

# CARLISLE CITY COUNCIL

Report to:- **Carlisle City Council**

Date of Meeting:- 15 September 2009

Agenda Item No:-

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**Public**

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Title:- **LICENSING ACT 2003 – NEW REGULATIONS AND  
COUNCIL SCHEME OF DELEGATION**

Report of:- **DIRECTOR OF LEGAL & DEMOCRATIC SERVICES**

Report reference:- **LDS 67/09**

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## **Summary:-**

On 5<sup>th</sup> August 2009, the Licensing Committee considered a report in connection with a new Order under the Licensing Act 2003. This Order affects the procedures to be adopted in respect of minor variations to premises licences/club premises certificates, especially with regard to the Council's Constitution and Statement of Licensing Policy. The Licensing Committee resolved to recommend the amendments to Full Council for adoption.

## **Recommendation:-**

That the Constitution be amended to read:

1. "An application for a minor variation should, where relevant representations were received, be dealt with at officer level"

That the Statement of Licensing Policy be amended to read:

2. "Application to vary premises licence/club premises certificate by way of minor variation procedure to be dealt with by officers"

**Contact Officer:**

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**J A Messenger**

Licensing Manager

03 September 2009

**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: Legislative Reform (Minor variations to Premises Licences and Club Premises Certificates) Order 2009 and the Constitution of the City of Carlisle**

# CARLISLE CITY COUNCIL

Report to:- **The Chairman and Members of the Licensing Committee**

Date of Meeting:- **5<sup>th</sup> August 2009**

Agenda Item No:-

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<b>Public</b>	<b>Operational</b>	<b>Delegated Yes</b>	
<b>Accompanying Comments and Statements</b>		<b>Required</b>	<b>Included</b>
Cumbria Fire Service		No	No
Cumbria Constabulary		No	No
Environmental Services		No	No
Planning Services		No	No

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Title:- **LICENSING ACT 2003 – NEW REGULATIONS & COUNCIL SCHEME OF DELEGATION**

Report of:- **DIRECTOR OF LEGAL & DEMOCRATIC SERVICES**

Report reference:- **LDS 67/09**

## **Summary:-**

The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 came into force on 29<sup>th</sup> July 2009. The Order brings in a simplified procedure for minor variations to Licensing Act 2003 premises licences and club certificates. The Government recommend that this procedure be dealt with by officers, even where there are relevant representations. In addition, the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009 relaxes the requirement to have a Designated Premises Supervisor in those premises. Aspects of these Regulations require amendment to the Council's Constitution and the Statement of Licensing Policy.

## **Recommendation:-**

Members are requested to agree the amendment to the Constitution and the Statement of Licensing Policy and recommend to Full Council for adoption.

J A Messenger  
Licensing Manager  
Legal & Democratic Services

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:- Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009, Constitution of the City of Carlisle, LA 2003 Statement of Licensing Policy.

## **To the Chairman and Members of the Licensing Committee on 5<sup>th</sup> August 2009**

### **Background**

- 1.1 The Licensing Act 2003 gives the responsibility for alcohol and entertainment licensing to the local authority.
- 1.2 In addition to procedures for granting new licences, there is also the provision to vary existing licences. Over the last four years it has become apparent that the variation procedure is both bureaucratic and expensive for licence holders and the Government have been looking to simplify the procedure for minor variations.
- 1.3 Currently to make an application to vary a licence/certificate, the holder must:
  - Serve copies on seven responsible authorities
  - Advertise in a local newspaper
  - Advertise on the premises
  - Consultation period of 28 days
  - Pay a fee based on the rateable value (Varies between £100 and £635)

