

CHESHIRE EAST COUNCIL

Governance and Constitution Committee

Date of meeting: 19th February 2010
Report of: Borough Solicitor
Title: Delegation of Licensing Functions (Minor Variations)

1.0 Report Summary

- 1.1 The report advises the Committee of a delegation of functions in relation to 'minor variations' under the Licensing Act 2003 by the Licensing Committee to the Head of Safer and Stronger Communities, and seeks approval for the resulting changes to the Constitution.

2.0 Recommendations

- 2.1 The Committee is requested

(1) to note the delegation of functions in relation to minor variations under sections 41A-C and 86A-C of the Licensing Act 2003 by the Licensing Committee to the Head of Safer and Stronger Communities; and

(2) to recommend to Council that the Borough Solicitor be authorised to make such changes to the Constitution as he considers necessary in order to give effect to the wishes of the Council in this regard, including those changes set out within Appendix 2 to the report.

3.0 Reasons for Recommendations

- 3.1 The scheme of delegation as set out within the Council's Constitution 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subject to certain exceptions, including circumstances where relevant representations have been received and not withdrawn. In accordance with the Secretary of State's Guidance to licensing authorities, the Licensing Committee has resolved to delegate decisions in relation to 'minor variations' to licensing officers. The Governance and Constitution Committee is requested to recommend to Council the changes to the Constitution required as a result of the Licensing Committee's decision.

4.0 Wards Affected

- 4.1 N/A

5.0 Local Ward Members

- 5.1 N/A

**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 and 81A to 81C. These sections, which were commenced on 29th 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 has inserted new provisions into the Licensing Act 2003 which establish a simplified process in relation to 'minor variations.'

11.2 A variation to a Premises Licence or Club Premises Certificate would not be considered as 'minor' 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 is required to consult such of the responsible authorities as it considers appropriate and must take into account any relevant representations by those authorities or any 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).

11.4 At its meeting on 18th January 2010, the Licensing Committee resolved to delegate to the Head of Safer and Stronger Communities the function of determining applications for 'minor variations' made under sections 41A-C and 86A-C of the Licensing Act 2003. The relevant Licensing Committee minute is attached as Appendix 1.

11.5 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.

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

12.1 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.

13.0 Access to Information

For further information:

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Background Documents:

None

Minutes of the Licensing Committee Meeting – 18th January 2010

Minute No. 81

Delegation of Functions - Minor Variations (under sections 41A-C and 86A-C of the Licensing Act 2003)

To consider proposed changes to the licensing scheme of delegation.

Minutes:

The Committee considered a report outlining 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.

RESOLVED

That the Licensing Committee 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.

Consequential Changes to the Constitution

1. To insert the wording below in italics at the start of paragraph 25.4.2 at page 136, the exceptions to the delegation of functions to the Head of Safer and Stronger Communities:

25.4.2 *With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003*, the determination applications under the Licensing Act 2003 and Gambling Act 2005 where relevant representations have been received and not withdrawn shall be referred to the Licensing Sub-Committee.

2. To insert the wording below in italics at the start of paragraph (ii) to the exceptions to the delegation of functions to the Head of Safer and Stronger Communities at page 161 under Licensing Functions (Licensing Act 2003 and Gambling Act 2005):

(ii) *With the exception of applications for minor variations under sections 41A-C or 86A-C of the Licensing Act 2003*, the determination applications under the Licensing Act 2003 and Gambling Act 2005 where relevant representations have been received and not withdrawn shall be referred to the Licensing Sub-Committee.