



## AGENDA ITEM: 9

### SUMMARY

<b>Report for:</b>	<b>Licensing, Health &amp; Safety and Enforcement Committee</b>
<b>Date of meeting:</b>	<b>04 February 2014</b>
<b>PART:</b>	<b>1</b>
If Part II, reason:	

<b>Title of report:</b>	<b>Delegation of Powers to Sub-Committees and Officers</b>
Contact:	Ross Hill – Licensing Team Leader, Legal Governance
Purpose of report:	To propose changes to the current scheme of delegations from the Committee to its Sub-Committees and officers.
Recommendations	That responsibility for the exercise of the powers specified in Annexes A and B of this report be delegated to the Licensing of Alcohol and Gambling Sub-Committee and the Assistant Director (Chief Executive's Unit), respectively.
Corporate objectives:	Dacorum Delivers <ul style="list-style-type: none"> <li>• Efficiencies</li> <li>• Reputation and profile delivery</li> </ul>
Implications:	<u>Risk Implications</u> Failure to ensure a correct scheme of delegation may result in successful legal challenges against the authority's decisions, with the risk of reputational damage and significant costs awards against the council.  <u>Financial / Value for Money / Equalities / Health &amp; Safety</u> None.
Consultees:	None
Background papers:	Dacorum Borough Council Constitution
Glossary of acronyms and any other abbreviations used in this report:	LHSE: Licensing, Health & Safety and Enforcement [Committee / Sub-Committee] LAG: Licensing of Alcohol and Gambling Sub-Committee

## **1. BACKGROUND**

- 1.1. Many of the Council's powers in respect of licensing and regulatory activities have been delegated to the Licensing, Health & Safety and Enforcement Committee to exercise. Where appropriate to do so and permitted by law, the Committee has then further delegated many of the more regularly used powers either to its Sub-Committees or to officers. The scheme of delegation is set out in part 3 of the Council's Constitution.
- 1.2. These delegations are periodically reviewed to ensure that they remain appropriate, and to take account of any change to the legislative provisions which empower the Council to act or carry out certain functions.
- 1.3. This report represents one of the first stages in the review process, and it is likely that further reports with additional proposed delegations will be brought to a future meeting, as other areas for which the licensing service is responsible are reviewed.
- 1.4. In this first stage, the legislation examined relates to alcohol, entertainment, late night refreshment, gambling, sex establishment and hypnotism licences.

## **2. CURRENT POSITION**

- 2.1. At present, the Committee has delegated many of its powers relating to the determination of individual applications to its two Sub-Committees and to officers.
- 2.2. The Licensing, Health & Safety and Enforcement (LHSE) Sub-Committee may currently carry out any of the functions of the full Committee in respect of the determination of individual applications (policy matters remain with the full Committee), with the exception of functions otherwise delegated to the Licensing of Alcohol and Gambling (LAG) Sub-Committee.
- 2.3. The LAG Sub-Committee may determine individual applications and notices under the Licensing Act 2003 and the Gambling Act 2005. The format and procedures for Sub-Committees exercising functions under this legislation and their meetings is prescribed in Regulations.
- 2.4. Officers have been granted delegated powers from the full Committee, and from the LAG Sub-Committee, to exercise many functions in respect of uncontested applications or which are time-limited. However, several functions introduced in recent statutory changes, particularly under the Licensing Act, are currently omitted from the scheme of delegation.

## **3. PROPOSED CHANGES**

- 3.1. Officers are now reviewing all applicable legislation utilised when exercising the Council's functions, comparing the statutory provisions and powers to that currently listed in the scheme of delegation. Where powers are currently omitted or incorrectly reflect the terminology of the statutory provision, updates have been proposed. A list of all of the proposed revised

delegations is included at Annex A (for delegation to Sub-Committees) and Annex B (for delegation to officers).

