



## Selection and Constitutional Review Committee

Notice of a meeting, to be held in Committee Room No. 2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on Thursday 4<sup>th</sup> February 2010 at 6.30pm.

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The Members of this Committee are:-

Cllr. Clokie (Chairman)

Cllr. Bartlett (Vice-Chairman)

Cllrs Ayres, Bradberry, Davidson, Davison, Goddard, Mrs Heyes, Hodgkinson, Kemp, Mrs Martin, Naughton

**NB: Under the Council's Public Participation Scheme, members of the public can submit a petition, ask a question or speak concerning any item contained on this Agenda (Procedure Rule 9 refers)**

### Agenda

Page  
Nos.

1. **Apologies/Substitutes** - To receive notification of substitutes in accordance with Procedure Rule 1.2(iii)
2. **Declarations of Interest** - Declarations of Interest under the Code of Conduct adopted by the Council on the 24<sup>th</sup> May 2007 relating to items on this agenda should be made here. The nature as well as the existence of any such interest must also be declared
3. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 24<sup>th</sup> September 2009

### Part I – For Decision

4. Licensing Act 2003 and Criminal Justice and Police Act 2001 – Delegation of Functions
5. Local Government and Public Involvement in Health Act 2007 – New Executive Arrangements for the Council

### Part II – For Information

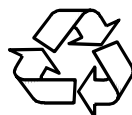
None for this Meeting

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DWS/EB  
27<sup>th</sup> January 2010

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## **Selection & Constitutional Review Committee**

Minutes of a Meeting of the Selection & Constitutional Review Committee held in Committee Room No.2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford on the **24<sup>th</sup> September 2009**

### **Present:**

Cllr. Clokie (Chairman);  
Cllr. Bartlett (Vice Chairman)

Cllrs. Ayres, Claughton, Davidson, Goddard, Hodgkinson, Kemp, Mrs Martin.

In accordance with Procedure Rule 1.2 (iii) Councillor Claughton attended as a Substitute Member for Councillor Mrs Heyes.

### **Apologies:**

Cllrs. Davison, Mrs Heyes, Naughton.

### **Also Present:**

Cllrs. Howard, Smith.

Member Services and Scrutiny Manager.

## **219 Minutes**

### **Resolved:**

**That the Minutes of the meeting of this Committee held on the 7<sup>th</sup> July 2009 be approved and confirmed as a correct record.**

## **220 The Constitution – Codes and Protocols – Civic Protocols – Selection of Mayor and Term of Office**

The report advised that following representations made during the 2007/08 Municipal Year regarding the interpretation of the civil protocols which dealt with guidance on the selection of the Mayor and Deputy Mayor and Term of Office, suggested changes were put forward to help clarify that particular section of the Constitution. A Member referred to the current budgetary situation and asked whether consideration should be given to moving away from having a Mayor and instead have a Chairman of the authority. The Chairman advised that there would be similar costs for both a Mayor and a Chairman and that Ashford had a Charter which granted the Borough the status of being able to appoint a Mayor.

Another Member considered that the whole issue of the Mayoralty needed to be looked at as he believed that recent events had brought a more political nature to the appointment of the Mayor. He believed that the Mayor had an important role to play both in and outside of the Borough and he was happy to see the Mayoralship retained. However he believed that the “rota” system was tending to politicise the

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role of the Mayor and he would prefer to see all Groups putting names forward and Members having a free vote on the nomination.

The Chairman referred to problems in other areas of the country where one party held the majority of seats and advised that it was difficult for other parties to make nominations for the Office of Mayor. He believed that the current system at Ashford did allow the Mayoralty to be shared amongst all Groups upon the Council. The Vice Chairman suggested that as it was often difficult for small minority groups to put forward candidates for the position of Mayor that perhaps all Opposition Groups should be considered together and the Mayoralship be allocated on a Conservative then Opposition Group and then Conservative then Opposition Group basis. It was accepted that this suggestion could only work in the current climate given the majority the Conservative Group had and would not apply if there were changes to the political make up of the authority.

Following further discussion the Chairman suggested that the relevant part of the Constitution be amended to include a statement that there be a presumption that Opposition Groups would have an opportunity to nominate candidates. The Committee supported the amendment.

