

**REPORT OF THE CONSTITUTION REVIEW WORKING GROUP  
No. 5/2009-10**

**COUNCIL 18 JANUARY 2010**

Chair:  
Councillor Kober

**INTRODUCTION**

- 1.1 This report covers a report considered by the Constitution Review Working Group at our meeting on 1 December 2009.

**ITEM FOR DECISION**

**2. AMENDMENTS TO THE SCHEME OF DELEGATION TO OFFICERS  
- LICENSING AND STANDARDS BODIES**

**Licensing Committee Delegations – Minor Variations Procedure**

- 2.1 We were advised about changes to the Licensing Act 2003 that are intended to reduce the burden of regulation by introducing a quicker and simpler “minor variations” procedures for those variations that are not likely to be controversial. The new legislation came into effect on 1 August 2009. The Council is now being asked to agree amendments to the relevant officers’ delegated powers in order to facilitate the effective operation of the new “minor variations” procedures.
- 2.2 We were reminded that, under the Licensing Act 2003, anyone wishing to sell alcohol by retail, provide late night refreshment or provide regulated entertainment, must apply to the Council for a premises licence. If there is any objection from a resident or business in the vicinity or from a “responsible authority”, such as the Police, the application has to be heard by a 3 Member Licensing Sub-Committee. If there are no objections the application is automatically granted.
- 2.3 When the licensable activities take place within a qualifying club, rather than publicly on a commercial basis, then there must be an application for a “club premises certificate”, rather than a “premises licence”, but essentially similar rules and procedures will still apply.
- 2.4 We noted that under the original legislation almost all variations to a premises licence had to be the subject of a full application procedure that would result in a Sub-Committee hearing in the event of an objection. After a public consultation last year, the Government has now introduced a quicker and simpler “minor variations” process for those variations that are not likely to be controversial. The fee for a “minor variation” application is now fixed at £89 rather than the average fee of £190 for the full application.

- 2.5 A “minor variation” is defined as one that will not impact adversely on the statutory licensing objectives. These are: (i) the prevention of crime and disorder (ii) public safety (iii) the prevention of public nuisance, and (iv) the protection of children from harm.
- 2.6 An application cannot be treated as a “minor variation” if it would: (i) extend the period for which the premises licence has effect, (ii) vary substantially the licensed premises, (iii) add or alter a designated premises supervisor, (iv) add the sale/supply of alcohol as a licensed activity, (v) increase the amount of time alcohol could be sold/supplied or (vi) authorise the sale/supply of alcohol at night between 23.00 and 7.00. Most “minor variations” are likely to be applications to vary existing licence conditions which do not fall within (i) to (vi) above.
- 2.7 We were informed that under the “minor variation” procedure the applicant will be required to advertise the proposed change publicly by notice outside the licensed premises for only 2 weeks as compared to 4 weeks for the full application. Local residents/traders and the “responsible authorities” will have the opportunity to make written objections within the 2 week period and any objections made must be taken into account before a decision is taken to grant or refuse the application.
- 2.8 This decision to grant or refuse must be made within 3 weeks of receipt of the application or the application is deemed to be refused. Unlike the full application procedure, there is no requirement for a hearing involving the applicant and objectors before a Member Sub-Committee. The applicant under the “minor variation” procedure has no right of appeal to the Magistrates against a refusal which would have existed under the full application procedure.
- 2.9 We were advised that, while there is no legal requirement for Councils to delegate decisions on “minor variations” applications to officers, the Government does assume that most Councils will wish to do so in order to meet the very tight timetable for a decision under this procedure.
- 2.10 We noted that the introduction of the new “minor variation” procedure was reported to a special meeting of the Licensing Committee on 3 August 2009. The Committee agreed to delegate powers relating to applications for “minor variations” to the Head of Enforcement Services. The Committee requested full Council to agree the changes shown in Appendix 1 to this report and to adopt them as amendments to the Office Scheme of Delegation in Appendix E to the Council’s Constitution.