- 3.2. Where a proposed delegation would duplicate a power currently listed in the scheme of delegation (which may be due to a rephrasing of a statutory power), it is intended that the existing delegation will be deemed rescinded upon the commencement of the new delegation.
- 3.3. As part of the changes, it is proposed that responsibility for determination of applications for sex establishment licences in circumstances where objections have been received, or where the application is not consistent with the sex establishment licensing policy adopted by the authority, is transferred from the LHSE Sub-Committee, to the LAG Sub-Committee. The rationale behind this proposal is that these applications, and the process for determining them, have far more in common with the processes for alcohol, entertainment and gambling licences than with the other forms of authorisation dealt with by the LHSE Sub-Committee, and as such will sit better within the structure and procedures of the LAG Sub-Committee. In particular, there are very few other matters currently dealt with by the LHSE Sub-Committee which include an opportunity for public representation and participation, whereas this is an essential part of sex establishment and premises licence applications and is reflected in that Sub-Committee's standard procedures. Enabling LAG Sub-Committees to determine sex establishment licence applications will also assist in fulfilling the statutory duty<sup>1</sup> to determine such applications promptly, as LAG meetings are called when required, whereas LHSE meetings are held on a pre-determined schedule.
- 3.4. It is also proposed that determination of certain gambling permit applications (specifically, family entertainment centre gaming machine permits, alcohol-licensed premises gaming machine permits, and prize gaming permits), which are not subject to statutory requirements to hold hearings prior to a decision to refuse, be delegated to officers, to streamline proceedings and to prevent a Committee meeting needing to be called to determine what are arguably some of the lowest impact permissions issued by the Licensing service. Where a statutory power of revocation exists, to remove the permit following misconduct or evidence of an adverse impact, this has been left with the LAG Sub-Committee. However, it is proposed that the power to cancel permits as a result of non-payment of annual fees is delegated, as this is essentially an administrative power.

#### **4. RECOMMENDATION**

- 4.1. That the Licensing, Health & Safety and Enforcement Committee delegate responsibility for the exercise of those powers listed in Annex A of this report to the Licensing of Alcohol and Gambling Sub-Committee;
- 4.2. That the Licensing, Health & Safety and Enforcement Committee delegate responsibility for the exercise of those powers listed in Annex B of this report to the Council's Assistant Director (Chief Executive's Unit).

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<sup>1</sup> Regulation 19 of the Provision of Services Regulations 2009 requires that licence applications for service-based activities must be processed as quickly as possible and, in any event, within a reasonable, fixed and publicised period, running from the time when all documentation has been submitted.

- 4.3. To amend the terms of reference for the LHSE Sub-Committee to reflect the transfer of powers relating to sex establishment licences, as follows:

“To carry out any of the functions relating to the determination of applications, the conditions applied to authorisations, or exemptions from the Council’s standard policies, which may otherwise be carried out by the Licensing and Health and Safety Enforcement Committee, except for those functions otherwise delegated to the Licensing of Alcohol and Gambling Sub Committee, contained within the Licensing Act 2003, the Gambling Act 2005, and the Local Government (Miscellaneous Provisions) Act 1982 relating to sex establishment licences.”

## **ANNEX A**

### **PROPOSED DELEGATIONS TO LICENSING OF ALCOHOL AND GAMBLING SUB-COMMITTEE**

#### **1. Licensing Act 2003**

- a. Determination of an application for a premises licence where relevant representations have been made and not withdrawn (s.18)
- b. Determination of an application for a provisional statement where relevant representations have been made and not withdrawn (s.31)
- c. Determination of an application to vary a premises licence where relevant representations have been made and not withdrawn (s.35)
- d. Determination of an application to specify a designated premises supervisor on a premises licence where an objection notice has been given and not withdrawn (s.39)
- e. Determination of an application to transfer a premises licence where an objection notice has been given and not withdrawn (s.44)
- f. Cancellation of an interim authority notice where an objection notice has been given and not withdrawn (s.48)
- g. Determination of an application for review of a premises licence (s.52)
- h. Determination of an application for summary review of a premises licence (s.53C), and setting of interim steps pending review (s.53B)
- i. Determination of application for a club premises certificate where relevant representations have been made and not withdrawn (s.72)
- j. Determination of application to vary a club premises certificate where relevant representations have been made and not withdrawn (s.85)
- k. Determination of an application for review of a club premises certificate (s.88)
- l. Withdrawal of club premises certificate following cessation of qualifying club status (s.90)
- m. Issue of a counter-notice following an objection to a standard temporary event notice (s.105)
- n. Imposition of conditions on a standard temporary event notice following an objection (s.106A)
- o. Determination of application for grant of a personal licence, where an objection notice has been given and not withdrawn (s.120)
- p. Determination of application for renewal of a personal licence, where an objection notice has been given and not withdrawn (s.121)