**Recommended:**

**That the proposed revisions to the Civic Protocol section of the Constitution as it relates to the selection of Mayor and Deputy Mayor and Term of Office and as set out in the appendix to these Minutes be approved.**

## **221 Councillor Call for Action (CCfA)**

The report advised that the Overview and Scrutiny Committee at its meeting on the 15<sup>th</sup> September 2009 had approved the Protocol and Guidance for use when the Committee was dealing with Councillor Call for Action and when acting as the Crime and Disorder Committee. The report recommended to the Selection and Constitutional Review Committee that the Protocol and Guidance be approved

**Recommended:**

**That the Protocol and Guidance for the Overview and Scrutiny Committee when dealing with a Councillor Call for Action and the Procedural Rules for the Overview and Scrutiny Committee when acting as the Crime and Disorder Committee be adopted and the Council's Constitution amended accordingly.**

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Appendix to Minute No 220/09/09

**A. Selection of Mayor and Deputy Mayor and Terms of Office**

The selection of Mayor and Deputy Mayor will not be confined to any one party. He/she will be chosen on merit. Where the political balance of the Council, however, might depend on the Mayor's casting vote it is not unreasonable to expect this factor to play a part in the selection procedure.

The term of office of Mayor and Deputy Mayor will normally be for one year. Although not compulsory for Members to serve a full term as a Councillor before becoming eligible for nomination as Mayor or Deputy Mayor, it is ~~should be~~ desirable that they do.

The Deputy Mayor will normally succeed the Mayor (subject to review in an election year).

There ~~should be~~ is a presumption against Members serving a second term as Mayor and Deputy Mayor if other willing candidates exist but this is ultimately a matter for decision of the Council. There is also a presumption that Opposition Groups will have an opportunity to nominate candidates.

**B. Procedure for Selection**

The procedure for the selection of the Mayor and Deputy Mayor will be as follows:-

- (a) Early in the calendar year, Group Leaders will meet informally to discuss the nominations for Mayor and Deputy Mayor for the ensuing year, and normally their recommendations will be reported to the Selection and Constitutional Review Committee immediately preceding the Annual Meeting of the Council. The name of the Mayor and Deputy Mayor elect may then be made public. This process does ~~will~~ not preclude ~~other~~ nominations of any other Councillor for Mayor or Deputy Mayor being made at the Annual Meeting, ~~but with goodwill should reduce the likelihood~~ but the expectation is that this should be avoided wherever possible.
- (b) Group Leaders will also make recommendations to the Selection and Constitutional Review Committee held immediately preceding the Annual meeting of the Council as to which Members are to propose and second nominations for the offices of Mayor and Deputy Mayor.
- (c) In election year, however, the above procedure ~~to be adopted will be as follows:-~~ may need to be revised to include a further meeting of Group Leaders in the week following election week, in the event of the nominated candidates for Mayor and Deputy Mayor not having been re-elected.

- ~~(c) Group Leaders will meet on a convenient date in the week following election week, to consider the making of recommendations for Mayor and Deputy Mayor and any allied matters.~~
- ~~(d) The recommendations from such a meeting will be reported to the programmed meeting of the Selection and Constitutional Review Committee held between the date of the election and the Annual Meeting of the Council. The Minutes of this meeting will be presented to the Annual Meeting of the Council.~~

**Agenda Item No:** 4

**Report To:** **SELECTION AND CONSTITUTIONAL REVIEW COMMITTEE**



**Date:** 4<sup>th</sup> February 2010

**Report Title:** **Licensing Act 2003 and Criminal justice and Police Act 2001: Delegation of functions**

**Report Author:** Licensing Manager

**Summary:**

Delegations of functions under the Criminal Justice and Police Act 2001, The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc) Order 2009 and Sections 53A, 53B & 53C of the Licensing Act 2003.

**Key Decision:** NO

**Affected Wards:** All

**Recommendations:** **The Committee be asked to recommend to the Council that:-**

- i. The Licensing and Health and Safety Committee delegate its functions under Section 19-28 of the Criminal Justice and Police Act 2001 to the Head of Environmental Services.
- ii. The Licensing and Health and Safety Committee delegate its functions under Sections 53A, 53B and 53C of the Licensing Act 2003 to the Licensing Sub-Committee.
- iii. The Constitution (Delegations to Regulatory and Non-Executive Committees) is amended to take account of recommendations (i & ii) above as detailed in Appendix A and B.
- iv. The additional schedule of delegations to officers to determine applications under the Licensing Act 2003, as contained in Appendix A & B to the report be approved and adopted and added to the current schedule of delegations.
- v. The terms of reference of the Licensing and Health and Safety Committee are revised so as to enable them to discharge the additional functions of the Licensing Authority under the Licensing Act 2003.

