

Committee: Licensing & Environmental Health

Agenda Item

Date: 27 March 2013

6

Title: TACIT CONSENT

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Item for decision

Summary

1. This report is to inform members of the requirement to have in place arrangements for tacit consent in respect of certain grants of licences and to seek members' approval of a tacit consent regime and exceptions thereto.

Recommendations

2. That members approve the draft scheme produced at Appendix A.

Financial Implications

3. None arising from this report.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None.
Community Safety	If tacit consent were to be applied in the case of certain applications for licences this may adversely impact upon community safety.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	As contained in the body of this report.
Sustainability	None.
Ward-specific impacts	None.

Workforce/Workplace	None.
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Situation

6. The European Union has required member states to adopt regulations governing service provision across the community states. The United Kingdom complied with this requirement by the provision of Services Regulations 2009.
7. The Regulations impose restrictions on authorisation schemes. “An authorisation scheme” means any arrangement which in effect requires the provider or recipient of a service to obtain the authorisation of, or to notify, a competent authority in order to have access to, or to exercise, a service activity. This definition embraces all licences, permits and registrations operated by the council.
8. The conditions under which an authority may have an authorisation scheme are that:
 - a. the scheme does not discriminate against the provider of the service.
 - b. the need for an authorisation scheme is justified by an overriding reason relating to the public interest and
 - c. the objective pursued cannot be attained by a less restrictive measure, in particular because inspection after commencement of the service activity will take place too late to be genuinely effective.
9. All authorisation schemes administered by the council have statutory force. They relate to the protection of public health or safety, the protection of the environment or animal welfare.
10. Regulation 19 provides that competent authorities must have an arrangement for the processing of applications as quickly as possible and in any event within a reasonable time after all relevant documentation has been submitted. Appendix A suggests appropriate timescales in respect of each licence or registration. These will be publicised on the council’s website. These times can be extended once for a limited time. Where the time is being extended the applicant must be notified of this with reasons and such notification must be given before the original period has expired.
11. The regulations provide that where an application is not processed within the period set out by the council or extended as permitted by the Regulations, authorisation is deemed to have been granted unless there are given arrangements in place.
12. Although the council can adopt different arrangements, these must be justified in each category in authorisation by virtue of overriding reasons relating to the public interest including a legitimate interest on the part of third parties.

13. It is the view of officers that different arrangements should apply for applications for authorisations that could impact upon public safety, public health, the environment or animal welfare. In those cases tacit consent would not be appropriate.

Risk Analysis

14.

Risk	Likelihood	Impact	Mitigating actions
Licences are granted without proper consideration by the Council	1 – the time scales suggested are realistic. It is unlikely that tacit consent would apply.	3 – in the event that unsuitable premises or persons are licensed there are risks to public health and safety	Members disapply the tacit consent provisions where the public interest or legislation require otherwise.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX A

Licence/Approval	Time Scale (in working days)	Tacit Consent	Comments
Acupuncture, tattooing, ear and skin piercing and electrolysis – Local Government (Miscellaneous Provisions) Act 1982	30	N/A	These matters are registrations, not consents.
Adult gaming centre premises licences – Gambling Act 2005	50	No	The Act requires the licensing authority to hold a hearing prior to determining an application in the event that an objection is received from the Gambling Commission, other responsible bodies or interested parties. Tacit consent would override this requirement.
Animal boarding – Animal Boarding Establishments Act 1963	30	No	The grant of licenses involves consideration of the facilities offered to secure the welfare of animals. It is in the public interest that the premises be inspected and officers satisfied that the welfare of animals will not be compromised before a licence is issued.

<p>Betting premises licences and provisional statements – Gambling Act 2005</p>	<p>50</p>	<p>No</p>	<p>The Act requires the licensing authority to hold a hearing prior to determining an application in the event that an objection is received from the Gambling Commission, other responsible bodies or interested parties. Tacit consent would override this requirement.</p>
<p>Caravan sites - Caravan Sites and Control of Development Act 1960</p>	<p>30</p>	<p>No</p>	<p>The grant of licenses involves consideration of issues of public health and safety. It is in the public interest that the site be inspected and officers satisfied that public health and safety will not be compromised before a licence is issued. s.6 of the Act provides immunity from prosecution in the event that an application has not been determined within 8 weeks (or, if planning permission is not granted until after the application for a licence is received within 6 weeks of the grant of planning permission). However that exemption does not prevent the later grant of a licence with appropriate conditions attached. Tacit consent would prevent the council imposing conditions which may be necessary or desirable in the public interest.</p>

