

Meeting:	Licensing and General Purposes Committee
Date:	7 September 2009
Subject:	Delegation of Functions to Officers
Responsible Officer:	Corporate Director of Community & Environment, Brendon Hills
Portfolio Holder:	Portfolio Holder for Environment and Community Safety, Councillor Susan Hall
Exempt:	No
Enclosures:	Appendix 1 - Legislative Reform Order

Section 1: Summary and Recommendations

This report sets out the changes made to the Licensing Act 2003 by The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009.

Recommendations:

The Committee is requested to:

1. Authorise the Director for Community and Environment to be able to discharge the functions brought in by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009; and
2. Authorise the Director for Community and Environment to further delegate this power to officers in his department.

Reason (for recommendation):

So that officers of the Licensing authority can discharge the new statutory powers, under the Licensing Act 2003, as intended by the Guidance to the Act.

Section 2: Report

2.1 Background & why a change is needed

2.1.1 Under section 7 of the Licensing Act 2003, the Licensing Authority functions are delegated to the licensing committee of the authority (which is established by section 6 of the Act) to discharge.

2.1.2 To discharge the new statutory powers inserted in to the Licensing Act 2003 (the Act) by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, this Authority needs to delegate the powers to officers to discharge as recommended in the Statutory Guidance issued by the Department for Culture Media & Sport (DCMS). If the recommendations are rejected the council may find it difficult to fulfil its statutory obligations as the time scales for determining applications under the new sections of the Act are short and it may not be possible to organise Licensing Panels at such short notice to determine the applications, leaving the authority possibly open to challenge.

2.1.3 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 (referred to as 'the Order' from this point onwards) simplifies the variation process for minor amendments to existing licences. Removal or amendments of certain details to approved plans of premises, and removal of certain conditions with the authorisation of Responsible Authorities may now follow this new minor variations procedure.

2.1.4 The Licensing Authority may reject a minor variation application on the basis that the variation(s) could adversely affect the promotion of any of the licensing objectives. In such cases the applicant must apply for the variation under the full variation process as set out in section 34 of the Act.

2.1.5 The purpose of the Order is to save time, money and regulatory resources by allowing variations that could not impair the promotion of the licensing objectives to be made to premises licences and club premises certificates through a simplified and less costly procedure.

2.1.6 The holder of a premises licence or club premises certificate may apply to the relevant licensing authority for variation of the licence or certificate under the new provisions (the new sections 41A and 86A respectively). Applications will be subject to regulations made in the exercise of the Secretary of State's powers under sections 54, 55, 91 and 92 of the Act, to prescribe the form and manner of making applications, the information and documents that must accompany them, and the fee to be paid to the relevant licensing authority. Applications will also be subject to regulations made by the Secretary of State under sections 17(5)(a) and 71(6)(a) requiring the applicant to advertise the application.

2.1.7 In determining an application the authority must consult such of the responsible authorities, as it considers appropriate, if there is any doubt about the impact on the licensing objectives of the variation(s) proposed. The authority

must take into account any relevant representations made concerning the application by those authorities or any relevant representations from interested parties (as defined in the Act), provided in the case of the latter, that the representations are made in writing within ten working days following the date of receipt of the application by the licensing authority. Relevant representations must be about the likely effect of the grant of the application on the promotion of one or more of the licensing objectives.

2.1.8 The licensing authority must grant an application under the new provisions if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of any of the licensing objectives. In any other case the authority must reject the application.

2.1.9 This procedure is in contrast to the normal procedure for the variation of a premises licence or club premises certificate, where the applicant must give notice of the application to each responsible authority, and where the application must be referred to an oral hearing in the event that an authority or interested party makes a relevant representation.

2.2.0 An application may not be made under the new provisions if the effect of the variations proposed in it would be to extend the period for which a premises licence has effect; to vary substantially the premises to which a premises licence or club premises certificate relates; to specify (in a premises licence) an individual as the premises supervisor; to authorise the sale or supply of alcohol or to authorise the sale by retail or supply of alcohol at any time between 11pm and 7am or increase in the amount of time on any day during which alcohol may be sold by retail or otherwise supplied. Variations of these kinds must be made through the normal variation procedure set out in sections 34 to 40 (for premises licences), sections 84 to 86 (for club premises certificates), or section 41D (for community premises) of the 2003 Act.

2.2.1 If the relevant licensing authority grants an application under the new provisions it must notify the applicant in writing, specifying the variations which are to have effect as a result of the grant, and the time at which they are to take effect. If an application is refused, the authority must notify the applicant in writing, giving its reasons for the refusal. The authority is required to reach its determination within a period of fifteen working days starting on the first working day after the authority receives the application, otherwise the application is treated as rejected and the authority must return the application fee. The authority and the applicant may however agree to treat the application and the fee as a new application.

2.3 Legal Implications

The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 took effect from 29 July 2009 by inserting new sections in to the Licensing Act 2003, and the implications of this Licensing

Authority not delegating the exercise of the new powers to officers in the Licensing Team are set out in paragraph 2.1.2 above.

The time frame within which to determine applications under the new provisions is very short, especially given that the licensing authority will have to wait for any representations from interested parties (who have 10 working days from the day after the authority receives the application) and must determine the application, in any event, within 15 working days from the first working day after receiving it.

The authority may therefore struggle to meet the statutory timescales if the delegations are not made, leaving the possibility of the authority being challenged.

2.4 Financial Implications

None

2.5 Equalities Impact

An Equalities Impact Assessment is to be undertaken.

2.6 Risk Management Implications

As per the comments in paragraphs 2.1.2 and 2.3 above.

Section 3 – Statutory Officer Clearance

For Chief Finance Officer	<input checked="" type="checkbox"/>	Name: Sheela Thakrar
		Date: 24 Aug 09
On behalf of the Monitoring Officer	<input checked="" type="checkbox"/>	Name: Paresh Mehta
		Date: 24 Aug 09

Contact:

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Background Papers:

Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009

1.	Consultation	N/a
2.	Corporate Priorities	YES

3.	Community Safety (s17 Crime & Disorder Act 1998)	YES
4.	Manifesto Pledge Reference Number	B2;D4;F2