- vi. The Head of Environmental Services and the Head of Legal and Democratic Services be given authority to change the Procedure note for Licensing Hearings

**Policy Overview:** Ashford Borough Council's Licensing Policy

**Financial Implications:**

**Risk Assessment** YES

**Equalities Impact Assessment** YES/NO (delete as appropriate)

**Other Material Implications:** NONE

**Exemption Clauses:** N/A

**Background Papers:** NONE

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## **Agenda Item No.4**

**Report Title: Licensing Act 2003 and Criminal justice and Police Act 2001:  
Delegation of functions**

### **Purpose of the Report**

1. To consider making a recommendation to the Council to approve the granting of delegated powers to the Head of Environmental Services in respect of certain functions under the Criminal Justice and Police Act 2001, as set out in Appendix A.
2. To consider making a recommendation to the Council to approve the granting of additional delegated powers to the Licensing and Health and Safety Committee and to the Head of Environmental Services in respect of certain functions under the Licensing Act 2003, as set out in Appendix B.

### **Issue to be Decided**

The Committee is asked to recommend to the Council that:

3. The Licensing and Health and Safety Committee delegate its functions under Section 19-28 of the Criminal Justice and Police Act 2001 to the Head of Environmental Services.
4. The Licensing and Health and Safety Committee delegate its functions under Sections 53A, 53B and 53C of the Licensing Act 2003 to the Licensing Sub-Committee.
5. The Constitution (Delegations to Regulatory and Non-Executive Committees) is amended to take account of recommendations (1 & 2) above as detailed in Appendix A and B.
6. The additional schedule of delegations to officers to determine applications under the Licensing Act 2003, as contained in Appendix B to the report be approved and adopted and added to the current schedule of delegations.
7. The terms of reference of the Licensing and Health and Safety Committee are revised so as to enable them to discharge the additional functions of the Licensing Authority under the Licensing Act 2003.
8. The Head of Environmental Services and the Head of Legal and Democratic Services be given authority to change the Procedure note for Licensing Hearings

### **Background**

***Criminal Justice and Police Act 2001***

9. Under Sections 19-28 of the Criminal Justice and Police Act 2001 powers were introduced to provide a means for either the Police or Local Authorities to close down illegal drinking dens and “shabeens” which did not hold Justices Licences. The Licensing Act 2003 expanded these powers so that they will apply where any premises are selling alcohol for the consumption on the premises in breach of its licensed conditions, for example, where sales are taking place but CCTV cameras, required as a condition of the licence, are not operating.
10. The scheme of delegation currently does not permit the authorisation of officers to issue closure notices and so we have to rely on our police colleagues. The Head of Environmental Services would like to have the ability for his licensing enforcement officers to be able to serve these notices where appropriate, rather than as now relying on the police.
11. The police and the Council work in close co-operation with each other on licensing issues, and both may exercise the Section 19 powers. It is desirable for the Council to have the ability to use these powers where, for example, the Council can deploy resources more quickly or effectively than the police, or where the Council is already the lead agency in dealing with a particular set of premises.
12. Closure is a two-stage process involving service of a “Closure Notice” because of the unauthorised sale of alcohol (including a breached condition). The Notice requires the recipient to take action to cease the illegal activity (including, for example to cure the breach). If the local authority is satisfied that the unauthorised sales continue or are likely to resume the police or the local authority may seek “a closure order” from a Justice of the Peace at any time between 7 days and 6 months later. A closure order may physically close the premises; and/or require a cessation of sales of alcohol; and/or require the payment of any sum of money to the Court pending compliance with the order. Where closure is required by an order, the premises would remain closed until either the police or the local authority issue a certificate indicating that the problem has been resolved or until the Court itself withdrew its order.
13. The closure power will also apply to Members Clubs.
14. Sections 19-28 of the Criminal Justice and Police Act 2001 provide powers for the police or the local authority to obtain Court orders to close down premises which are used to sell alcohol for consumption on or in the vicinity of the premises in question.
  - Either without a premises licence or club premises certificate or temporary notice licence in contravention of Section 136 of the Licensing Act 2003 (“the 2003 Act”) or
  - In breach of the conditions attached to such an authorisation.
15. Section 136 of the 2003 Act makes it an offence to carry on or attempt to carry on a licensable activity otherwise than under and in accordance with an authorisation.
16. Section 19 of the 2001 Act empowers the constable or a local authority to serve a “closure notice” on any premises where they are satisfied that the premises

are being, or within the last 24 hours have been, used for a unauthorised sale of alcohol for consumption on or in the vicinity of the premises.

17. Section 20 of the 2001 Act enables a constable or the local authority, between 7 days and 6 months after the service of a closure notice, to apply for a "closure order" from the Magistrates' Court in respect of the premises specified in the closure notice.

