the Licensing Act 2003 allocated to the Head of Legal Services in the following table:-

SCHEME OF DELEGATION

Matter to be dealt with	Licensing Sub-Committee	Head of Legal Services
Application for personal licence	If a Police objection is made	If no objection is made or the applicant, Council and Police all agree a hearing is not necessary.
Application for personal licence with unspent convictions	In all cases	
Application for premises licence/club premises certificate	If a relevant representation is made	If no relevant representation is made
Application for provisional statement	If a relevant representation is made	If no relevant representation is made
Application to vary premises licence/club premises certificate	If a relevant representation is made	If no relevant representation is made
Application to vary Designated Premises Supervisor	If a Police objection is made	In all other cases
Request to be removed as Designated Premises Supervisor		In all cases
Application for transfer of premises licence	If a Police objection is made	In all other cases
Application for interim authorities	If a Police objection is made	In all other cases
Application to review premises/club premises certificate	In all cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc		In all cases

Matter to be dealt with	Licensing Sub-Committee	Head of Legal Services
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases	
Determination of a Police objection to a temporary event notice	In all cases	
In cases where the Magistrates' Court has determined the licence on appeal		In all cases

Appendix 2

Amendment to Constitution - Section 6 - The Scheme of Delegation to Officers

Part 3 Page 29. In the table detailing the delegations, after “Application to vary premises licence/club premises certificate” insert the following rows under the relevant headings:

Matter to be dealt with	Licensing Sub-Committee	Head of Legal Services
Application for a minor variation to premises licence/club premises certificate		In all cases
Decision on whether an application for minor variation should be referred to a responsible authority		In all cases
Application to disapply the mandatory condition for a Designated Premises Supervisor at community premises	If a Police objection is made	In all other cases