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Meeting	Licensing Committee
Date	11 July 2012
<b>Subject</b>	<b>Delegation of Powers – Licensing Act 2003</b>
Report of	Interim Director for Environment, Planning and Regeneration
Summary	To seek to approve and adopt the delegation to officers for decisions in respect of Minor Variations and also to designate an officer to act on the Council's behalf as a responsible authority under the Licensing Act 2003, as amended by the Police Reform and Social Responsibility Act 2011

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Officer Contributors	Emma Phasey, Trading Standards and Licensing Manager
Status (public or exempt)	Public
Wards Affected	All wards
Key Decision	N/A
Reason for urgency / exemption from call-in	N/A
Function of	Council
Enclosures	Appendix A - Police Reform and Social Responsibility Act 2011 Appendix B – Table of Delegations
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## **1. RECOMMENDATIONS**

- 1.1 That the committee delegate authority to the Senior Licensing Officer to act on the Council's behalf as a responsible authority under the Licensing Act 2003 (as amended).**
- 1.2 That the Committee approve and adopt the delegation to officers for decisions in respect of Minor Variations as provided in section 41A – 41D of the Licensing Act 2003**
- 1.3 That the Committee approve and adopt the revised scheme of delegation in appendix B.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Council decision of the 14/12/2010 to adopt the current Licensing Policy and the scheme of delegation that was attached to it.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The objectives of the policy as determined by the Licensing Act 2003 are the prevention of crime and disorder, public nuisance, protecting children from harm and public safety, these contribute to the corporate priority of 'A successful London suburb' as they are meeting the strategic objective to "ensure that our town centres are vibrant places where business can thrive" thereby helping ensure that the Borough is a prosperous place where people want to live and ensuring it remains clean and safe.
- 3.2 The delegation of these powers will help support objectives contained within the corporate plan in relation to a "successful London suburb" in particular ensuring we maintain an efficient council with services designed to meet the changing needs of residents

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Failure to review and adopt the delegations would mean that these roles would have to be undertaken by the committee rather than the licensing department which would mean the Council, as the licensing authority, would find it exceptionally difficult to perform these licensing functions as each minor variation application would need a full licensing sub committee to determine the decision. Failure to adopt correctly the responsible authority delegation could lead to a conflict of interest between the decision maker and the responsible authority allowing for potential legal challenge.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 All decisions will be taken objectively and each application considered on its merits. All decisions must be taken in line with the Licensing Act 2003, the

statutory guidance and the London Borough of Barnet's licensing policy. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits, regardless of the race, colour, nationality, ethnic origin, sex, marital status, disability or age of the individuals involved.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 There are no specific financial implications. There are no adverse costs associated with adoption of the scheme of delegation. However not to agree to a scheme of delegation would create great difficulties for the licensing authority to carry out its functions within statutory time periods and thereby run the risk of appeals to the magistrate's court and possible cost orders.

## **7. LEGAL ISSUES**

- 7.1 All local authorities need to put in place appropriate arrangements to enable them to fulfil their obligations under the Licensing Act 2003 (as amended) as a responsible authority. Ensuring an appropriate separation of responsibilities between the officer advising the licensing committee or sub-committee in its capacity as the licensing authority, and the officer acting for the Council as the responsible authority, decisions taken by the Licensing and Appeals Sub-Committee should not be open to challenge on grounds of there having been a conflict of interest.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution Part 3, Section 2, details the functions of the Licensing Committee including "All functions under the Licensing Act 2003"

## **9. BACKGROUND INFORMATION**

### **Licensing as a responsible authority**

- 9.1 There have been a number of changes to licensing legislation introduced by the Police Reform and Social Responsibility Act 2011. One of the changes, which has now taken effect, was to give licensing authorities greater powers and flexibility by making them responsible authorities in their own right under the Licensing Act 2003.
- 9.2 As a responsible authority the Council, as the licensing authority, may now submit representations and also seek a review of an existing licence without having to wait for the police or another responsible authority to make representations.
- 9.3 To enable the Council to fulfil this role as a responsible authority, the Committee is asked to delegate authority to an officer to act on its behalf.
- 9.4 The Committee should note that guidance issued by the Home Office states that licensing authorities are not expected to act as responsible authorities on behalf of other responsible authorities or other parties (for example, local

residents, local councillors or community groups) Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so.