### ***Licensing Act 2003 – Minor Variations***

18. The Secretary of State for Culture Media and Sport has made two Orders under the Legislative and Regulatory Reform Act 2006 to amend the Licensing Act 2003. These Orders are the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates Order 2009 and the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009.
19. The purpose of the Minor Variations Order is stated as being "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 process".
20. Small variations that will not impact adversely on the licensing objectives are now subject to a simplified 'minor variations' process. Under this process, the applicant is not required to advertise the variation in a newspaper or circular or copy it to the responsible authorities. However, they must display it on a white notice (to distinguish it from the blue notice used for full variations and new applications).
21. On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives.
22. In considering the application, the licensing authority must consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision. For instance, they may need to consult the environmental health officer on an application with possible public nuisance implications. There is no requirement to consult all responsible authorities on each application and in many cases the licensing authority may be able to make a decision without consultation.
23. Ashford Borough Council's Licensing Section sits within Environmental Services and has good working relationships with colleagues in Environmental Health and Environmental Protection and communication is a constant two way process. In addition the section enjoys an excellent working relationship with the local police and especially with the Police Licensing Officer.
24. Interested parties have ten working days to submit representations. The licensing authority must therefore wait until this period has elapsed before determining the application, but must do so at the latest within 15 working days, from the date of the application.

25. If the licensing authority fails to respond to the applicant within 15 working days the application is considered to be refused.
26. The new procedure for minor variations does not include provisions for a hearing and the Government recommends that decisions on minor variations should be delegated to licensing officers.

### ***Licensing Act 2003 – Alcohol sales in Community Premises***

27. Section 19 of the Licensing Act 2003 imposes a mandatory condition that all sale of alcohol must be approved by a personal licence holder and that there must be a designated premises supervisor (DPS) who is responsible for the day to day running of the premises. No sale of alcohol can be made whilst there is not a DPS or when the personal licence of the DPS is suspended.
28. This requirement does not apply to bona fide members clubs operating under a club premises certificate as it is assumed that responsibility for the running of the premises, including discipline, rests with a management committee.
29. The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009 allows the licensing authority not to include the mandatory condition in the licence where the premises licence is held (or will be held, if granted) by a management committee or board of individuals. In effect the legislation assumes that the management committee will assume the role of the DPS as occurs in members clubs.
30. Where a management committee of community premises applies for the disapplication of the mandatory condition an alternative condition will be applied the effect of which will be that the licence holder (management committee) is responsible for the supervision and authorisation of all alcohol sales made under the licence.
31. A community premises is defined as premises that are or form part of a church hall, chapel hall, or other similar building or a village hall, parish hall or community hall or a similar building. A building such as a school that is used for community events would not fall within this definition, as its primary purpose is education, unless it is widely used for the benefit of the community as a whole. Halls that are predominantly private venues hired out for community events are unlikely to fall within this definition.
32. In order for Section 19 to be disapplied the licensing authority must be satisfied that there are suitable arrangements in place for the supervision of the sale of alcohol on the premises. This would include the arrangements for the hiring of the premises and hiring agreements.
33. Where a Chief Officer of Police for an area in which a community premises is situated objects to the alternative condition being substituted on grounds of crime and disorder the Licensing Authority must hold a hearing. Similarly other responsible authorities or interested parties may object and a hearing must be held.

34. Where a review is held in respect of a community premises the Licensing Authority may re-impose the requirement for under Section 19, Licensing Act 2003.
35. The Order makes three sets of modifications to the Licensing Act 2003 in relation to their applications to Community Premises. These modifications affect those parts of the Act relate to applications for licences, applications to vary licences and applications to review licences.

### ***Licensing Act 2003 – Expedited Reviews***

36. Sections 53A, 53B and 53C were inserted into the Licensing Act 2003 by the Violent Crime Reduction Act 2006.
37. Where a senior police officer (rank of Superintendent or above) is of the opinion that a premises is associated with serious crime or serious disorder or both they may serve apply to review that premises under Section 53. The purpose of these powers is to provide the police with the means to trigger a fast track review of a premises licence and for the licensing authority to respond quickly by taking interim steps (Section 53B) pending a full review of the premises licence (Section 53C).
38. Section 10(4) of the Licensing Act provides that the consideration of a Section 53A application and a determination of Section 53B interim steps is not a matter that may be delegated to an officer of the Council but must be taken by the relevant Licensing Sub-Committee or the Authority acting as a whole. This is also confirmed by the Department of Culture, Media and Sport Guidance. It is recommended that the consideration of Section 53A applications and the determination of whether to impose Section 53B interim steps be delegated to the Council's Licensing Sub-Committee.
39. It is proposed that the Head of Environmental Services and Head of Legal and Democratic Services develop a procedure for use in interim hearings.
40. Under Section 53C of the Licensing Act 2003 the Council must hold a hearing in order to fully review the premises licence within 28 days of receiving the police's Section 53A application. Again it is recommended that Section 53C review hearings be delegated to the Licensing Sub-Committee.

