

# Bath & North East Somerset Council

MEETING: **Licensing Committee**

DATE: **29<sup>th</sup> January 2013**

AGENDA  
ITEM  
NUMBER

TITLE: **Change to Scheme of Delegation**

WARD: **All**

## AN OPEN PUBLIC ITEM

### List of attachments to this report:

Annex A: Current Table of Delegation of Functions under the Licensing Act 2003

Annex B: Extract from Home Office Guidance on Local Authorities acting as Responsible Authorities.

## 1 THE ISSUE

- 1.1 The amendments to the Licensing Act introduced by the Police Reform and Social Responsibility Act 2011 provides that the Licensing Authority in whose area the premises lie has a dual role as a 'Responsible Authority' for making representations in respect of an application for a premises licence and also as the adjudicating authority. Therefore, it is important that there is a separation of roles between persons making representations and those who are making the final decision or who are advising the Licensing Authority in its capacity of adjudicating body.
- 1.2 The Licensing Act provides that the Council's power, as Licensing Authority, to delegate authority to an officer to act as a 'Responsible Authority' lies with the Licensing Committee. The Committee are, therefore, recommended to delegate authority to the Environmental Monitoring and Licensing Manager to act on behalf of the Licensing Authority as a 'Responsible Authority' provided that other licensing officers are processing the application.

## 2 RECOMMENDATION

- 2.1 That the function to make representations is delegated to Officers of the Council specifically the Environmental Monitoring and Licensing Manager. In their absence the function should be delegated to a Senior Manager within the Council's Public protection Service and that the Council's Terms of Reference, and Table of Delegation of Functions, for the Licensing Committee are amended to reflect this change.

### **3 FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications arising from this report as the changes relate to current service procedures.

### **4 THE REPORT**

- 4.1 The Licensing Act 2003 has been amended by the Police Reform and Social Responsibility Act 2011 to give the status of 'Responsible Authority' to the Licensing Authority, thus enabling the Licensing Authority itself to make representations on new applications made in accordance with Section 17 of the 2003 Act; to make representations on variations to licences made in accordance with Section 34 of the 2003 Act, and also to call a review of an existing licence in accordance with 51 of the 2003 Act.
- 4.2 The Police and Social Responsibility Act 2011 came into effect on 25th April 2012. Section 103 of that Act amends the Licensing Act 2003 to make the Licensing Authority a 'Responsible Authority'. This is in addition to the existing 'Responsible Authorities'.
- 4.3 Bath & North East Somerset Council is the Licensing Authority within the district. The Licensing Committee has responsibility for discharging licensing functions on behalf of the Licensing Authority. Therefore delegation from the Committee is requested to establish how the role of 'Responsible Authority' will be carried out. Section 10 of the Licensing Act 2003 permits the Licensing Committee to discharge certain functions to an officer of the Licensing Authority.
- 4.4 All 'Responsible Authorities' are entitled to make representations in relation to applications for grant, variation or review of a premises licence or club premises certificate. Representations must be relevant and relate to the promotion of one or more of the four licensing objectives. It is for the Licensing Authority to determine when there are appropriate grounds to make representations. For further information on determination of applications please refer to the Licensing Act 2003 and the Guidance issued under section 182 of the Licensing Act 2003.
- 4.5 The role of 'Responsible Authority' needs to be separated from the role of Licensing Officer. It is proposed that the Environmental Monitoring and Licensing Manager takes on the responsibility of Responsible Authority so as to provide a separation of responsibilities from the Licensing Officer handling the application. In their absence this role would be taken on by one of the other Senior Managers within the Public protection Service.
- 4.6 For more information and explanation on Licensing Authorities acting as 'Responsible Authorities' see paragraphs 9.13 to 9.19 of the Guidance issued under section 182 of the Licensing Act 2003 a copy of which is provided in Annex B.

**5 RISK MANAGEMENT**

<b>Recommendation</b>	<b>Risk/Threat/Opportunity</b>	<b>Mitigation(s)</b>
<p>That the function to make representations is delegated to officers of the council, specifically the environmental monitoring and licensing manager. In his absence the function should be delegated to senior licensing officers.</p>	<p>If the proposed amendments and additions are not made to the delegation of functions the efficiency of the licensing Service could be reduced, and claims could be made that the Council are not acting in an impartial or appropriate manner. This would be an opportunity to ensure procedural fairness and eliminate conflicts of interest.</p> <p>If the proposed amendments are not made the efficiency, impartiality and ability of the Licensing Authority to carry out its functions would be compromised. For example, failure to separate the functions of determining body and responsible authority will result in conflicts of interest and failure to delegate the function to act as a Responsible Authority will prevent the Authority from discharging its statutory functions.</p>	<p>The amendments of the Delegation of functions will reduce the risk of legal challenge to the licensing process.</p> <p>The proposed changes in this report are adopted.</p>

**6 EQUALITIES**

**6.1 Equalities Impact Assessment**

An Equalities Impact Assessment was completed by the Government before the main consultation on the original proposals and the conclusions were that there are no adverse or negative impacts of opportunity for any equality target group or for any reasons.

## **7 CONSULTATION**

- 7.1 This report has not been sent to the Trades Union because they would have no involvement in this application.

## **8 ISSUES TO CONSIDER IN REACHING THE DECISION**

### **8.1 Human Rights Act and Other Legal Implications**

Section 1 and Schedule 1 Part 1 and 11 of the Human Rights Act 1998 apply; Article 1 - Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest.

Article 6 - That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal by law.

## **9 ADVICE SOUGHT**

- 9.1 The Council's Monitoring Officer (Council Solicitor) and Section 151 Officer (Strategic Director - Support Services) have had the opportunity to input to this report and have cleared it for publication.

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<b>Background papers</b>	The Licensing Act 2003 The Police Reform and Social Responsibility Act 2011

## TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
<b>LICENSING ACT 2003</b>				
Approval of Statement of Licensing Policy and review	All cases			
Application for Personal Licence			If a police objection is made	If no objection made
Application for Personal Licence, with unspent convictions			If a police objection is made	If no objection made
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	All other cases
Request to be removed as Designated Premises Supervisor				All cases
Application for transfer of Premises Licence			If a police objection is made	All other cases
Application for interim authorities			If a police objection is made	All other cases
Application to review Premises Licence/Club Premises Certificate			All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.				All cases
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			All cases	
Determination of Minor Variation applications for premises licences and for club premises certificates				All cases

## ANNEX A

Determination of the removal of a Designated Premises Supervisor or Personal Licence Holder at community premises			If a relevant representation is made	All other cases
Applications for the classification of unclassified films			All cases	

**EXTRACT FROM THE HOME OFFICE GUIDANCE ON THE LICENSING ACT 2003.****LICENSING AUTHORITIES ACTING AS RESPONSIBLE AUTHORITIES**

- 9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.
- 9.14 Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.
- 9.15 It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.
- 9.16 The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

- 9.17 In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority.
- 9.18 In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different person from the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. It is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.
- 9.19 For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.