- q. Consideration of convictions coming to light after grant or renewal of a personal licence, where an objection notice has been given and not withdrawn (s.124)
- r. Determination of a review of a premises licence following a closure order and magistrates' court notification (s.167)
- s. Imposition of restrictions on dancing and live music, on review of a premises licence or club premises certificate (s.177, s.177A)
- t. Making of representation when the authority is consulted on a cross-boundary application by a neighbouring licensing authority

## **2. Gambling Act 2005**

- a. Determination of application for a premises licence where representations have been made and not withdrawn or disregarded, or where it is proposed to attach an additional condition or exclude a default condition (s.163, s. 169)
- b. Determination of application to vary a premises licence where representations have been made and not withdrawn or disregarded, or where it is proposed to attach an additional condition or exclude a default condition (s.187)
- c. Determination of application to transfer a premises licence where representations have been made and not withdrawn or disregarded, or where it is proposed to attach an additional condition or exclude a default condition (s.188)
- d. Determination of application to reinstate a premises licence where representations have been made and not withdrawn or disregarded, or where it is proposed to attach an additional condition or exclude a default condition (s.195)
- e. Determination of a review of a premises licence (s.201)
- f. Determination of application for a provisional statement where representations have been made and not withdrawn or disregarded, or where it is proposed to attach an additional condition or exclude a default condition (s.204)
- g. Issue of counter-notice following receipt of a notice of objection in respect of a temporary use notice (s.224)
- h. Dismissal of objections given in respect of temporary use notices (s.225)
- i. Making of order disapplying exempt gaming and gaming machine entitlements from specified alcohol-licensed premises (s.284)
- j. Refusal of application for registration for the promotion of small society lotteries, or revocation of registration (Sched.11 paras 47-48 & 50)
- k. Determination of application for a club gaming permit or club machine permit, or variation or renewal thereof, where a permitted ground for refusal is engaged (Sched.12 paras 5-7, 10, 15 & 24)

- l. Cancellation of club gaming permit or club machine permit (Sched.12 para 21)
- m. Cancellation or variation of licensed premises gaming machine permit (Sched.13 para 16)

### **3. Local Government (Miscellaneous Provisions) Act 1982**

- a. Determination of application for waiver of sex establishment licence requirement; termination of waiver (Sch. 3, para 7)
- b. Determination of application for grant, renewal, variation or transfer of sex establishment licence, where relevant objections have been made and not withdrawn, or where application is not consistent with the authority's licensing policy (Sch. 3, paras 8, 9 & 18)
- c. Extension of licence continuation period following death of licence-holder (Sch. 3, para 15)
- d. Revocation of sex establishment licence (Sch. 3, para 17)

## ANNEX B

### PROPOSED DELEGATIONS TO OFFICERS

Delegation of the following powers to the **Assistant Director (Chief Executive's Unit)** is proposed, with a view to onward authorisation as appropriate:

#### 1. Licensing Act 2003

- a. To make representations on behalf of the licensing authority in its capacity as a responsible authority (s.17, 29, 34, 41A, 51, 53A, 71, 84, 86A, 87, 167)
- b. Determination of the relevancy of representations (s.18, 31, 35, 41B, 52, 53C, 72, 85, 86B, 88, 167)
- c. Determination of an application for a premises licence where relevant representations were not made or were all withdrawn (s.18)
- d. Issue of copy of premises licence, club premises certificate, temporary event notice or personal licence following loss, theft, damage or destruction (s.25, 79, 110, 126)
- e. Inclusion of alternative community premises licence conditions (s.25A, 41D)
- f. Determination of an application for a provisional statement where relevant representations were not made or were all withdrawn (s.31)
- g. Exclusion of representations against a premises licence application where a provisional statement has been issued (s.32)
- h. Determination of an application to vary a premises licence where relevant representations were not made or were all withdrawn (s.35)
- i. Determination of an application to specify a designated premises supervisor on a premises licence where an objection notice was not given or was withdrawn (s.39)
- j. Removal of designated premises supervisor from premises licence (s.41)
- k. Determination of an application for minor variation of a premises licence; selection of responsible authorities for consultation (s.41B)
- l. Determination of an application for transfer of a premises licence where an objection notice was not given or was withdrawn (s.44)
- m. Determination of exemption of applicant from requirement to provide licence-holder's consent on application for transfer of premises licence (s.44)
- n. Acceptance of an interim authority notice (s.47)
- o. To apply for the review of a premises licence on behalf of the licensing authority in its capacity as a responsible authority (s.51)
- p. Rejection of grounds for review specified in a review application (s.51, 87)