### **Risk Assessment**

41. The current Scheme of Delegations to Officers is extensive and was designed to implement recommended best practice. With only minor exceptions, the Scheme enables most of the functions of the Licensing Authority with respect to applications to be discharged by officers, except where a hearing is required. Where a hearing is required, the matter is determined by a sub-committee of the Licensing Committee. It would be entirely consistent with this approach to extend the Scheme of Officer Delegations in accordance with the recommendation.

42. The efficiencies which the two Licensing Act Orders aim to bring about will only be realised if the Scheme of Officer Delegations is extended so as to enable officers to discharge various functions under them.
43. All Local Authorities must fulfill their obligations under Section 17 of the Crime and Disorder Act 1981 when carrying out their functions as licensing authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area.
44. The Council has an enforcement / compliance role in relation to alcohol licensing and it is important that the Authority can properly and fully carry out that responsibility.

### **Legal implications / other considerations**

45. The Council has a duty under the Licensing Act 2003 to put in place such measures that will facilitate the operation of the new minor variations procedure.
46. It is a legal requirement for the Council to grant delegated authority to officers to determine applications under the new Orders.
47. It should be noted that there is no statutory right of appeal against a decision in respect of a minor variation application or to interim steps.

### **Equalities Impact Assessment**

48. The Council is committed to the delivery of services in a fair and non-discriminatory way, and to ensuring that all persons have access to a fair hearing.
49. There are no significant equality and diversity issues. The new procedures should greatly simplify the processes for applicants thus improving access.
50. The powers under the Criminal Justice and Police Act 2001 will need to be used in accordance with the Kent and Medway Enforcement Protocol. In particular the Council's intention should be to improve regulatory outcomes without imposing unnecessary burdens.

### **Other Options Considered**

51. Not to use the powers under Section 19-28 of the Criminal Justice and Police Act 2001. As these options would only be used to ensure compliance when persuasion, warning letters, etc have not worked, the local authority would have to consider prosecution. The adoption of these powers would be a cost effective measure to ensure compliance with the Licensing Act.
52. Not to delegate the functions for minor variations and alcohol sales in community premises but for the sub-committees of the Licensing Committee to discharge them. Not giving delegated authority to officers to determine

applications that fall into these categories would be counter to Government intention's to reduce administrative burdens on applicants.

## **Consultation**

53. The minor variation procedure and changes to alcohol sales for community premises were consulted on by the Department of Culture, Media and Sport (DCMS) and passed by Parliament following a consultation process.
54. The Violent Crime Reductions Act 2006 and its impact on the Licensing Act 2003 were consulted on by the Home Office and passed by Parliament following a consultation process.
55. All of the proposed changes have been discussed with the Legal Department, the Democratic Services Manager and the Chair of the Licensing and Health and Safety Committee.
56. The DCMS Guidance suggests that licensing officers "must consult relevant responsible authorities if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision."

## **Implications Assessment**

57. An essential component of the Licensing Act 2003 is the promotion of 4 basic objectives ("the Licensing Objectives") i.e.
  - The Prevention of Crime and Disorder
  - Public Safety
  - Prevention of Public Nuisance
  - The Protection of Children from harm
58. The Licensing Act 2003 expands the powers given to Local Authorities under Sections 19-28 of the Criminal Justice and Police Act 2001. The powers will place licence holders and premises supervisors, who will usually have day to day management control of the premises, under pressure to maintain order and deter disorder and nuisance behaviour. The powers have a significant deterrent value in curbing disorder and public nuisance through noise as well as enabling disorder and noise nuisance to be brought to an end when they occur.
59. The main saving is for the applicant and it is possible there will be a minor loss of application fees for variations of premises. However this not likely to be of significance and allowances have been made in the 2010/11 budget.
60. It is possible that the increased efficiency in the process will result is a saving of staff time, but again, this is likely to be insignificant.
61. The additional powers under the Criminal and Police Act 2001 are unlikely to result in additional costs unless a "closure order" is obtained from the Magistrates' Court. Experience from other Licensing Authorities indicates this is an unlikely scenario.

62. The implications of the two Orders and of the Closure Notices are being closely watched by the licensing trade, the public and central government.

### **Handling**

63. All matters relating to the discharge by a Licensing Authority of its licensing functions have to be referred to its Licensing Committee and, accordingly, that Committee must discharge those functions on behalf of the Authority.
64. Two exceptions to this general provision are the adoption of the Statement of Licensing Policy or, where another of its Committees has the matter referred to it.

