

Agenda Item No: 4

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



Date: 4th 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.

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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*

Matter to be dealt with	Circumstances under which decision may be made
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

	Provisions under which a hearing is held	Circumstances under which a hearing is held
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

	Provision under which hearing is held	Period of time within which hearing must be commenced
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.
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Part 3 Appendix 5 Allocation of Functions – Additions to the Delegations to Head of Environmental Services

NON-EXECUTIVE FUNCTIONS – Licensing Act 2003

Matter to be dealt with	Circumstances under which decision may be made
<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.