- q. Suspension of premises licence on failure to pay annual fee; and lifting of suspension on payment of outstanding fee (s.55A)
- r. Duty to update premises licence, club premises certificate or personal licence document (s.56, 93, 134)
- s. Power to require production of premises licence, club premises certificate, temporary event notice or personal licence (s.57, 94, 109, 135)
- t. Inspection of premises prior to determination of premises licence, provisional statement or club premises certificate application (s.59, 96)
- u. Determination of an application for a club premises certificate where relevant representations were not made or were all withdrawn (s.72)
- v. Determination of an application to vary a club premises certificate where relevant representations were not made or were all withdrawn (s.85)
- w. Determination of an application for minor variation of a club premises certificate; selection of responsible authorities for consultation (s.86B)
- x. To apply for the review of a club premises certificate on behalf of the licensing authority in its capacity as a responsible authority (s.87)
- y. Suspension of club premises certificate on failure to pay annual fee; and lifting of suspension on payment of outstanding fee (s.92A)
- z. Acknowledgement of temporary event notices (s.102)
- aa. Issue of a counter-notice following an objection to a late temporary event notice (s.104A)
- bb. Issue of a counter-notice to a temporary event notice where permitted limits are exceeded (s.107)
- cc. Power to enter premises to which a temporary event notice relates (s.108)
- dd. Determination of application for personal licence where (s.120):
  - i. the applicant meets all applicable statutory criteria;
  - ii. the applicant does not meet one or more of the compulsory statutory criteria;
  - iii. the applicant meets all of the compulsory statutory criteria but not the convictions criterion, where an objection notice was not given or was withdrawn.
- ee. Determination of application for renewal of personal licence where an objection notice was not given or was withdrawn (s.121)
- ff. Power to enter premises to investigate licensable activities (s.179)
- gg. Defence of appeals brought against decisions made by the authority (s.181)
- hh. Provision of information to licensing authorities or responsible authorities (s.185)

- ii. Legal proceedings or administration of cautions for offences under the Act (s.186)
- jj. Power to authorise “authorised persons” for all purposes of the Licensing Act 2003 (s.13, 69, 108, 135)

### **Licensing Act 2003 (Hearings) Regulations 2005**

- kk. Power to require clarification on particular points from a party to the hearing (reg. 7)
- ll. Determination that a hearing is unnecessary (with agreement of all relevant persons) (reg. 9)
- mm. Determination to extend a prescribed time limit where necessary in the public interest (reg. 11)
- nn. Adjournment of hearing prior to commencement (reg. 12)

## **2. Gambling Act 2005**

- a. Acknowledgement of occasional use notice (s.39)
- b. To make representations on behalf of the licensing authority in its capacity as a responsible authority in respect of premises licence applications (s.161, and that section as applied by s.187, 188, 195, 197, 200 and 204)
- c. Proposal to attach additional condition(s) to a premises licence; proposal to exclude default condition(s) from a premises licence (s.162)
- d. Determination that a hearing is unnecessary (with consent of all relevant persons) (s.162)
- e. Determination that representations made in respect of a premises licence application are vexatious, frivolous, or will certainly not influence the authority’s determination of the application (s.162)
- f. Determination of application for a premises licence where representations were not made or were all withdrawn or disregarded, and where it is not proposed to attach an additional condition nor exclude a default condition (s.163)
- g. Power to require production of premises licence, temporary use notice, family entertainment centre gaming machine permit, club gaming permit, club machine permit, licensed premises gaming machine permit or prize gaming permit (s.185, 229, Sched.10 para 20, Sched.12 para 13, Sched.13 para 10, Sched.14 para 20)
- h. Duty to update premises licence following change of circumstance (s.186)
- i. Determination of application to vary a premises licence where representations were not made or were all withdrawn or disregarded, and where it is not

proposed to attach an additional condition nor exclude a default condition (s.187)