### **Conclusion**

65. The introduction of the minor variations system is intended to make the application process for variations that have little impact on the operation of the licensed premises quicker, simpler and less expensive to the premises licence holder. Safeguards to prevent applications that should be dealt with as an ordinary variation being dealt with under this procedure, are built into the system.
66. It is suggested that delegated authority be given to Officers to determine all minor variation applications under the Act as well as applications from community premises to disapply the mandatory conditions.
67. The purpose of the expatiated review powers are to compliment the existing procedures for tackling crime and disorder and are for use in circumstances of a serious nature.
68. The compliance / enforcement role of the Council is important in improving the health, safety, security and welfare of the Borough's residents, visitors and business community. By recommending the authority under the Criminal and Police Act 2001 be delegated to the Head of Environmental Services the Council can ensure that decisions can be taken promptly.

### **Portfolio Holder's Views**

69. The Report has been sent to the Portfolio holder for comment.

|          |  |
|----------|--|
| Contact: | James Hann   |
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**Appendix A:**

**Part 3 Appendix 5 Allocation of Functions – Additions to the Delegations to Head of Environmental Services**

**NON-EXECUTIVE FUNCTIONS – *Criminal Justice and Police Act 2001***

| <b>Matter to be dealt with</b>   | <b>Circumstances under which decision may be made</b> |
|--|---|
| To exercise the powers in sections 19 to 28 of the Criminal Justice and Police Act 2001. | All cases   |

## Appendix B: Proposed Additions to the Scheme of Delegation for Licensing Act Functions

### Additions to the Terms of Reference of Council Committees – Licensing Subcommittee (Part 3 Appendix 4 – Responsibility for Functions)

1. Applications under the following provisions of the Licensing act 2003

|    | <b>Provisions under which a hearing is held</b>   | <b>Circumstances under which a hearing is held</b> |
|----|---|--|
| t. | Section 25A (Determination of application for the alternative licence condition to be included in the licence instead of the conditions in section 19(2) and (3)) | If police representation made                      |
| u. | Section 41D (Determination of application by community premises to disapply the mandatory conditions for alcohol on a premises)                                   | If police representation made                      |
| v. | Section 52A (Determination of application for a review: supply of alcohol from community premises)  | If police representation made                      |
| w  | Section 53A (Determination of application for expedited reviews)  | If police representation made                      |
| X  | Section 53B (Determination of application for Interim steps)  | If police representation made                      |
| y  | Section 53C (Determination of application for a review of premises licence following review notice)   | If police representation made                      |

### ADDITIONS TO THE PROVISIONS UNDER WHICH HEARINGS MAY BE HEARD AND THE PERIOD OF TIME WITHIN WHICH HEARINGS MUST BE COMMENCED

|     | <b>Provision under which hearing is held</b>   | <b>Period of time within which hearing must be commenced</b>   |
|-----|--|--|
| 19. | Section 25A (Application for the alternative licence condition to be included in the licence instead of the conditions in section 19(2) and (3)) | 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c) |
| 20. | Section 41D (Application by community premises to disapply the mandatory conditions for alcohol on a premises)                                   | 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c) |
| 21. | Section 52A (Review: supply of alcohol from community premises)  | 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c) |
| 22. | Section 53A (Determination of application for expedited reviews)   | 48 hours of the time of the receipt of the application   |
| 23. | Section 53B (Determination of application for Interim steps)   | 48 hours of the time of the receipt of the application   |

|     |   |  |
|-----|---|--|
| 24. | Section 53C (Determination of application for a review of premises licence following review notice) | 28 days beginning with the day after the end of the period during which an application for review is received. |
|-----|---|--|

**Part 3 Appendix 5 Allocation of Functions – Additions to the Delegations to Head of Environmental Services**

**NON-EXECUTIVE FUNCTIONS – Licensing Act 2003**

| <b>Matter to be dealt with</b>  | <b>Circumstances under which decision may be made</b> |
|---|---|
| <i>Application for a Minor Variation of a Premises Licence</i>  | <i>All cases including if representation is made</i>  |
| <i>Application for a Minor Variation of a Club Premises Certificate</i>                                 | <i>All cases including if representation is made</i>  |
| <i>Application by community premises to disapply the mandatory conditions for alcohol on a premises</i> | <i>If no police objection is made</i>                 |

**Note:**

The granting of the above delegations is without prejudice to officers referring an application to a Sub-Committee or to a Sub-Committee referring an application to the full Committee, if considered appropriate by the Licensing Officer or Sub-Committee in the circumstances of any particular case and where permitted by legislation.

