

LICENSING AND SAFETY COMMITTEE

31 AUGUST 2016

DELEGATIONS TO THE CHIEF LEGAL OFFICER - LICENSING ACT 2003

Report from: Perry Holmes, Chief Legal Officer/Monitoring Officer

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Summary

The purpose of this report is to seek the Committee's agreement to the delegation of specific functions to the Chief Legal Officer concerning the procedure for hearings held under the provisions of the Licensing Act 2003.

1. Budget and Policy Framework

1.1 Chapter 3, Part 2, paragraphs 8 and 8 (B) of the Council's Constitution specifies the functions of the Licensing and Safety Committee and the Licensing Hearing Panel respectively. Part 4 sets out the Employee Delegation Scheme and the delegations to the Chief Legal Officer in relation to licensing matters are listed in paragraph 6.4.

2. Background

2.1 The Licensing and Safety Committee is responsible for functions relating to the Licensing Act 2003 which it has delegated to the Licensing Hearing Panel or, where there are no objections or relevant representations, the Chief Legal Officer.

2.2 The Licensing Act 2003 (Hearings) Regulations 2005 set out the procedure to be followed for hearings held under the Act. The regulations include the circumstances in which a hearing must be held and when it may be dispensed with; the prescribed time limits and when these may be extended; and the circumstances where a hearing may be adjourned or re-arranged.

2.3 As the powers set out in the regulations do not always accord directly with the rules governing Council committee meetings, there is a need to provide some clarity about the procedure to be followed. This report seeks to provide this clarity by proposing specific delegations to the Chief Legal Officer for inclusion in the Employee Delegation Scheme.

3. Delegations to the Chief Legal Officer

3.1 Attached at Appendix 1 is an extract from the Employee Delegation Scheme as set out in Part 4 of the Council's Constitution, amended to include the proposed additional delegations to the Chief Legal Officer relating to the Licensing Act 2003 (Hearings) Regulations 2015. These proposed additional delegations to the Chief Legal Officer are as follows:

3.2. Regulation 9 – Right to dispense with a hearing if all parties agree.

3.2.1 Where a hearing would normally be held, such a hearing can be avoided if all parties concerned agree that a hearing would be unnecessary. It is proposed that the Chief Legal Officer be delegated the authority to give notice that a hearing has been dispensed with in these circumstances. The Chief Legal Officer would then determine the matter instead of a Licensing Hearing Panel.

3.2.2 If an agenda for the Licensing Hearing Panel meeting has already been despatched, the Chief Legal Officer will consult the members of the Panel before dispensing with the hearing.

3.3 Regulations 11 and 12 – Power to extend time limits and adjourn/re-arrange hearings.

3.3.1 The Local Authority may extend the time limits in relation to a hearing where it considers this to be necessary in the public interest. It is proposed that the Chief Legal Officer be delegated the authority to extend the time limits provided for within the regulations if he or she considers this to be in the public interest based on the individual facts of the case. One example would be where a significant amount of late information is submitted and sufficient time is needed for parties to the hearing to consider it.

3.3.2 If the effect of extending a time scale would require a meeting of a Licensing Hearing Panel to be moved after five clear days notice of the meeting has been given and an agenda has been despatched, the Chief Legal Officer will consult the members of the Panel before extending the time limit. In this case, the meeting of the Licensing Hearing Panel would still be opened at the appointed time, date and venue, and the Panel would be required to agree to adjourn the meeting to a specified future date or dates. This is to ensure openness and transparency in the decision making process.

3.4 Regulation 19 – Supporting information

3.4.1 The Local Authority may disregard any information provided by a party to the hearing which is not relevant. It is proposed that the Chief Legal Officer be delegated the authority to determine whether such information is irrelevant. Where the Chief Legal Officer proposes to disregard any information the submitting party shall be given an opportunity to indicate why they believe the information to be relevant to the hearing before a final decision is made.

3.5 Regulations 31 to 33 – Irregularities

3.5.1 Any irregularity which arises as a result of a failure to comply with the Act or related guidance prior to making a determination will not automatically render

the proceedings void. However, the Local Authority should take any steps it thinks fit to cure the irregularity before reaching its determination. It is proposed that the Chief Legal Officer be delegated the authority to take such steps.

- 3.5.2 If an agenda for the Licensing Hearing Panel meeting has already been despatched, the Chief Legal Officer will consult with the Chairman or Vice Chairman of the Licensing and Safety Committee before taking action to resolve the irregularity.

4. Risk management

- 4.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.
- 4.2 There is a risk that the Council may receive a legal challenge if the processes put in place for licensing hearings do not comply with the relevant legislation.

5. Financial and legal implications

- 5.1 There are no financial implications arising from this report.
- 5.2 Hearings held under the Licensing Act 2003 must follow the procedure set out in the Licensing Act 2003 (Hearings) Regulations 2005.

