

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: LICENSING COMMITTEE**

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**Date of Meeting: 18<sup>th</sup> January 2009**

**Report of: Mrs K Khan, Solicitor**

**Subject/Title: Delegation of functions – ‘minor variations’ (under sections 41A-C and 86A-C of the Licensing Act 2003)**

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### **1.0 Report Summary**

- 1.1 The purpose of the report is to seek approval for changes to the licensing scheme of delegation to take account of the ‘minor variations’ process introduced by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009.

### **2.0 Recommendations**

- 2.1 The Licensing Committee is requested to delegate the power to determine applications under sections 41A-C and 86A-C of the Licensing Act 2003, including cases where relevant representations are received and not withdrawn, to the Head of Safer and Stronger Communities.

### **3.0 Reasons for Recommendations**

- 3.1 The scheme of delegation currently delegates licensing functions under the Licensing Act 2003 to the Head of Safer and Stronger Communities, subject to certain exceptions, including circumstances where relevant representations have been received and not withdrawn. The Secretary of State’s Guidance to licensing authorities (issued under section 182 of the 2003 Act) recommends that decisions on ‘minor variations’ should be delegated to licensing officers.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

### **6.0 Policy Implications including - Climate change - Health**

- 6.1 None.

**7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

7.1 None

**8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

8.1 None.

**9.0 Legal Implications (Authorised by the Borough Solicitor)**

9.1 The Licensing Act 2003 has been amended by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 which inserted sections 41A to 41C. These sections, which were commenced on 29<sup>th</sup> July 2009, make provision for a simplified process in relation to ‘minor variations.’

9.2 Paragraph 25.2.8 of Part III of the Constitution provides that subject to certain specified exceptions, the Head of Safer and Stronger Communities is authorised to discharge licensing functions under the Licensing Act 2003. Paragraph 25.4.2 provides an exception to the power in paragraph 25.2.8 and states “the determination of an application under the Licensing Act 2003 [or Gambling Act 2005] where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee.”

9.3 Paragraph 8.36 of the Guidance to local authorities issued by the Secretary of State under section 182 of the 2003 Act states: “On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.”

**10.0 Risk Management**

10.1 There is a risk of legal challenge to decisions taken by the licensing authority if the individual/body taking such decisions does not have the correct delegation to do so.

**11.0 Background and Options**

11.1 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 inserted new provisions into the Licensing Act 2003. These provisions establish procedures for the variation of premises licences and club premises certificates in cases where the licensing authority considers that none of the variations proposed could have an adverse effect on any of the licensing objectives. The purpose of the new provisions is 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 procedure.”<sup>1</sup>

11.2 An application may not be made under the new provisions if the effect of the variations proposed would be:

- to extend the period for which a premises licence has effect;
- to vary substantially the premises to which a premises licence or club premises certificate relates;
- to specify (in a premises licence) an individual as the premises supervisor;
- to authorise the sale or supply of alcohol or to increase the amount of time on any day during which alcohol may be sold by retail or otherwise supplied;
- to disapply the mandatory condition concerning the supervision of alcohol sales by a Personal Licence holder and the need for a DPS at community premises.

11.3 In determining an application the authority must consult such of the responsible authorities as it considers appropriate and must take into account any relevant representations by those authorities or an interested parties. The licensing authority must grant an application only if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of the licensing objectives. In any other case the authority must reject the application. Whilst licensing authorities must take any representations into account before making a decision there is no right to a hearing (as there is in relation to a ‘full’ variation application). As set out within paragraph 9.3 above the recommendation from central government is that decisions on minor variations should be delegated to officers.

11.4 The scheme of delegation currently delegates licensing functions under the Licensing Act 2003 to the Head of Safer and Stronger Communities, subject to certain exceptions, including circumstances where relevant representations have been received and not withdrawn. Whilst the Licensing Section has received a number of applications for minor variations, in each of these cases there have been no representations and therefore officers have had delegated authority to determine the applications. In accordance with the recommendation within the Secretary of State’s Guidance, this report requests the delegation to the Head of Safer and Stronger Communities of the power to determine applications for minor variations where representations are received and not withdrawn.

## **12.0 Overview of Year One and Term One Issues**

12.1 None.

## **13.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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<sup>1</sup> Explanatory note to the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009

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