**Agenda Item No:** 5

**Report To:** Selection and Constitutional Review Committee  
Executive



**Date:** 4<sup>th</sup> February 2010

**Report Title:** Local Government and Public Involvement in Health Act  
2007 – New Executive Arrangements for the Council

**Report Author:** Head of Legal and Democratic Services

**Summary:**

The report summarises and outlines the implications of the requirements of the Local Government and Public Involvement in Health Act 2007 in relation to mandatory changes to all Local Authorities' Executive arrangements. My report to the Selection and Constitutional Review Committee on the 5<sup>th</sup> May 2009 which largely dealt with Councillor Call for Action and New Scrutiny Functions also advised that under Part 3 of the 2007 Act all Local Authorities had to review their Executive arrangements and to consider which of the following two Models to adopt:-

- (a) A directly elected Mayor and Cabinet or
- (b) A new style of Leader and Cabinet.

This report sets out a timetable and the steps which need to be taken to enable the Council to make a decision by the 31<sup>st</sup> December 2010.

**Key Decision:** NO – This is not an Executive decision.

**Affected Wards:** All Wards

**Recommendations:** **The Selection and Constitutional Review Committee and the Executive are asked to consider the report and agree the following recommendations to Council:-**

- (i) That the changes to Executive model arrangements and the necessary procedures to change them as provided for in the Local Government and Public Involvement in Health Act 2007 be noted.**
- (ii) Approve the timetable for the process set out in Paragraph 10.**
- (iii) Agree that the consultation with the public be undertaken by way of an article in the Ashford Voice and by a dedicated page on the Council's website; such detailed arrangements to be agreed**

by the Head of Legal and Democratic Services and the Head of Communications and Marketing.

- (iv) Note that a further report would be submitted to the Selection and Constitutional Review Committee and Executive in early Autumn advising of the results of the consultation exercise and proposing a recommendation as to which Executive model to adopt for consideration by the Council on the 7<sup>th</sup> October 2010.

**Policy Overview:** The Council is required by the 2007 Act to consider this issue.

**Financial Implications:** None in relation to this report. There would, however, be costs if the Council decided to hold a Referendum over proposals to adopt a Mayoral and Cabinet Model. Furthermore there would be additional work to deal with the actual election of a Mayor which would need to be undertaken at the same time as the election of Councillors in May 2011.

**Risk Assessment** The new style Leader and Cabinet Executive will automatically be imposed on the Council by the Secretary of State if it does not undertake the formal steps to review Executive arrangements.

**Equalities Impact Assessment** NO

**Other Material Implications:** Not applicable

**Background Papers:** None

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## **Report Title: Local Government and Public Involvement in Health Act 2007 – New Executive Arrangements for the Council**

### **Purpose of the Report**

1. To advise Members of the changes to the Executive arrangements arising from the Local Government and Public Involvement in Health Act 2007 and to seek authority to undertake a consultation exercise and report back to the Committees and Council in due course with recommendations as to which revised Model to adopt.

### **Issue to be Decided**

2. Authority is sought to undertake a consultation exercise on the two new Executive Models available under the 2007 Act and to agree a timetable for this exercise to be undertaken. The Government White Paper 'Strong and Prosperous Communities' sets out the principal thinking behind the changes and in particular they refer to the fact that in most authorities leaders face election every year. It is considered that this can make it hard to take and see through essential but difficult but decisions that may in the short term be unpopular. The White Paper also suggested that this brings uncertainty for senior management teams in pursuing and implementing longer term strategies. In view of this the Government consider that there is a need for councils to move towards having more stable and more visible political leadership. Government research shows that leadership is the single most significant driver of change and improvement in local authorities.

### **Background**

#### **Local Government and Public Involvement in Health Act 2007**

3. The Local Government Act 2000 required each Local Authority to implement a new form of Local Governance. This Act provided for three main forms of Executive:
  - An elected Mayor with a Cabinet of Councillors appointed by the Mayor (Mayor and Cabinet).
  - A Leader elected by the Council and a Cabinet of Councillors appointed either by the Council or the Leader (Leader and Cabinet).
  - An elected Mayor with an Officer known as the Council Manager appointed by the Council (Mayor and Council Manager).
4. Following a consultation exercise which involved a letter being sent to all households in the Borough, the Council adopted the Leader and Council Cabinet Model. The new Executive arrangements were introduced in July 2001. The results of the consultation exercise at that time showed 57% support for the Leader and Cabinet Model. For a comparison the directly

elected Mayor with Cabinet Model received 16% of the vote and the directly elected Mayor with Council Manager 13% of the vote. A total of 8069 responses were received to the consultation.

5. As outlined in the summary to this report the 2007 Act changes the forms of Executive which are now limited to:-

- (a) The Mayor and Cabinet Executive or
- (b) A Leader and Cabinet Executive

To continue with the current arrangements is not an option. The Council has to make a final decision on this matter by 31<sup>st</sup> December 2010. The revised model will come into effect following the next full Council elections in May 2011.

