

WILTSHIRE COUNCIL

LICENSING COMMITTEE

14TH SEPTEMBER 2012

LICENSINGACT2003

Licensing Authorities as Responsible Authorities

Executive Summary

This report informs Members on the internal arrangements of the licensing service to ensure that the Licensing Authority has the correct structure in place to carry out its new function as a Responsible Authority.

It informs members of the Licensing Committee of relevant changes put in place further to the approval of Council on the 10th July 2012 of the change in the scheme of delegation specific to the Licensing Committee.

Recommendations

It is recommended:

That the Licensing Committee notes this report and agree to the proposed service structure and responsibilities within the Licensing service.

Reason for Proposal

Statutory requirement for the Council.

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Purpose of Report

1. To inform Members of the Licensing Committee of the arrangements put in place for the Licensing Authority to carry out its function as a Responsible Authority.

Background

2. The Police Reform and Social Responsibility Act 2011 added Licensing Authorities to the list of Responsible Authorities under the Licensing Act 2003. The aim of this change in legislation is to ensure that Licensing Authorities are better able to respond quickly to the concerns of local residents and businesses by taking actions they consider appropriate to tackle irresponsible premises without having to wait for representations from other Responsible Authorities.
3. What are the key changes being made to the Licensing Act 2003?

Licensing Authorities are now empowered to fulfil the same functions as other Responsible Authorities under the Licensing Act 2003, including:

- Making relevant representations relating to new licence applications and licence variations
 - Requesting that the Licensing Authority review an existing licence
 - Making representations regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impacts. Wiltshire Council has not adopted a special policy at present concerning cumulative impact areas; however, this may change when the impact of other proposed changes in the legislation take effect.
4. From 25 April 2012, Licensing Authorities have been included in the list of Responsible Authorities under the Licensing Act 2003. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require Responsible Authorities as a matter of course to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes.
 5. It is, therefore, for the Licensing Authority to determine when it considers it appropriate to act in its capacity as a Responsible Authority; the Licensing Authority should make this decision in accordance with its duties under section 4 of the 2003 Act.

6. Licensing Authorities are not generally expected to act as Responsible Authorities on behalf of other parties, for example; local residents, local councillors or community groups, although there are occasions where the Licensing Authority may decide to do so. Members of the Licensing Authority can make relevant representations to the Licensing Authority in their own right, and it is reasonable for the Licensing Authority to expect them to make representations themselves where they are reasonably able to do so. However, if these bodies have failed to take action and the Licensing Authority is aware of relevant grounds to make a representation, it may choose to act in its own capacity as Responsible Authority.
7. The Licensing Authority would expect other Responsible Authorities to intervene where the basis for the intervention falls within the remit of that other Responsible Authority. For example, the police should make representations which are based on concerns about crime and disorder. Likewise, it is reasonable to expect the Local Authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each Responsible Authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other Responsible Authority.
8. The 2003 Act enables licensing authorities to act as Responsible Authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other Responsible Authorities.

Separation of responsibilities

9. It is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the Licensing Sub Committee comprising elected members of the authority who are advised by a licensing officer if it is required. Therefore, a separation is achieved by allocating distinct functions to different officials within the authority. In these cases, Licensing Authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the Licensing Committee must be a different individual to the officer who is acting for the Responsible Authority.
10. The officer acting for the Responsible Authority should not be involved in the licensing decision process and must not discuss the merits of the case with those involved in making the determination by the Licensing Authority. Discussion should not take place between the officer acting as Responsible Authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other Responsible Authorities. Representations, subject to limited exceptions, must be made in writing.

It is for the Licensing Authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities.

11. As a unitary council, Wiltshire Council has a large enough licensing service to allocate the function of Responsible Authority to its licensing manager. This role has already been delegated to the licensing manager at the full meeting of the Council on 10th July 2012. In the absence of the Licensing Manager and to bring resilience to the service, the two senior licensing officers within the authority have also been delegated to exercise the function of Responsible Authority.
12. The licensing manager will not be involved in the application process but will set up a separate file to consider the application for the authority in its capacity as Responsible Authority, engage with other Responsible Authorities where appropriate and determine whether the authority acting as a Responsible Authority wishes to make a representation.
13. Communication between the licensing manager exercising the function of Responsible Authority and the licensing officer processing the application should remain formal and be consistent with communications with other Responsible Authorities.
14. At any subsequent Licensing Sub Committee hearing, and in order to ensure that the public have the perception of an actual separation of roles, the officer acting as the Responsible Authority should be seated with the representatives from other Responsible Authorities.

Environmental Impact

15. There is minimal environmental impact of this proposal. Successful application of the Licensing Act functions will reduce the impact of licensable activities on the public – i.e. noise and public disorder.

Equality and Diversity

16. The impact of this proposal is assessed as “low” against the Council statutory responsibilities.

Risk Assessment

17. It is essential to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest.

Financial Implications

18. There will be no additional cost implications for the authority.

Legal Implications

19. Wiltshire Council at its meeting on the 10th July 2012 agreed an amended scheme of delegation specific to the Licensing Committee. The role to act as the Responsible Authority on behalf of the Licensing Authority has been given to the licensing manager and in their absence this role will be carried out by the senior licensing officer.

Conclusion

20. Following the review of the roles and responsibilities of the licensing service it is concluded that the proposed separation of roles within the service will allow the Licensing Authority to function effectively as a Responsible Authority.

Background Papers

- The Licensing Act 2003
- The Police Reform and Social Responsibility Act 2011

Appendices

None.

LICENSING AUTHORITY ACTING AS A RESPONSIBLE AUTHORITY

OFFICER ROLES

