

FOR: REGULATORY AND LICENSING COMMITTEE

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Agenda Item: 7

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**THE POLICE REFORM & SOCIAL RESPONSIBILITY ACT 2011 AND
LICENSING ACT 2003 – DELEGATED AUTHORITY**

1. PURPOSE OF REPORT

- 1.1 To determine appropriate delegated authority for the specific function of Responsible Authority under the Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011.

2. BACKGROUND

- 2.1 Members will recall that at the previous Special meeting of the Committee on the 17th May 2012 you considered the Police Reform and Social Responsibility Act 2011 (2011 Act) and its effects upon the Licensing Act 2003.
- 2.2 As part of the changes resulting from this act, Licensing authorities are now, for the first time, included in the list of “Responsible Authorities” in their own right along with:
- the chief officer of police;
 - the local fire and rescue authority;
 - the local enforcement agency for the Health and Safety at Work etc Act 1974 etc
(see Chapter 8);
 - the local authority with responsibility for environmental health;
 - the local planning authority;
 - a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm;

- Primary Care Trusts (PCTs) and Local Health Boards (in Wales); and
- the local weights and measures authority (trading standards).

- 2.3 The revised Statutory Guidance provides detailed advice on this matter (para 9.11 to 9.19) and set out below (in italics) is an extract from this document with the key matters for consideration underlined.
- 2.4 *Responsible authorities under the 2003 Act are automatically notified of all new applications. Whilst all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.*
- 2.5 *A similar framework already exists in the Gambling Act 2005. The Licensing Act 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.*
- 2.6 *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 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.*
- 2.7 *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.*
- 2.8 *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.*
- 2.9 *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.

- 2.10 *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 the 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.*
- 2.11 *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. 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.*
- 2.12 *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.*

3. MATTER FOR CONSIDERATION

- 3.1 As is detailed above, the matter for consideration is that of the new role of the Local Authority as a “Responsible Authority” under the Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011 and delegation to an Officer to ensure proper separation is achieved by allocating distinct functions (i.e. those of Licensing Authority and Responsible Authority) to different officials within the authority.
- 3.2 Currently the Officers delegated to deal with such matters are the Electoral Services Manager as the Licensing Authority and Environmental Health Manager as the person with responsibility for Environmental Health as a Responsible Authority.
- 3.3 To address the new area of responsibility of the Council where it is as a licensing authority, now also acting as responsible authority and to ensure a separation of responsibilities it is recommended that delegated authority be granted to Strategic Director - Democratic and Legal Services for this specific purpose as they are not directly involved in the licensing decision process.
- 3.4 It is anticipated that this delegated authority would be used infrequently as in most cases other responsible authorities are more likely to make representation on applications in the event.

4. Recommendation

- 4.1 Members are requested to note the contents of the report and advice contained.
- 4.2 That delegated authority be granted to the Strategic Director - Democratic and Legal Services in respect of the specific function of Responsible Authority within the Council for the purposes of the Licensing Act 2003 as amended by the Police Reform and Social Responsibility Act 2011.

5. Financial Implications

- 5.1 None

6. Strategic Plan Implications

- 6.1 Reducing disturbance and Antisocial behaviours through our powers under the Licensing Act is a key strategic action.

7. Sustainability Issues

- 7.1 Services for licensing and regulatory functions contribute to the well-being and safety of our residents and towards protecting and providing a high quality and sustainable environment for this and future generations.

8. Human Rights Issues

- 8.1 The impact of entertainment related activities and the operating of licensed premises all have Human Rights implications both in terms of nuisance and via the regulatory control of business effected through licence conditions

9. Crime and Community Safety Issues

- 9.1 Possible impact on community safety resulting from these proposals by reason of its deregulatory purposes.

10. Risk Management Issues

- 10.1 Ensuring appropriate delegation of these matters will minimise any risk of legal challenge to any licensing decision made.

Background Documents:

Home Office Statutory Guidance issued under Section 182 (4) of the Licensing Act 2003