- 9.5 However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority. The preliminary guidance issued by the Home Office on the Licensing Act 2003 ( as amended ) in so far as it refers to licensing authorities acting as responsible authorities is attached to this report as appendix A.
- 9.6 To ensure procedural fairness and eliminate conflicts of interest, the Council needs to ensure there is a separation of responsibilities within the Authority. It is therefore suggested the clearest way to separate the responsibilities is to delegate the power of responsible authority to the Senior Licensing Officer.
- 9.7 Currently all applications come into the department to be allocated by the Senior Licensing Officer. The senior officer will, upon receipt and prior to commencing any work on an application, assess as to whether they may need to utilise their responsible authority function. If they believe they will need to they will pass the unallocated application to the Trading Standards and Licensing Manager to allocate the application to another officer within the department. The Trading Standards and Licensing Manager will then act as line manager to this officer in respect of this application for the duration of the application process, thus maintaining a clear separation of responsibility and avoiding a conflict of interest.

#### **Minor variation**

- 9.8 The Licensing Act 2003 was amended to include a new Minor Variations procedure. This was created to speed up uncontested variations and to reduce costs to applicants and Licensing Authorities. A minor variation can only be used where the variations proposed would not have an adverse effect upon the promotion of the four licensing objectives set out in the 2003 Act (the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm). The amendments are inserted into the Licensing Act 2003, as sections 41A, 41B, 41C and 41D.
- 9.9 The Minor Variation procedure requires that applications are made to the licensing authority on a prescribed Minor Variations form with a fee of £89. This is less than the cost of a full variation.
- 9.10 The application must be displayed by the applicant at the premises but the application does not need to be advertised in a local newspaper. The application is only served on the Licensing Authority. Responsible authorities are only involved when the Licensing Officer feels it is appropriate.
- 9.11 Interested Parties i.e. local residents/businesses can make representations based on the licensing objectives. But representations from Interested Parties to Minor Variations do not trigger the Licensing Authority holding a hearing, instead mean the Licensing Officer must take any representations into account when arriving at their decision. The applicant can propose voluntary conditions in relation to the representation.

- 9.12 A minor variation application must be rejected, which:
- substantially varies the premises layout,
  - changes the designated premises supervisor,
  - adds the supply of alcohol as an activity authorised by the licence,
  - authorises the supply of alcohol at any time between 11pm and 7am
  - increases the amount of time during which alcohol may be sold by retail or supplied, or
  - allows supply of alcohol to be made or authorised by a management committee alcohol from community premises instead of a designated premises supervisor.

Should at any time in the minor variation process an officer believe that the decision to grant will have an adverse effect on the licensing objectives then the officer can refuse the application on this grounds. However the applicant can then apply for a full variation and the £89 fee will be deducted from the cost of the full variation. This allows an officer to defer the decision making in these applications to the sub committee.

- 9.13 Effectively, the Government has passed the ability to vary Premises Licences in limited circumstances to Licensing Officers, provided the variation will not adversely effect the promotion of any of the licensing objectives. If the variation will have an adverse effect on the promotion of any of the licensing objectives, the Officer must refuse the application.
- 9.14 In accordance with section 7(1) of the Act, the functions of the Licensing Authority are to be taken and carried out by its Licensing Committee. The Licensing Committee may delegate these functions to sub-committees or in appropriate cases, to officers supporting the licensing authority (section 10 of the Act). The Licensing Authority (the Council) cannot make this delegation on behalf of the Licensing Committee. The Licensing Committee must formally delegate its powers to sub-committees or officers.
- 9.14 Under the current scheme of delegations in respect of the Licensing Act 2003 officers have no authority to refuse an application and when representations have been received applications are determined by the Licensing Sub Committee. Government recommends that decisions on minor variations should be delegated to licensing officers.. Members are requested therefore to consider delegating the power to determine such applications to the Licensing team and amending the Delegation of Licensing Function.
- 9.15 In the Guidance, the Secretary of State recommended a model scheme of delegation that this Authority has adopted in its current Statement of Licensing Policy. Appendix B shows the current scheme of delegation with the proposed delegations (in red) that will need to be added to the scheme of delegation.