### **The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009**

- 2.1 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 was made on 30 June 2009 and came into force on 29<sup>th</sup> July 2009. The Order brings in a simplified procedure as follows:
  - Application to Licensing Authority only
  - Advertise on premises only
  - Licensing Authority may consult with such responsible authorities as it considers appropriate
  - Consultation period of 14 days
  - Proposed set fee of £89
- 2.2 Under the new scheme council licensing officers should consult with relevant responsible authorities 'if there is any doubt' about the impact of the variation on the licensing objectives contained in the Licensing Act 2003. This is not a mandatory requirement to consult.
- 2.3 Applications must be advertised on the premises on a white public notice (unlike the blue notice required for other LA 2003 notifications) and the standard application form is set out in the regulations.
- 2.4 Interested parties in the vicinity of the application also have ten working days from the date after the application was received to make representations on the likely effect of the variation on the licensing objectives. There is no right to a hearing but the licensing officer must take any relevant representations into account.
- 2.5 This means the licensing authority has to wait at least eleven working days before deciding whether to grant the minor variation, or refuse the application – and must

make its decision within fifteen working days of having received the application. If it fails to make a decision in that time, the application is deemed to have been refused and the application fee must be returned unless the licensing authority and the applicant agree it can be treated as a new application.

- 2.6 The guidance says that minor variations will generally fall into four categories:
- minor changes to the structure or layout of a premises
  - small adjustments to licensing hours
  - the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions and
  - the addition of certain licensable activities. In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.
- 2.7 It is also possible to add regulated entertainment (such as the performance of plays or film exhibitions) to the licence if they have no adverse impact on the licensing objectives.
- 2.8 The supplementary guidance goes on to list some ‘helpful’ factors to consider whether to add a licensable activity, including the nature of the licensable activity, any conditions volunteered by the applicant, and the track record of the premises – either positive or negative.
- 2.9 The guidance, which is approved by parliament, states these factors are not exhaustive and ‘licensing officers should bring their own experience and knowledge of licensing to bear when considering applications.’
- 2.10 There may also be cases where it is necessary to revise the wording of a condition that is unclear and/or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licensee to understand and comply with the condition and easier for the licensing authority to enforce it.
- 2.11 The Government intends that this procedure be dealt with at officer level to negate the need for extended consultation and sub-committees, hence the requirement to make a decision within 15 days of receipt. Where there is a complicated application, or one with many relevant representations, the officer may reject the application and a full variation application would have to be made. This would then allow extended consultation and the opportunity of a sub-committee for any representations.

### **The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009**

- 3.1 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls etc.) Order 2009 will also insert new sections 25(A) and 41(D) into the Licensing Act, allowing community premises licensed to sell alcohol to either do so without requiring a named premises supervisor to be specified on the licence, or for the licence to be varied to remove the requirement for a premises licence.

- 3.2 The 'committee or board of individuals' in charge of the premises would be expected to take responsibility for the sale of alcohol instead, subject to any representations from the police 'in exceptional circumstances' that this should not take place.
- 3.3 As an additional safeguard, interested parties and responsible authorities can apply for premises licences to be reviewed by the licensing authority and for the requirement for a premises supervisor to be re-imposed on the licence.

### **Constitution of the City of Carlisle**

- 4.1 Under the Scheme of Delegation, any application for a variation to the Premises Licence must be dealt with by a sub-committee, where there are relevant representations. This is inconsistent with the new legislation, which is designed to enable minor variations to be dealt with quickly and with less formality. Furthermore, the timescale within which an application for a minor variation must be dealt with (within 15 days of receipt) precludes the calling of and providing the necessary information to a sub-committee.
- 4.2 It is therefore proposed that an application for a minor variation should, where relevant representations are received, be dealt with at officer level.

### **Statement of Licensing Policy**

- 5.1 Appendix 1 lists the table of delegated functions. After 'Application to vary premises licence .....

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Officers</b>
Application to vary premises licence/club premises certificate by way of minor variation procedure			All cases

### **RECOMMENDATION**

Members are requested to agree the amendment to the Constitution and the Statement of Licensing Policy and recommend to Full Council for adoption.

Prepared by:  
 J A Messenger  
 Licensing Manager