

Southend-on-Sea Borough Council

Report of Director of Technical & Environmental Services

to

Licensing Committee

on

25th February 2005

Report prepared by: David Krieger

Agenda
Item No.

LICENSING ACT 2003 Scheme of Delegations and Progress Report

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 To set out a scheme of delegations previously approved by Council, for the concurrence of the Licensing Committee.
- 1.2 To advise of progress in implementing the new licensing controls, and indicate areas requiring final procedural agreement.

2. Recommendation

- 2.1 That the Scheme of Delegations as set out in Appendix 1 be agreed, subject to amending the quorum of Sub-Committees A and B to three.
- 2.2 That additionally, Trading Standards Officers within the Department's Trading Standards Group be authorised to make representations in respect of applications.
- 2.3 That the contents of the report be noted.
- 2.4 That Appendix 2 be agreed in connection with the application of Members' Code of Conduct in relation to the Licensing Act 2003.

3 Background

- 3.1 On 16th December 2004, Council approved a Statement of Licensing Policy, following a formal consultation process. This policy document was brought into force (as required by law) on 7th January 2005.
- 3.2 Council also approved amendments to the Constitution as now set out in Appendix 1 to this report – Scheme of Delegations. The approval given was (due to the timing of the legislation) subject to the concurrence of the Licensing Committee.
- 3.3 The approved Scheme of Delegations makes provision for a quorum of two on Sub-Committees A and B, but the advice of Counsel specialising in licensing is that the Act, although ambiguous on the point, requires the quorum of a Sub-Committee to be three Members.

4 Further Legal Stages

- 4.1 Sections of the Licensing Act 2003 have been brought into force progressively. The first Appointed Day (7th February 2005) was the first day upon which applications could be made to the Council as Licensing Authority, by existing licence holders under transitional arrangements. That day also marked the coming into force of the sections of the Act giving powers to Licensing Committees, and this gives rise to the need for the current report concerning delegations.
- 4.2 Although the Act itself has been in place for some time, its implementation has required the approval of several sets of Regulations, containing detailed and specific requirements. These are:
- i) The Licensing Act 2003 (Transitional Provisions) Order 2005, with four schedules.
 - ii) The Licensing Act 2003 (Personal Licences) Regulations 2005, with four schedules.
 - iii) The Licensing Act 2003 (Hearings) Regulations 2005.
 - iv) The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, with fifteen schedules.
- 4.3 The final versions of these Regulations became available on 14th January 2005, and have required intensive effort to assimilate the detailed requirements into Departmental operating procedures. These delays have been a cause of critical difficulties for many authorities in the lead up to the first Appointed Day.
- 4.4 Subsequently, on 21st January, the Regulations covering the licensed fee structure were released. The fee levels now approved are considerably higher than those originally put forward in the consultation documents, and provide for both a higher scale of fees throughout, and multipliers to be applied to the licence fees for On-licensed type premises which are exclusively or primarily involved in the sale of alcohol. The overall fee income to the Authority is not known at this stage, as it will depend upon a number of factors including:
- a) The date on which applications are received (fees are based upon the non-domestic rateable value which will change midway through the transitional period).
 - b) The number of premises seeking variation, and the number of individuals seeking personal licences can only be estimated at this time.

5 Training, and Contact with the Licensed Trade

- 5.1 Training has continued, for Officers and Members, following on from the formal sessions undertaken in September and November last year. Utilising reciprocal arrangements we were able to take advantage of training opportunities provided by the Licensing Authorities in Chelmsford, and latterly Colchester. Finally, an informal training session is scheduled immediately after the conclusion of the business part of today's Licensing Committee meeting.
- 5.2 Liaison has continued with the Licensing Justices. In addition to the regular attendance of the Justices Transfer Sessions by a senior officer from the Safety and Licensing Service, on 7th February the Chairman of the Council's Licensing Committee attended the Justices Annual Licensing Session as an observer, and your officer made a brief presentation. In the speech from the Chairman of the Licensing Justices Committee, it was clear that Magistrates are mindful of the potential level of work involved during the transition process, with the possibility of appeals arising from the high number of applications to be dealt with by the Council during a short time.