## **APPENDIX A**

### **1. Police Reform and Social Responsibility Act 2011**

#### **Licensing authorities as responsible authorities (Home office Guidance)**

**Preliminary guidance: April 2012**

#### **Introduction**

The content of this document is provisional, and its publication at this stage is intended to assist licensing authorities in their preparation for changes to the Licensing Act 2003 being introduced by Part 2 of the Police and Social Responsibility Act 2011. The content of this document broadly reflects, but is not the statutory guidance (or a revised version of it) issued by the Secretary of State under section 182 of the Licensing Act 2003; as such, there should be no reliance upon it for any purpose. Revised statutory guidance will be laid in Parliament and available on the Home Office website on 25 April 2012, the date on it will come into force.

#### **What is the policy aim?**

The Police Reform and Social Responsibility Act 2011 added licensing authorities to the list of responsible authorities under the Licensing Act 2003. The aim of this policy is to ensure that licensing authorities are better able to respond quickly to the concerns of local residents and businesses by taking actions they consider appropriate to tackle irresponsible premises without having to wait for representations from other responsible authorities.

#### **What are the key changes being made to the Licensing Act 2003?**

Following the commencement of this measure, licensing authorities will be empowered to fulfil the same functions as other responsible authorities under the Licensing Act 2003 including:

- Making relevant representations relating to new licence applications and licence variations
- Requesting that the licensing authority review an existing licence
- Making representations regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impact.

## **2. How should licensing authorities prepare for these changes?**

From 25 April 2012, licensing authorities will be included in the list of responsible authorities under the Licensing Act 2003. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes.

It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these bodies have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.

It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.

The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority. In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority.

The officer acting for responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. An *illustration* of how this delegation of responsibilities may occur is provided below. This is an example of how the process could work, but it is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.

*Demonstrating separation of roles - illustration:*

- At the outset, the licensing authority may decide to allocate the function of responsible authority to its corporate director, for example. The corporate director delegates this function to the licensing manager who allocates a principal licensing officer within the authority to exercise the function of responsible authority. The principal licensing officer is not involved in the application process but sets up a separate file to consider the application for the authority in its capacity as responsible authority, engaging with other responsible authorities where appropriate and determining whether the authority acting as a responsible authority wants to make a representation.
- A separate licensing officer will receive and process applications. Communication between the officer exercising the function of responsible authority and the officer processing the application should remain formal and consistent with how communications would be with other responsible authorities. At the hearing, to ensure that the public perception of a, and an actual, separation of roles, the officer acting as the responsible authority should be seated with the other responsible authorities.

For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.

**How should businesses prepare for these changes?**

Businesses should be aware of these forthcoming changes but do not need to do anything to prepare.

**How do these changes affect other parties?**

These changes should not affect other parties who will continue to fulfil their functions under the 2003 Act in the normal way. It is not expected that licensing authorities will normally act as responsible authorities upon request on behalf of other parties, such as local residents or community groups. These parties will be entitled to make relevant representations to the licensing authority in their own right if they have grounds to do so and it is reasonable that the licensing authority will expect these parties to make representations themselves where they are able to.

## APPENDIX B

### TABLE OF DELEGATED FUNCTIONS

<b>Matter to be dealt with</b>	<b>Licensing Committee</b>	<b>Licensing Sub-Committee</b>	<b>Officers</b>
Application for a personal licence		If a Police objection	
Application for a personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representations made
Application for a provisional statement		If a representation made	If no representations made
Application to vary premises licence/club premises certificate		If a representation made	If no representations made
Application to vary designated premises supervisor		If a Police objection	All other cases
Request to be removed designated premises supervisor		All cases	
Application for transfer of premises licence		If a Police Objection	All other cases
Application for Interim Authorities		If a Police Objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc			All cases

Decision to object when a local authority is a consultee and not a relevant authority considering an application		All cases	
Determination of a police representation to a temporary event notice		All cases	
Minor Variation (section 41A – 41D Licensing Act 2003)			All cases – Officers may consult with Responsible authorities
Fulfil the function of the responsible authority for the Licensing Authority under the Licensing Act 2003			All cases