- j. Determination of application to transfer a premises licence where representations were not made or were all withdrawn or disregarded, and where it is not proposed to attach an additional condition nor exclude a default condition (s.189)
- k. Issue of copy of premises licence, temporary use notice, family entertainment centre gaming machine permit, club gaming permit, club machine permit, licensed premises gaming machine permit, or prize gaming permit following loss, theft or damage (s.190, 227, Sched.10 para 21, Sched.12 para 16, Sched.13 para 11, Sched.14 para 21)
- l. Revocation of premises licence on failure to pay annual fee (s.193)
- m. Determination of application to reinstate a premises licence where representations were not made or were all withdrawn or disregarded, and where it is not proposed to attach an additional condition nor exclude a default condition (s.195)
- n. To apply for the review of a premises licence on behalf of the licensing authority in its capacity as a responsible authority (s.197)
- o. Rejection in whole or in part of premises licence review application (s.198)
- p. Grant in whole or in part of premises licence review application (s.199)
- q. Initiation and notification of reviews of premises licences of a particular class on behalf of the licensing authority (s.200)
- r. Determination of a review of a premises licence without hearing, with the consent of all relevant parties or if all representations are to be disregarded; determination that representations made in respect of a review are vexatious, frivolous, or will certainly not influence the review (s.201)
- s. Determination of application for a provisional statement where representations were not made or were all withdrawn or disregarded, and where it is not proposed to attach an additional condition nor exclude a default condition (s.204)
- t. Exclusion of representations against a premises licence application where a provisional statement has been issued (s.205)
- u. Issue of a counter-notice to a temporary use notice where permitted limits are exceeded; consultation prior to issue of counter-notice (s.218)
- v. Acknowledgement and endorsement of temporary use notice (s.220, 227)
- w. To object to a temporary use notice on behalf of the licensing authority (s.221)
- x. Determination that a hearing is unnecessary (with consent of all relevant persons); issue of counter-notice where hearing dispensed with (s.222)

- y. Acknowledgement of modification of temporary use notice by agreement; power to propose modification where an objection has been given (s.223)
- z. Acknowledgement of notice of intention to make gaming machines available for use in alcohol-licensed premises under automatic entitlement (s.282)
- aa. Determination of application for a family entertainment centre gaming machine permit, or renewal thereof (Sched.10 paras 8 & 18)
- bb. Notification of non-occupation of premises causing FECGMP to lapse (Sched.10 para 14)
- cc. Notification to Gambling Commission of large lottery promoted by registered society (Sched.11 para 40)
- dd. Registration of applicant society for the promotion of small society lotteries (Sched.11 para 44)
- ee. Cancellation of registration for the promotion of small society lotteries (Sched.11 paras 53-54)
- ff. Determination of application for a club gaming permit or club machine permit, or variation or renewal thereof, where the permitted grounds for refusal are not engaged, or where a hearing has been dispensed with (Sched.12 paras 5-7, 10, 15 & 24)
- gg. Cancellation of club gaming permit or club machine permit on failure to pay annual fee (Sched.12 para 22)
- hh. Determination of application for a licensed premises gaming machine permit, or variation or transfer thereof (Sched.13 paras 4-6, 15 & 19)
- ii. Cancellation of licensed premises gaming machine permit on failure to pay annual fee (Sched.13 para 17)
- jj. Determination of application for a prize gaming permit, or renewal thereof (Sched.14 paras 9-11 & 18)
- kk. Legal proceedings or administration of cautions for offences under the Act (s.346)
- ll. Exchange of information (s.29, 30 & 350)
- mm. Defence of appeals brought against decisions made by the authority (s.206, 226, 284, Sched.10 para 22, Sched.11 para 51, Sched.12 para 25, Sched.13 para 21, Sched.14 para 22)
- nn. Power to designate "authorised persons" for all purposes of the Gambling Act 2005 (s.304)

### **3. Local Government (Miscellaneous Provisions) Act 1982**

- a. Determination of application for grant, renewal, variation or transfer of sex establishment licence, where relevant objections were not made or were

withdrawn, and where application is consistent with the authority's licensing policy (Sch. 3, paras 8, 9 & 18)

- b. Cancellation of sex establishment licence (Sch. 3, para 16)
- c. Power to enter and inspect any sex establishment in the authority's area; and to seize and remove anything found therein (Sch.3, paras 25 & 25A)
- d. Defence of appeals brought against decisions made by the authority
- e. Legal proceedings or administration of cautions for offences under the Act

#### **4. Hypnotism Act 1952**

- a. To authorise an exhibition, demonstration or performance of hypnotism (s.2)
- b. Legal proceedings or administration of cautions for offences under the Act