- 5.3 Officers from the Council's Safety and Licensing Service have continued to maintain liaison with the licensed trade and with the lawyers representing them. This has involved visits to individual premises, and presentations to small groups of traders.
- 5.4 Discussions have been maintained with the "Responsible Authorities", whose officers will provide the professional responses in relation to applications upon which they are consulted, and who are likely to appear before future meetings of the Council's Sub-Committees. Indeed, a formal meeting is to be held with these groups on 28th February. In this connection, the Regulations have introduced a further Responsible Authority, namely the Weights and Measures Authority. This necessitates the authorisation of Trading Standards Officers to make representations in respect of applications.
- 5.5 Operation of the new Licensing system within the Safety and Licensing Service is intended to be largely based upon the existing computer system (ITECS). The late arrival of the detailed Regulations (mentioned above) posed similar problems for the computer software suppliers, and loading of the necessary new software release and associated training, was not completed until 4th February. Despite its late arrival we were, nevertheless, the first ITECS user in the County to have the latest software release installed.

6 Application Levels

- 6.1 At the time of preparing this report, no formal applications have been received under the new system. Nevertheless, numerous requests for application forms have been received and actioned, with the despatch of detailed guidance material. The lack of early applications is perhaps not unexpected, due to the difficulties which the Department of Culture, Media and Sport (DCMS) had in making the complex application forms available for downloading from their website, and our experience is mirrored by other authorities across the county.
- 6.2 Notwithstanding the above, it is inevitable that applications will be received from all existing licensed venues and clubs during this transitional phase which ends on 6th August 2005, and it is likely that the first wave will come from the major legal firms dealing with, in some case, thousands of applications from national licensed chains.
- 6.3 There has been a high level of publicity, both at national and local level, and the decision has been taken deliberately to limit this Service's own mail shots, at this stage, in order hopefully to avoid a flood of applications in the first few weeks of operation. Nevertheless, some 150 initial advisory letters have been despatched, primarily to existing public entertainment and related licence holders.
- 6.4 Given the strict timetable set out in the Regulations for dealing with applications, it is likely that the first hearings by the Licensing Sub-Committees A and B will need to take place very soon after Easter. From that time, it may be appropriate to schedule in three meetings per week, as a working arrangement. This would enable applicants and officers to have a clear basis for the timing of application hearings. If it transpired that a particular meeting was not required, it could be cancelled. It is intended to prepare lists of those applications which are likely to require a hearing by the Sub-Committees at an early stage. These lists will be circulated to Members, so that they may be aware of likely future workloads, and can be alerted to potential conflicts of interest which would prevent them hearing individual cases, and enabling them to advise the Council's Committee Services officers accordingly. In allocating Members from the rota, the Members will not be assigned to hear cases within their own Ward.
- 6.5 In view of the critical time constraints in dealing with the level of applications during the transitional phase, and the unquantified level of public objection, it is important that hearings proceed as scheduled. It is, therefore, felt necessary that a fourth Member be allocated on a stand-by basis, in case another Member has to withdraw.

- 6.6 The Regulations covering hearings are particularly detailed, and set out very tight timescales for the determination of applications of each description, together with the notices of hearing to be given.

7 Further Government Initiatives, and Final Implementation

- 7.1 There has been considerable publicity highlighting public concern in relation to the problem of "binge drinking" in town and city centres, and this concern has been reflected by Government. The Home Office has brought forward a document entitled "Responsible Drinking" which puts forward for discussion a number of measures designed to tackle the problems which can arise. This includes the concept of Alcohol Disorder Zones, where additional control measures and financial penalties can be imposed. Legislative measures, arising from the consultative document, can be expected soon.

- 7.2 At the time of preparing this report, the second Appointed Day had yet to be announced. Nevertheless it is widely expected to be a date in November 2005. From that date, the new licences granted by the Council will become live. It is presently estimated that up to 700 premises licences or club premises certificates, and up to 1000 personal licences will need to be processed during the transitional period.

