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REPORT TO LICENSING BOARD

Subject: **Licensing Board – Scheme of Delegation Changes**

Cabinet Portfolio: **Community**

Corporate Lead: **Service Director, Law and Governance**

Meeting Date: **24 January 2012**

Status: **Public**

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1.0 Recommendation:

1. **For the Board to agree:**

   a. **A change to the scheme of delegation to allow a greater amount of business to be considered by Sub-Committees rather than the full Licensing Board, as detailed in 3.0 below;**
   b. **The formation of Sub-Committees as detailed at paragraph 4.0 below;**
   c. **A change to the Licensing Board Terms of Reference in light of legal advice relating to substitute members detailed in 5.0 below.**

2. **For the Board to note:**

   a. **That a further report giving a full review of the Licensing Board scheme of delegation will follow at a future meeting of the Board.**

2.0 Reason for recommendation:

Under changes to the Constitution made in 2009, the duty to maintain a licensing scheme of delegation and keep it under review was delegated to the Licensing Board. Changes to the scheme of delegation are recommended at this time in order that licensing business can be dealt with more efficiently. Changes to the scheme of delegation are within the gift of the Board and are not required to be approved at Full Council level.

On the basis of legal advice it is recommended that substitute members be no longer used for the purposes of any business under the Licensing Act 2003. This advice is detailed in full at Section 9.0 of this

report. The recommended changes to the scheme of delegation are also made in light of the possible implications of this advice.

3.0 Background:

Currently, applications made to the Council under the Licensing Act 2003 must be heard by a full Licensing Board if the premises in question is situated within a Cumulative Impact Area as detailed by the Council's Statement of Licensing Policy. It is recommended that Sub-Committees of the Licensing Board now be permitted to hear the following applications that fall within the Council's Cumulative Impact Area:

- Application for New Premises Licence
- Application for Variation of a Premises Licence

Best practice is for decisions of the Licensing Board to be delegated to the lowest appropriate Member/ Officer level for efficiency purposes and it is the practice for the majority of decisions to be made at a Sub- Committee level in other Councils. The latest Guidance issued under Section 182 of the Licensing Act contains a recommended delegation of functions at Section 13.79. This recommends that the majority of licensing matters be delegated to a Sub-Committee level with no elevation to Board level for applications where a premises fall under a Cumulative Impact Area.

Upon its introduction in 2008 it was agreed that items of business that came under the Council's Cumulative Impact Policy would be heard by the full Board to ensure adequate expertise among members and to further the experience of Councillors in hearing these items. Councillors are now sufficiently trained and experienced in these applications to make this reason redundant.

Should the Board agree to this recommended change an amendment would be required, at the time of its next revision, to the Council's Statement of Licensing Policy at Section 3 to reflect this.

No other changes to the scheme of delegation for the Licensing Board are recommended at this time, although a more full review of the scheme of delegation is required and will be brought to the Board for consideration in due course.

4.0 Sub-Committees

The Board is formed of eleven members based on political balance. The quorum - the minimum number of members required before valid business may be undertaken – for the full Board is six.

The quorum for Sub-Committees is three members, with one reserve member.

Currently, where Sub-Committees are used, the membership of Sub-Committees are determined by Democratic Services on a rota system to ensure suitable Member expertise, avoid unsuitable political balance, and avoid individual Members taking part in hearings where

they have a prejudicial interest. It is current practice for the Chair and Vice Chair to form part of a Sub-Committee, along with one further member and one reserve. The Board is asked to consider whether it wishes to make any changes to this practice.

The scheme of delegation allows for Sub-Committees to hear a range of business under different statutes – ie. taxi matters and Licensing Act 2003 items at the same meeting. Where the scheme of delegation allows business to be heard at Sub-Committee level it is also possible for this to be elevated to full Board level if this is more efficient to do so.

5.0 Substitute Members

In 2009 the Council agreed that a pool of trained substitute members - bearing in mind the spirit of political balance – be maintained, for use as substitute members of the Licensing Board. This has been the practice to date. Recent legal advice is that substitute members should not be used for business falling under the Licensing Act 2003 as the Act does not make their use explicitly permissible.

The implication of this would be that the Council is at risk of being inquorate for meetings if the majority of business is still required to be heard at full Board level. Allowing a larger proportion of applications to be heard at Sub-Committee level will allow more flexibility in terms of convening meetings.

In light of this change to the use of substitute members the Board is requested to agree the removal of point 2 in the Licensing Board Terms of Reference, attached at Appendix 1 to this report.

6.0 Training and Experience

On 9 June 2009 Council agreed that:

'all Licensing Board Members, including new and substitute Members, must receive suitable training in relevant aspects before serving as a Licensing Board Member in relation to those aspects';

and in addition,

'that refresher training be organised every two years for all Licensing Board Members and other Members of the Council.'

In addition to this, the proposed rotation system for Sub-Committees should ensure that Councillors continue to further their experience in licensing matters, although should any member wish to gain more experience in an area of licensing it is suggested that they be invited to join a Sub-Committee meeting for observation purposes.

7.0 Consultation:

Proposals detailed above have been made in consultation with the Chair and Vice-Chair of the Licensing Board, along with Licensing and Legal Officers.

