

LICENSING COMMITTEE – 19TH MAY 2010

LICENSING ACT 2003: INTERESTED PARTIES

Agenda Item 9

Portfolio Area: Licensing
Report Presented by: Rachel Crouch

Background Papers: DCMS – Revised guidance on Licensing Act 2003 (2010)
Corporate Implications: Please refer to table at end of report
Options: See body of report
Risks: None

Executive Summary

A report to advise Members of a change to legislation extending the meaning of “interested party” in relation to the Licensing Act 2003 to include a Member of the relevant licensing authority.

Decision

Members are requested to note the contents of the report.

1. BACKGROUND

The Licensing Act 2003 places a statutory responsibility on all Local Authorities to undertake the Licensing of:-

- a) the sale by retail of alcohol,
- b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club,
- c) the provision of regulated entertainment, and
- d) the provision of late night refreshment.

This amounts to Local Authorities being responsible for the licensing of all pubs, clubs, cinemas, entertainment premises and establishments serving hot food between 11pm and 5am together with the licensing of most persons responsible for operating these premises.

A premises licence shall be granted following receipt of a valid application unless a relevant representation is received. A relevant representation must concern the likely effect of granting the premises licence on the promotion of the licensing objectives.

Relevant objections must be made by an **interested party** or a **responsible authority** within the period prescribed.

Representations made by an interested party (who is not also a responsible authority), must not, in the opinion of the licensing authority, be frivolous or vexatious.

2. DEFINITIONS

“Interested Party”

Prior to the Policing and Crime Act 2009, “Interested party” meant any of the following—

- (a) a person living in the vicinity of the premises,
- (b) a body representing persons who live in that vicinity,
- (c) a person involved in a business in that vicinity,
- (d) a body representing persons involved in such businesses.

The Policing and Crime Act 2009 extends the above definition by inserting

- (e) a member of the relevant licensing authority.

This applies to all types of application including club premises certificates.

“Licensing Objectives”

Under the Licensing Act 2003, Section 4 (2) the licensing objectives are defined as—

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

3. NEXT STEPS

It is considered appropriate that some brief guidance notes be provided to all members to ensure that there is clarity over the new provision for a member to object as an interested party; and that the licensing objectives and the need to keep the content of any objections to the licensing objectives are understood.

4. BACKGROUND PAPERS

DCMS – Revised guidance on Licensing Act 2003 (2010)

Corporate Implications			
Financial:	There will be a training cost		
Legal:	It is important that Members are aware of the extension of the definition of ‘interested party’		
Equalities & Diversity:	None		
Customer Impact:	None		
Environment & Climate Change:	None		
Consultation/Community Engagement:	Local Committees		Partners
	Public		Staff
Key Decision:	No		
Public/Private Report:	Public		
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Extract from the DCMS Guidance issued under section 182 of the Licensing Act 2003 Consolidated version published 28 January 2010

INTERESTED PARTIES

8.5 The second group – “interested parties” – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:

- a person living in the vicinity of the premises in question;
- a body representing persons living in that vicinity, for example, a residents’ association, or a parish or town council;
- a person involved in a business in the vicinity of the premises in question;
- a body representing persons involved in such businesses, for example, a trade association; and
- a member of the relevant licensing authority, i.e. elected councillors of the licensing authority for the area in which a premises is situated (see paragraph 8.1).

8.6 It is expected that “a person involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.

8.7 Any of these individuals or groups may specifically request a representative to make a representation on their behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.

8.8 Further information on the role of interested parties is available in “Guidance for interested parties: applying for a review” which can be found on the DCMS website.

THE ROLE OF LOCAL COUNCILLORS

8.9 Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Local councillors can also, as elected members of the licensing authority, make representations in their own right if they have concerns about any premises, regardless of whether they live or run a business in the vicinity of those premises. For example, councillors may apply for a review of a licence if problems at a specific premises which justify intervention are brought to their attention.

8.10 Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a ‘prejudicial’ interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest). In cases where a local councillor makes a representation as an interested party, they will be considered to have a ‘prejudicial’ interest in the local authority’s decision on a

resulting review and in the local authority's representation to any appeal on this decision.

8.11 According to the Model Code of Conduct, councillors with a 'prejudicial' interest must not exercise executive functions in relation to that business and must not seek improperly to influence a decision about that business. Councillors with a prejudicial interest are allowed to attend relevant meetings to make representations, answer questions or give evidence, provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.

8.12 The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. For example, where a councillor has made representations in their capacity as an elected member of the licensing authority. In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence in any other way.

8.13 In addition, councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews.

8.14 The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.

8.15 Where an officer of the authority, such as a licensing officer, has information that raises concerns about a licensed premises, they are entitled to bring that information to the attention of an elected councillor. For example, in the case of underage alcohol sales, they may wish to alert the child protection portfolio holder or the chair of the licensing committee, who may then wish to consider calling for a licence review (subject to the points raised above).