

To: **Licensing and Safety Committee**
21 OCTOBER 2021

LICENSING ACT 2003 DELEGATIONS
Public Protection Partnership Manager

1 Purpose of Report

- 1.1 To set out and seek approval for updated delegations under the Licensing Act 2003 (LA03).

2 Recommendations

That the Committee

- 2.1 To **CONSIDER** the suggested amendments to the delegations and to **RECOMMEND** that the Chief Executive sign off the changes in light of the authority delegated to them to do so at the Council meeting in April 2021.
- 2.2 To **DELEGATE** authority to the Monitoring Officer to make any changes to the Constitution arising from this report.

3 Reasons for Recommendations

- 3.1 The Licensing Act 2003 established that Bracknell Forest Council, as a unitary authority, would be the Licensing Authority for the District of Bracknell Forest. Section 7 of the Licensing Act 2003 requires the Council to establish a Committee for the purpose of the Act and to oversee the implementation of the Act in the District. The Committee must by law consist of between twelve and fifteen Members of Council and any Sub-Committee must consist of three members of the Committee. In accordance with the Constitution the Committee must appoint a Chairman and Vice Chairman and each Sub-Committee must appoint a Chairman. Section 10 of the Licensing Act 2003 permits the Licensing Authority to delegate functions under the Act to either a Sub-Committee or to an Officer of the Licensing Committee. A number of minor changes required to the Delegations have recently come to light.
- 3.2 It is important for both applicants, licence holders, responsible authorities and residents that the any scheme of delegation is clear in its intent. These amendments to delegations provide additional clarity about who is making decisions and on what legal basis. External specialist legal advice has been sought about the changes to the delegations.

4 Alternative Options Considered

- 4.1 None. It is a statutory requirement to have the delegations in place.

5 Supporting Information

- 5.1 The legal position regarding the delegation of licensing functions can be summarised as follows
- Section 101(1) of the Local Government Act (LGA) 1972 provides that (subject to any express statutory provision) a local authority may arrange for the discharge of any of its functions by a committee, sub-committee or one of its officers.

OFFICIAL SENSITIVE (COMMERCIAL)/OFFICIAL SENSITIVE (PERSONAL)

- Section 101(15), inserted by the LA03, states that section 101 does not apply to any function of a licensing authority under the LA03. This means that the usual mechanisms for delegation do not, and cannot apply to the Licensing Act, and by extension the Gambling Act.
 - Under section 7 of the LA03, the functions of the licensing authority (Council) are expressly delegated to, and must and can only be discharged by, the licensing committee which must be established by the authority, subject to the exceptions contained in subsection (2) and the circumstances described in subsection (9).
 - The exceptions contained in subsection (2) and the circumstances described in subsection (9) are the only functions that can be discharged by the licensing authority (full Council).
 - Section 10 of the LA03 allows a licensing committee to sub-delegate any functions to sub-committees and some functions to officers.
- 5.2 The delegation Schemes identifies in table form those matters that are matters for the Licensing and Safety Committee along with those that are matters for the Licensing Sub-Committee and those which are delegated to Officers.
- 5.3 Primarily the delegations to Officers are the administrative functions under the Act and include the authority to approve full applications, variations, minor variations for premise licences as well as personal licences and temporary event notices (under the Licensing Act 2003). In some cases these matters would automatically come before a sub-committee if objections are raised that cannot be mediated by Officers. The occasions when matters will go before the Sub-Committee are set out in the relevant scheme and reflect both the law and adopted local policy framework.
- 5.4 The activity of both Officers and Licensing Sub-Committee are reported annually to the Licensing Committee.

Background

- 5.5 It had recently come to light that a number of minor changes to the existing delegations need to be made. They are set out below:
- the references to section 134A has been corrected to refer to section 132A;
 - the power to suspend or revoke a personal licence under section 132A (12) has been identified as being a sub-committee decision;
 - the decision to make vary or revoke an early morning alcohol restriction order under Section 172A(1) has been corrected to refer to a Council decision, rather than a decision of the Executive;
 - footnote number 3 has been amended to reflect that change; and
 - footnote number 4 has been deleted and references to footnote number 7 have been altered to refer to footnote number 6.
- 5.6 In the interest of completeness the updated delegations are set out in Appendix A to this report.

6 Consultation and Other Considerations

Legal Advice

- 6.1 The legislative provisions for the Licensing Authority's discharge and, where applicable, delegation of licensing functions are as set out in the body of this report and the footnotes to Appendix (A) "Delegation of Functions" thereto.

Financial Advice

- 6.2 There are no financial implications associated with this report.

Other Consultation Responses

- 6.3 External Legal advice has been sought from James Button of James Button & Co solicitors.

Climate Change Implications

- 6.6 The recommendations in Section 2 above are expected to:
Have no impact on emissions of CO₂.

Background Papers

Licensing Act 2003

Appendices

Appendix A – Appendix A – Licensing Act 2003– Proposed Scheme of Delegation

Contact for further information

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