## **Standards Committee Delegations – Appointment of Sub-Committee Membership**

- 2.11 As a wholly separate issue, we were asked to approve a correction to the officer scheme of delegation which would restore the delegated power, previously granted to the Head of Local Democracy and Member Services, to appoint the membership of Sub-Committees of the Standards Committee.
- 2.12 We were advised that the current delegated powers granted to the Head of Local Democracy and Member Services are as shown at Appendix 2 to this report. The final sub-paragraph (m), which is in bold italics and underlined, is not included in the current Scheme of Delegation to Officers last revised and adopted by full Council on 30 March 2009. However, this sub-paragraph (m) was previously agreed by the Standards Committee and adopted by full Council on 14 July 2008. The omission of sub-paragraph (m) from the Scheme in March 2009 was an unfortunate oversight which Members are now being recommended to correct.
- 2.13 We noted that the Monitoring Officer reported to the Standards Committee meeting on 10 June 2008 concerning the introduction of the “local filter” arrangements for handling complaints under the Members’ Code of Conduct. Under the Local Government and Public Involvement in Health Act 2007 this became the responsibility of the local Standards Committee rather than the Standards Board for England from 8 May 2008. Each Standards Committee was required to set up Assessment Sub-Committees and Review Sub-Committees to decide which complaints merited formal investigation by the Monitoring Officer. Those complaints which involve a finding of failure to comply with the Code result in a formal hearing which can be undertaken by the full Standards Committee but are usually determined by a Hearing Sub-Committee.
- 2.14 The membership of the main Standards Committee is appointed by Annual Council and this includes the 5 independent members. However the Sub-Committees mentioned above have an ad-hoc membership which varies according to timing and Member availability. The Standards Committee can appoint a Sub-Committee if there is a convenient Committee meeting in advance of the proposed Sub-Committee meeting. But often this will be inconvenient.
- 2.15 We were advised that the only other valid mechanism for making appointments to Sub-Committees is delegation to an officer since the Chair of the Committee has no power to take formal decisions alone. The appropriate officer is the Head of Local Democracy and Member Services who has delegated powers to appoint to other Member bodies.

- 2.16 Each Sub-Committee has a membership of 5, which will include at least 2 of the independent members, one of whom must Chair the meeting. There will be at least one majority group Councillor and one minority group Councillor. We were assured that when exercising the proposed delegated power, the Head of Local Democracy and Member Services would observe the above principles and would consult both the Chair of the Standards Committee and the Monitoring Officer. Every effort would be made to ensure that all Members of the Committee have the opportunity to participate, in turn, in Sub-Committee business.
- 2.17 We noted that in most cases the identity of the Members serving on a Standards Sub-Committee would not be contentious. But in a few instances, where there might be suggestions of possible bias affecting a Standards Committee Member or Members, we were assured that officers would wish to refer the decision on the appointment of the membership to the Standards Committee itself rather than relying upon the delegation.

## **WE RECOMMEND**

That Members agree the changes to the scheme of delegation to officers set out in Appendices 1 and 2 to this report and resolve to adopt them amendments to Appendix E to the Council's Constitution

(The text of this Appendix is already part of the Officer Scheme of Delegation for the Directorate of Urban Environment. In order to grant new delegated powers to determine minor variation applications, the text recommended to be added is shown in bold italics and underlined. N.B. the reference to “Appendix 2” in the “box” at the top of the Schedule below is a reference to Appendix 2 to the Scheme of Delegation for the Directorate of Urban Environment which is not reproduced in this report as there will be no changes to it.)

## APPENDIX E to the Council’s Constitution – Scheme of Delegation to Officers

### Section 4 – Delegations to the Directorate of Urban Environment

#### Schedule of statutory delegations (extract relating to the Licensing Act 2003)

<b>Licensing Act 2003</b>	<b>Limited Delegation:</b> The delegations to officers under this Act exclude all the matters reserved by law to the Licensing Committee and Licensing Sub-Committees as set out in Appendix 2 below	
Section 5	Power to consult about the Statement of Licensing Policy or revisions but excluding the final adoption of the Statement of Licensing Policy or revisions to it	H-Enf
Section 8 and Schedule 3	Duties in relation to the register of prescribed licensing information	H-Enf
Sections 13, 69, 108 and 179	Power to appoint authorised persons or officers for purposes of this Act	AD-FS H-Enf - only
Part 3 and Schedule 5 Part 1	Powers in relation to Premises Licences including applications for, and the grant, duration, variation, updating, transfer and review of, licences and provisional statements, interim authority notices and inspection of premises. <b><u>This includes powers in relation to applications for minor variations of premises licences.</u></b> Powers in relation to the conduct of appeals and the enforcement of these provisions	H-Enf
Part 4 and Schedule 5 Part 2	Powers in relation to Club Premises Certificates including applications for, and determinations relating to, the grant, duration, variation, updating, withdrawal and review of,	H-Enf