8 Background Papers

None

9 Appendices

- 9.1 Appendix 1 – Scheme of Delegations
- 9.2 Appendix 2 – Application of Members' Code of Conduct in relation to Licensing Act 2003 matters

SCHEME OF DELEGATIONS

The terms of reference of the Licensing Committee (Part 3, Schedule 2 to the Constitution) shall be amended as follows:-

Licensing Committee

Membership - 15 Members of the Council

Terms of Reference to be amended **to include:**

- Administration of the Licensing Act 2003;
- Administration of the Gaming Act 1968;
- From the second Appointed Day, under the Licensing Act 2003, **to delete:**
 - Licensing of places for Public Entertainment;
 - The administration of the Private Places of Entertainment (Licensing) Act 1967;
 - Licensing of Late Night Refreshment Houses;

From the coming into force of Licensing requirements the Security Industry Authority within the South East Region, **to delete**

- The overseeing of the Door Supervisor Registration Scheme.

The following terms of reference shall be subject to the concurrence of the Licensing Committee:-

Two Licensing Sub-committees (A and B)

There are two Licensing Sub-committees, A and B. Each Sub-committee is authorised to deal with the matters set out below. The Sub-committees will be convened in turn by rota, subject to the availability of Members.

Membership: 3 Members of the Council

- a) The Chairman of the Licensing Committee shall be a member of Sub-committee A and the Vice Chairman of the Licensing Committee shall be a member of Sub-committee B (unless in either case the Chairman or the Vice-Chairman respectively is unable to attend a particular meeting when the provisions of the following paragraph shall apply). The Chairman of each Sub-committee shall be the Chairman or Vice Chairman of the Licensing Committee (as appropriate).
- b) The remaining members shall be drawn from the membership of the Licensing Committee. Members will be selected to attend in turn by rota, subject to availability.

Substitutes: Not applicable (in view of the manner of appointment and absence of proportionality).

Proportionality: Does not apply (the Sub-committees are appointed under the Licensing Act 2003).

Quorum 2

Terms of Reference:

To consider and determine applications under the Licensing Act 2003 where representations have been made, in respect of the following cases.

- i. Applications for personal licences;
- ii. Application for premises licences/club premises certificates.
- iii. Applications for provisional statements;
- iv. Applications to vary premises licences/club premises certificates;
- v. Applications to vary designated premises supervisors;
- vi. Applications to transfer Premises Licences;
- vii. Applications for interim authorities;
- viii. Applications to review premises licences/club premises certificates;
- ix. Decision to objection when the Local Authority is a consultee, and not the "relevant authority" considering the application.
- x. Determination of Police representations to temporary event notices;

The following responsibilities are also delegated to the Sub-Committees.

- a. Applications for personal licences with unspent convictions;
- b. Applications under the Gaming Act which are opposed.

Status of meetings – open to the public subject to the provisions of the Licensing Act 2003.

Procedure at Meetings

- a. The Chief Executive & Town Clerk shall arrange for meetings of the Sub-committees to be convened as and when required, drawing upon membership as set out above.
- b. Meetings of the Sub-committees will be conducted in accordance with appropriate legislation, procedures and the principles of natural justice which shall take precedence over Standing Orders and in particular Standing Order 39 shall not apply.

Reports to: the Licensing Committee

Licensing Sub-Committee C

Membership

7 Members of the Council.

Substitutes: Permitted in accordance with Standing Order 31B

Proportionality: Applies.

Quorum

As per Standing order 38.1

Terms of Reference

To consider and determine all applications except matters reserved to the Licensing Committee and/or Sub-Committees A & B pursuant to the Licensing Act 2003.

Status of Meetings

Open to the public (in part).

Procedure at Meetings

Meetings of the Licensing Sub-committee C shall be conducted in accordance with appropriate legislation and procedures, which shall take precedence over Council Standing Orders. Applicants, objectors and their representatives are entitled to attend meetings to give evidence as required.

Reports to

Council.

Delegation to Chief Officers

- 1) Through the Director of Technical and Environmental Services the following posts be delegated authority to act as indicated.

