

CHESHIRE EAST COUNCIL

Governance and Constitution Committee

Date of meeting: 30 September 2009
Report of: Monitoring Officer
Title: Delegation of Licensing Functions (Expedited Reviews)

1.0 Purpose of Report

- 1.1 To advise the Committee of a delegation of functions in relation to expedited reviews under the Licensing Act 2003 from the full Licensing Committee to the Licensing Sub-Committee and to seek approval for the resulting changes to the Constitution.

2.0 Recommendations

- 2.1 That the Committee
- (1) note the delegation of functions in relation to expedited reviews under sections 53A, 53B and 53C from the full Licensing Committee to the Licensing Sub-Committee; and
 - (2) recommend to Council the consequential changes to the Constitution as a result of the Licensing Committee's decision as set out within the report.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 Sections 53A, 53B and 53C of the Licensing Act 2003 make provision for the exercise by the Licensing Authority of functions in relation to 'expedited' or 'summary' review applications.
- 5.2 Section 10 of the Licensing Act 2003 provides that a licensing committee may arrange for the discharge of any functions exercisable by it by a sub-committee established by it. Section 10 also provides that the functions within sections 53A, 53B and 53C may not be discharged by an officer of the authority.

6.0 Risk Assessment

- 6.1 There is a risk of legal challenge to decisions taken by the licensing authority if a body taking such decisions does not have the correct delegation to do so. The decision requested seeks to ensure that the Constitution accurately reflects the delegation made by the Licensing Committee.

7.0 Background and Options

- 7.1 At its meeting on 22nd May 2009, the Licensing Committee resolved to delegate certain functions in relation to 'expedited' review applications (i.e. applications for the urgent review of a premises licence or club premises certificate) to the Licensing Sub-Committee established under the Licensing Act 2003. The relevant Licensing Committee minute is attached as Appendix 1.
- 7.2 A number of changes to the Constitution are required to reflect the Licensing Committee's decision, details of which are set out within Appendix 2.

8.0 Overview of Day One, Year One and Term One Issues

- 8.1 It is advantageous to make these changes as soon as possible to ensure that the Constitution accurately reflects the delegations made by the Licensing Committee.

9.0 Conclusions and Recommendation

- 9.1 The Committee is asked to approve the consequential changes to the Constitution as set out within Appendix 2 to the report.

For further information:

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Background Documents:

None

Minutes of the Licensing Committee Meeting - 22nd May 2009

Minute No. 54

Delegation of Functions (Expedited Reviews)

To consider the delegation of functions relating to expedited reviews under the Licensing Act 2003 from the Licensing Committee to the Licensing Sub-Committee.

Minutes:

In accordance with the Licensing Act 2003, certain functions falling under the remit of the Licensing Committee could be delegated to a Licensing Sub Committee; the power of referral to the parent committee being retained by the Chairman and Vice Chairman. On the 19 December 2008, the Committee had resolved to delegate the majority of its functions under the 2003 Act to a Sub-Committee of three Members; however two functions were omitted namely –

- a) Determination of interim steps pending summary review [Sections 53A(2) (a) or 53B]; and
- b) Any function under Section 53C [review following review notice] in a case where relevant representations [within the meaning of Section 53C(7)] have been made.

To ensure reviews could be dealt with expeditiously, the Committee was invited to delegate the above powers to the Sub Committee.

RESOLVED: That the following functions be delegated to the Licensing Sub Committee established under the Licensing Act 2003, subject to the proviso that the Chairman or Vice Chairman of the full Committee has the discretion to refer matters to the full Licensing Committee if the item is particular significant or controversial in nature -

- a) Determination of interim steps pending summary review [Sections 53A(2) (a) or 53B]; and
- b) Any function under Section 53C [review following review notice] in a case where relevant representations [within the meaning of Section 53C(7)] have been made.

APPENDIX 2

Consequential Changes to the Constitution

1. To insert the following into the table with the Licensing Committee's terms of reference at page 91 of the Constitution:

Function	Full Committee	Sub-Committee
Determination of interim steps pending summary review (sections 53A(2) (a) or 53B of the 2003 Act)		To determine interim steps
Functions under Section 53C (review following review notice) in a case where relevant representations have been made		To determine the review application

2. To insert the following into the Schedule of functions of the Licensing Committee at page 98 of the Constitution (and to renumber the succeeding paragraphs accordingly):

(xvi) *Sections 53A(2) (a) and 53B of the 2003 Act (determination of interim steps pending summary review);*

(xvii) *Section 53C (review following review notice)*

3. To insert the following into paragraph 25.4 at page 136, the exceptions to the delegation of functions to the Head of Safer and Stronger Communities (and to renumber the succeeding paragraphs accordingly):

25.4.5 The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.

4. To insert the following into the exceptions to the delegation to the Head of Safer and Stronger Communities at page 155 under Licensing Functions (Licensing Act 2003 and Gambling Act 2005):

(x) *The determination of interim steps pending summary review (under sections 53A(2) and 53B of the Licensing Act 2003) and determination of reviews (under section 53C of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.**