	certificates. <b><i>This includes powers in relation to applications for minor variations of premises club premises certificates.</i></b> Powers in relation to the conduct of appeals and the enforcement of these provisions	
Part 5 and Schedule 5 Part 3	Powers in relation to Permitted Temporary Activities including Temporary Event Notices and objections, modifications, rights of entry and copies. Powers in relation to the conduct of appeals and the enforcement of these provisions	<b>H-Enf</b>
Part 6 and Schedule 5 Part 3	Powers in relation to Personal Licences, Including applications for, and the grant and renewal of, licences including notification of changes and convictions. Powers in relation to the conduct of appeals and the enforcement of these provisions	<b>H-Enf</b>
Parts 7, 8 & 9 and all Regulations made under the Licensing Act 2003	Powers in relation to offences, closure of premises and miscellaneous and supplementary matters, including special events and exemptions, and all procedural or operational matters excluding final decisions on applications <b><i>requiring hearings</i></b> which are reserved to Members.	<b>H-Enf</b>

## APPENDIX 2

(The text of this Appendix is already part of the Officer Scheme of Delegation for Proper Officer and Specified Officer Functions. The text proposed to be added, in order to grant delegated powers to appoint the membership of Standards Sub-Committees, is shown at sub-paragraph (m) in bold italics and underlined. Those delegations marked with an asterisk \* indicate that consultation with a Member is required before exercise of the power.)

## **APPENDIX E to the Council's Constitution – Scheme of Delegation to Officers**

### **Section 9 – Proper Officer and Specified Officer Functions**

#### **1.4 Head of Local Democracy and Member Services**

The Head of Local Democracy and Member Services is appointed Proper Officer and specified officer in relation to:

- (a) Those proper officer functions relating to access to information not delegated to the Head of Legal Services above under Part VA and Schedule 12A of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000-2006;
- (b) Section 191 of the Local Government Act 1972 (providing information to assist the Ordnance Survey);
- (c) Sections 225 and 229 and Schedule 14, Part II, Paragraph 25 (7) of the Local Government Act 1972, and Section 41(1) of the Local Government (Miscellaneous Provisions) Act 1976 (custody of, and certifying, documents);
- (d) Section 8 of the Representation of the People Act 1983 (the officer who will act as Deputy to the Electoral Registration Officer in the event of the latter's incapacity or a vacancy arising);
- (e) Section 2(2) of the Local Government and Housing Act 1989 (Maintenance of the list of politically restricted posts);

In addition the Head of Local Democracy and Member Services is empowered:

- (f) To determine the appointment of outside members to the “pool” from which the membership of School Admissions Appeals Panels and School Exclusions Appeals Panels are drawn;
- (g) To determine the membership of individual Appeals Panels (under (f) above) and the selection of Chairs of these Panels;
- (h) To make appointments of representative School Governors as notified by the Cabinet Member for Children and Young People or the Opposition Spokesperson, as appropriate; \*
- (i) To make appointments to vacancies on the Standing Advisory Council on Religious Education and Conference Committees;
- (j) To make appointments to the membership of Special Licensing Sub-Committees from among the Members of the Licensing Committee; \*
- (k) To appoint an additional Member or Members to any scheduled meeting of a Licensing Sub-Committee from among the Members of the Licensing Committee whenever the appointment of a substitute Member under the Committee Procedure Rules (Part 4, Section B) would be impracticable and the meeting would otherwise be inquorate; \*
- (l) The exercise of the delegated powers in (j) and (k) above shall be, so far as practicable, in consultation with the Chair of the Licensing Committee and the Chief Whip of each Group and with a view to achieving political balance in the membership of Licensing Committees. \*
- (m) **To appoint the membership of Assessment Sub-Committees, Review Sub-Committees and hearing Sub-Committees in accordance with the relevant Regulations (S.I. 2008/1085 and any amendment) and the decisions of the Standards Committee and in consultation with the Chair of the Standards Committee and the Monitoring Officer. \***