6. The new Leader and Cabinet Executive arrangements are similar to the existing Leader and Cabinet (Executive) system this Council adopted in 2001 and the main changes are shown below:-

- The new arrangements require the Leader (the Act refers to the Leader as the 'Executive Leader') to be elected by the Full Council and provide that he or she must appoint two or more Councillors (but no more than nine) to an "Executive". The Executive Leader would be required to appoint one of the members of the Executive to be the Deputy Leader, who would hold office (unless he resigns or ceases to be a member of the authority) until the end of the term of office of the Executive Leader. However the Executive Leader may, if he thinks fit, remove the Deputy Executive Leader from office and appoint another person to that position.
- This arrangement requires the Executive Leader to determine the responsibilities of other Executive Members and gives him the power to delegate the functions of the Executive in any way permitted by law (for example to an individual Executive Member or to a Sub-Committee of the Executive or as with the present system for certain functions to Officers) If for any reason the Executive Leader is unable to act or that office is vacant, the Deputy Leader will act in that persons place. There is however nothing to prevent the Council continuing with its existing procedure of collective decision making which has served the Council well.
- The Act requires the Executive Leader to be appointed by the Council not just for one year but for a term of four years. The Council will be able to include in the Constitution provision which would enable the Executive Leader to be removed within the 4 year period.

7. In terms of a Mayor and Cabinet Executive, it is important to note that this is not a reference to a Civic Mayor currently used by this Council but would be a Mayor directly elected for period of four years and could not be removed by resolution of the Council. The elected Mayor would not represent a Ward but would be the Council's Political Leader with overall responsibility for the effective implementation of Council policy and delivery of services. This latter

option may cause confusion in the minds of the public as there is a current “Civic Mayor”. In this case consideration would need to be given to changing the title of the “Civic Mayor” to “Chairman of the Council”.

### **Procedure**

8. It is important to understand that although the Council is already operating Executive arrangements the new legislation requires public consultation where the Council proposes to move from the current Leader and Cabinet Executive to the new style Executive Leader and Cabinet. To change the form of its Executive the Authority has to:-
  - Consult before drawing up proposals for a change in form of Executive. The Act specifies that this should be for a minimum of a 12 week period.
  - Draw up proposals including, if the proposals are for an Executive Leader and Cabinet Executive, whether the Authority proposes to adopt provisions to allow it to remove the Executive Leader during the Leader’s term of office.
  - Decide whether the change should be subject to approval by a referendum. This Council is not required to hold a referendum on this occasion since its current Executive arrangements were not approved by a referendum.
  - Publicise the proposals including by publishing in one or more newspapers circulating in its area a Notice which:-
    1. States that the Authority has drawn up proposals.
    2. Describes the main features of the proposals.
    3. States that the proposals are available at the Council’s principal office for inspection by members of the public at specified times.
    4. Specifies the address of the principal office.
  - Hold a Referendum if they have decided that there should be one.
  - Resolve to change the form of Executive.
  - Implement the new governance arrangements.
  - Publicise the new arrangements.
9. The Authority would also have to consider the extent to which the proposals would be likely to assist in securing continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness.

### **Consultation**



10. The timetable set out below would allow the Authority to consult the general public and also consider a revised Executive Model for adoption prior to the 31<sup>st</sup> December 2010 with a view to the new Executive arrangements taking effect three days following the elections of the Borough Council to be held on the 5<sup>th</sup> May 2011.

| <b>Date</b>                    | <b>Process</b>   |
|--------------------------------|--|
| June to August 2010            | Consultation via Ashford Voice and the website.  |
| September/October 2010         | Selection and Constitutional Review, Executive and Council to consider consultation feedback and approve the formal proposals for new Executive Model. |
| 8 <sup>th</sup> October 2010   | Council publishes formal Notices about the proposed changes.   |
| 16 <sup>th</sup> December 2010 | Council adopts the formal resolution approving the new Executive arrangements.   |
| March 2011                     | A report to Executive and Selection and Constitutional Review re: any changes required to the Constitution.  |
| April 2011                     | Council to approve amendments to Constitution.   |
| 9 <sup>th</sup> May 2011       | The new Executive arrangements take effect following the Elections on the 5 <sup>th</sup> May 2011.  |

11. It is suggested that the precise form of the consultation exercise be determined by the Head of Legal and Democratic Services and the Head of Communications and Marketing.

### **Handling**

12. As outlined in the timetable in Paragraph 10 above, following the consultation exercise Officers would bring a further report to the Selection and Constitutional Review Committee and Executive with a view to firm recommendations of what Executive model to adopt being made to the Council.

### **Conclusion**

13. The Selection and Constitutional Review Committee and Executive is asked to agree the recommendations set out in this report.

### **Portfolio Holder's Views**

14. The Leader of the Council supports the suggested process as set out within the report.

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