To the Senior Assistant Director of Technical and Environmental Services, the Group Manager – Trading Standards, the Team Manager – Commercial Services and the Principal Environmental Health Officer (Safety and Licensing): the approval of applications **where no representations have been** are made, in respect of:

- i. Applications for personal Licences;
 - ii. Applications for Premises Licences/Club Premises Certificates;
 - iii. Application for Provisional Statements;
 - iv. Applications to Vary Premises Licences/Club Premises Certificates;
 - v. Applications to Vary Designated Premises Supervisor;
 - vi. Requests to be removed as a Designated Premises Supervisor;
 - vii. Applications for transfer of premises Licence;
 - viii. Applications for interim authorities;
 - ix. Decisions on whether complaints are irrelevant, frivolous, vexatious, repetitious or otherwise excluded.
 - x. Applications under the Gaming Act which are not opposed.
2. To the Senior Assistant Director of Technical and Environmental Services, the Group Manager – Trading Standards and to all professional and technical officers for the time being employed within the Safety and Licensing Service:-
 - i. Appointed as authorised persons for the purposes of the Licensing Act 2003;
 - ii. Authorised to issue all notices and counter-notices not otherwise reserved to the Licensing Committee or Licensing Sub-Committees;
 3. To all professional and technical staff within the Technical and Environmental Services Department (and who come within the description of authorised person for the purposes of Section 13(2) of the Licensing Act 2003).

- i) Appointed as authorised persons for the purposes of the Licensing Act;
- ii) Authorised to make representations in respect of applications.

4. To the Director of Technical and Environmental Services, the Assistant Director (Planning) and the Group Manager (Development Control).

To the Director of Social Care, Assistant Directors of Social Care and Managers of Sections having responsibility for the protection of children from harm (this delegation also to have effect in relation to equivalent officers in the Department of Community Services, once operational).

- authorised to make representations in respect of applications.

5. To all Trading Standards officers

- authorised to enforce the provisions of Sections 146 and 147 of the Licensing Act 2003.

Application of Members' Code of Conduct in relation to Licensing Act 2003 matters

In dealing with applications under the Licensing Act 2003, the attention of Members is drawn to the following key aspects of the Code of Conduct and the rules against bias.

1. Prejudicial Interest

- You must consider whether or not you have a personal or prejudicial interest in the application due to personal circumstances, including the well-being or financial position of a relative, partner or friend.
- You must not place yourself in a situation where your honesty or integrity may be questioned.

If this may possibly occur you must not sit on the sub-committee or attend the hearing at all.

- You may make a written representation to the relevant Council officer (in accordance with the provisions of the Act) if you live in the vicinity of the premises. However, having made the representation you have a prejudicial interest and must not sit on the sub-committee or attend the hearing.
- Even if you live in the vicinity but have not made a representation you must consider whether you have a prejudicial interest and if so you must not sit on the sub-committee or attend the hearing.
- If you realise at the sitting of the sub-committee that you have a prejudicial interest:

You must declare this to the legal adviser and leave the room.

You cannot be present in the public gallery or speak as a member of the public.

- **2. Bias**

- You should not reach a final conclusion before you come to take a decision on an issue and your statements and activities should not create the impression your views on a matter are pre-determined.
- If you have sat on or attended another committee (e.g. Development Control) and expressed an opinion when the issue has been considered you must not sit on the licensing sub-committee which hears the application.

- If you are approached by persons wishing to lobby you regarding the licence application you must explain that you cannot discuss the matter and refer the lobbyist to another Ward Member or the licensing officer who can explain the process of decision making. If you wish to represent the lobbyist another must not sit on the sub-committee, but may attend the hearing as their representative (if that person has made a valid representation and specifically asked you to represent them).
- Ward Councillors should not sit on the sub-committee at the hearing of an application relating to their own Ward, or where their Ward is likely to be directly affected by the application.

They can speak only on behalf of their constituents. They cannot be part of the decision making process.

- As a member of the Licensing Committee you must not attempt to lobby sub-committee members about their decision.

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The mere impression of bias as opposed to actual bias is sufficient for the sub-committee's decision to be challenged in the courts.

Conduct

Must not ask irrelevant questions

Must not make statements or express opinions. If you want to elicit specific information should do so by asking the witness a question.

Must make decisions based on merit.

Must reach your own conclusions on the issues before you, based solely upon the evidence which is presented.