8.0 Options & Impacts:

The alternative option at this time is to continue to hear the majority of business at full Licensing Board level with limited delegation to Sub-Committees. Without the flexibility that was previously brought by the use of substitute members the Board would be at risk of being inquorate at meetings and unable to consider licensing business within regulated timescales set out under the Licensing Act 2003. This would leave the Council open to challenge and would make the administration of the Board less efficient.

9.0 Summary of Legal Implications:

Although it is not explicit under the Licensing Act 2003, legal advice is that the Licensing Board should not use substitute members to hear business under this Act. This is because the Act allows for a Licensing Committee of between 10 and 15 members and the Guidance suggests most matters can be dealt with by a Sub- Committee. No mention is made of the use of substitute members in either the Act or Guidance.

The implications of continuing to hear business at full Board level without the flexibility of substitute members could leave the Council open to legal challenge if there were a lack of members available to attend a Board meeting.

10.0 Summary of Financial/Resource Implications:

There is no cost associated with changing the scheme of delegation to hear more business at Sub-Committee level.

Pursuing the alternative option detailed at 8.0 above could result in financial implications associated with legal challenge to the Council.

11.0 Summary of Environmental impact: N/A

12.0 Summary of Equalities and Diversity impact: N/A

13.0 Summary of Risk Assessment: N/A

14.0 Attachments:

Appendix 1 - Terms of Reference of the Licensing Board.

Background Papers:

-Minutes of Council dated 9 June 2009.
http://archive.bournemouth.gov.uk/Library/Committee_Meetings/COU/Min`utes/9%20June%202009%20_3_.pdf

-Minutes of Licensing Board dated 18 June 2009.
http://archive.bournemouth.gov.uk/Library/Committee_Meetings/Statutory_Licensing_Act_2003_B/Minutes/090618.pdf

-Bournemouth Council Statement of Licensing Policy
http://www.bournemouth.gov.uk/Business/Licensing/LicensingAct2003/StatementofLicensingPolicyLA2003.pdf

-Home Office – Amended Guidance Issued Under Section 182 of the Licensing Act 2003 – October 2010
http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/publications/alcohol/guidance-section-182-licensing?view=Binary

LICENSING BOARD – TERMS OF REFERENCE

1. That the current two Licensing Boards be replaced by a single Licensing Board of 11 Members. It is proposed that the quorum - lowest number of Members who must be present before the meeting can conduct valid business - is six Members. The new Licensing Board will also appoint the sub-committees referred to under paragraphs 4 and 8b. below.

2. That a suitable number of substitute Members be available to be determined by the Chair/Vice Chair of the Licensing Board in consultation with Democratic Services. These may initially include some Members displaced from one of the existing Licensing Boards by recommendation 1. The selection of the substitute Members will bear in mind the spirit of political balance and have regard to the knowledge and skills required. All Licensing Board Members, including new and substitute Members, must receive suitable training in relevant aspects before serving as a Licensing Board Member in relation to those aspects.

3. That the delegation to the Licensing Board in the Constitution is generically worded to cover all policy and practice in connection with statutory commercial public safety licensing of a type that may require quasi-judicial process or intervention, such as alcohol, entertainment, gambling, sex shops, public carriage - non-exhaustive illustrative list.

4. That the delegation at paragraph 3. above includes a requirement on the Licensing Board to set up sub-committees as suitable and to sub-delegate licensing decisions to the lowest appropriate Member/Officer level by means of an agreed scheme of delegation that the Licensing Board must keep under review.

5. That the delegation at paragraph 3. above excludes matters that cannot be delegated by law. These currently include the Licensing and Gambling Act policies, which must be decided by Full Council. This exclusion should not prevent the policies from being debated and reviewed by the Licensing Board in order to bring forward recommendations to Full Council.

6. That the delegation at paragraph 3. above excludes licensing matters involving any new laws that are discretionary on the Council, until such matters have been considered by the Cabinet – for example, a Portfolio decision or Cabinet decision depending on the nature of the issue. If it is decided by the Cabinet or full Council that such discretionary matters will be enforced by the Council, then the matter is delegated to the Licensing Board.

7. That there is a generically worded delegation in the Constitution to the Director of Environmental Health and Consumer Services to cover all enforcement and administrative arrangements in connection with statutory commercial public safety licensing.

8. That based on the principle of the licensing decision being made at the lowest suitable level:

   a. The Full Board will determine:

      i. Licensing policy - 'recommends only' for Licensing Act 2003 and Gambling policy
      ii. Delegations on hearings to sub-committees
      iii. Delegations on disciplinary powers and uncontested decisions to sub-committees and officers, including where necessary level and function of officer that may take the decision, and issues on which officers must consult with the Chair and Vice Chair of the Licensing Board before making a decision
      vi. Size and number of sub committees, subject to statutory provisions
      v. Type of case to be heard only by full Board – for example Licence Applications in the Cumulative Impact Zone, Sex Shops, Revocation or Suspension of Taxi Operators Licences

   b. Sub-Committees:

      i. Are of a size determined by statute or Full Board. For example three Members as required by the Licensing Act 2003 to hear normal alcohol licence applications, but five Members to hear standard taxi discipline matters.
      ii. Are comprised of Members as determined by Democratic Services to ensure suitable Member expertise and avoid unsuitable political balance.
      iii. Make quasi-judicial decisions on behalf of the Full Board – that is appeal from there to the Courts.
      vi. Will not determine policy – but may be asked to examine a topic and make recommendation to Full Board.