6. Recommendation

- 6.1 That the Licensing and Safety Committee delegates to the Chief Legal Officer its functions in relation to the procedure for hearings held under the Licensing Act 2003, as set out in Appendix 1.
- 6.2 That the Licensing and Safety Committee recommends that the Monitoring Officer, who has delegated authority to make minor changes to the Constitution, amends the Employee Scheme of Delegation accordingly.

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Appendices

Appendix 1 – Proposed Amendments to the Employee Delegation Scheme.

Background papers

None

PROPOSED AMENDMENTS TO THE EMPLOYEE DELEGATION SCHEME**(amendments shown in bold)**

Description of delegation to the Chief Legal Officer	Responsibility delegated from
<p>6.14 Licensing:</p> <ul style="list-style-type: none"> • Except where a specific Council side responsibility, to manage all licensing and registration functions of the Council including the licensing and registration of pleasure boats, hackney carriage and private hire, sex establishments, street and house to house collections, motor salvage, scrap metal dealers, street trading consents and such other services as may be authorised. 	Council Leader/Cabinet
<ul style="list-style-type: none"> (i) With regard to Licensing Act 2003 matters, to determine: (ii) An application for a personal licence, if no objection made; (iii) An application for a premises licence/club premises certificate, if no relevant representation made; (iv) An application for a provisional statement, if no relevant representation made; (v) An application to vary a premises licence/club premises certificate, if no relevant representation made; (vi) An application to vary a designated premises supervisor in all cases other than where there is a police objection; (vii) A request to be removed as a designated premises supervisor; (viii) An application for transfer of premises licence in all cases other than where there is a police objection; (ix) Applications for interim authorities in all cases other than where there is a police objection; (x) A decision on whether a complaint is irrelevant, frivolous, vexatious, etc. <p>Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003 (Council 9 December 2004 & 22 November 2007).</p>	Council

Description of delegation to the Chief Legal Officer	Responsibility delegated from
<ul style="list-style-type: none"> • With regard to the Licensing Act 2003 (Hearings) Regulations 2005 on matters to be referred to a Licensing Hearing Panel for determination: <ul style="list-style-type: none"> (i) Subject to (ii), to agree to dispense with a hearing, and give notice to that effect to the parties, if all persons required by the Act have given notice that they agree that such a hearing is unnecessary. (ii) If the agenda for a meeting of a Licensing Hearing Panel to consider the matter has been despatched, to consult Panel members before agreeing to dispense with the hearing and cancelling the meeting. (iii) Subject to (i) and (ii), to determine the matter under the Act. (iv) Subject to (v), to extend the time limits provided within these Regulations, and give notice to the parties stating the period of the extension and the reasons for it, where this is considered to be necessary in the public interest. (v) If the agenda for a meeting of a Licensing Hearing Panel to consider the matter has been despatched and extending a time limit would require the Panel to meet on an additional specified date or dates, to consult Panel members before agreeing to such an extension. (vi) Subject to Notes 1 and 2, to agree to adjourn (or postpone) a hearing to a specified date or arrange for a hearing to be held on specified additional dates where this is considered necessary for the consideration of any representations or notice made by a party. (vii) To notify forthwith the parties of the date(s), time(s) and place(s) of any reconvened or additional meetings for the hearing. <p>Note 1: Once the agenda for a meeting of a Licensing Hearing Panel has been despatched, unless the hearing is cancelled because it is no longer required, the meeting must commence at the specified time, date and venue, so that the Panel may determine to</p>	<p>Council/ Licensing and Safety Committee</p>

Description of delegation to the Chief Legal Officer	Responsibility delegated from
<p>adjourn the meeting to a later specified date or dates.</p> <p>Note 2: Extending a time limit or adjourning/re-arranging a hearing to a later date or dates may not have the effect that: (a) an application will be treated as granted or rejected under paragraph 4(4), 7(3), 16(4), 19(3) or 26(4) of Schedule 8 of the Act; or (b) there would be a failure to determine a review of a premises licence following a closure order under section 167 of the Act within the specified period .</p> <p>(viii) To disregard any information given by a party to the hearing or any person given permission to attend, which is not relevant to their application, representations or notice, and the promotion of the licensing objectives, having first given the submitting party an opportunity to indicate why they believe the information to be relevant to the hearing.</p> <p>(ix) Subject to (x), to take such steps he or she thinks fit to cure any irregularity resulting from a failure to comply with any provision of the Regulations before a determination is made, if he or she considers that any person may have been prejudiced as a result of the irregularity.</p> <p>(x) If the agenda for a meeting of a Licensing Hearing Panel to consider the matter has been despatched, to consult the Chairman or Vice-Chairman of the Licensing and Safety Committee before taking steps to cure the irregularity.</p> <p>(xi) To correct any clerical mistakes in any document recording a determination or errors arising in such document from an accidental slip or omission.</p>	