Club gaming permits and club machine permits – Gambling Act 2005	40	No	The Act requires the licensing authority to hold a hearing prior to determining an application in the event that an objection is received from the Gambling Commission or the police. Tacit consent would override this requirement.
Dangerous wild animals - Dangerous Wild Animals Act 1976	30	No	The grant of licenses involves consideration of issues of public safety, public nuisance, whether the applicant is a suitable person to hold a licence and animal welfare. It is in the public interest that officers be satisfied on these issues before a licence is granted.
Dog breeding establishments – Breeding of Dogs Act 1973	30	No	The grant of licenses involves consideration of the facilities offered to secure the welfare of animals. It is in the public interest that the premises be inspected and officers satisfied that the welfare of animals will not be compromised before a licence is issued.
Environmental permits – Environmental Protection Act 1990	65	No	Work which requires such permits has the potential to damage the environment and public health. It is in the public interest that the application is properly considered before a permit is issued.

Family entertainment centre gaming machines – Gambling Act 2005	40	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Family entertainment centre licence – Gambling Act 2005	50	No	The Act requires the licensing authority to hold a hearing prior to determining an application in the event that an objection is received from the Gambling Commission, other responsible bodies or interested parties. Tacit consent would override this requirement.
Food premises – Food Safety Act 1990	20	N/A	This is a registration, not a consent.
Hackney carriages – Town Police Clauses Act 1847	10	No	Transport matters are not subject to the directive. Licenses may not be granted unless the council is satisfied that the driver is a fit and proper person. Tacit consent could override this duty and endanger public safety.
Hackney carriage drivers – Town Police Clauses Act 1847	10	No	Transport matters are not subject to the directive. Licenses may not be granted unless the council is satisfied that the driver is a fit and proper person. Tacit consent could override this duty and endanger public safety.

House to house collections – House to House Collections ACT 1939	30	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Houses in multiple occupation – Housing Act 2004	20	No	The grant of licenses involves consideration of issues of public health and safety. It is in the public interest that the property be inspected and officers satisfied that public health and safety will not be compromised before a licence is issued.
Licensed premises gaming machine permits – Gambling Act 2005	40	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Minor variation to premises licenses – Licensing Act 2003	15	No	The legislation specifically states that if the application is not determined within time it is deemed to be refused.
Motor salvage operators – Vehicles (Crime) Act 2001	10	N/A	This is a registration, not a consent.
Occasional use notice – Gambling Act 2005	10	N/A	This is a notification, not a consent.
Notification of intent to have gaming machines in accordance with an automatic entitlement - Gambling Act 2005	10	N/A	This is a notification, not a consent.
Permission to place tables, chairs etc on the highway – Highways Act 1980	40	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.

<p>Personal licenses – Licensing Act 2003</p>	<p>15</p>	<p>No</p>	<p>The Act requires the licensing authority to hold a hearing prior to determining an application in the event that an objection is received from the police. Tacit consent would override this requirement.</p>
<p>Pet Shops - Pet Animals Act 1951</p>	<p>30</p>	<p>No</p>	<p>The grant of licenses involves consideration of the facilities offered to secure the welfare of animals. It is in the public interest that the premises be inspected and officers satisfied that the welfare of animals will not be compromised before a licence is issued.</p>
<p>Premises licences, provisional statements, transfer of premises licences and variations (other than minor variations) to premises licenses – Licensing Act 2003</p>	<p>50</p>	<p>No</p>	<p>The Act requires the licensing authority to hold a hearing prior to determining an application where representation have been received from relevant authorities or others. Tacit consent would override this requirement. It is notable that during the transitional period applications for a licence without variation were deemed granted after 2 months if undetermined whereas applications for a variation which were not dealt with within that time scale were deemed to be refused.</p>

Private hire operators	10	No	Transport matters are not subject to the directive. Licenses may not be granted unless the council is satisfied that the driver is a fit and proper person. Tacit consent could override this duty and endanger public safety.
Private hire vehicles	10	No	Transport matters are not subject to the directive. Licenses may not be granted unless the council is satisfied that the driver is a fit and proper person. Tacit consent could override this duty and endanger public safety.
Private hire vehicle drivers – Local Government (Miscellaneous Provisions) Act 1976	10	No	Transport matters are not subject to the directive. Licenses may not be granted unless the council is satisfied that the driver is a fit and proper person. Tacit consent could override this duty and endanger public safety.
Riding establishments – Riding Establishments Acts 1964 and 1970	30	No	The grant of licenses involves consideration of the facilities offered to secure the welfare of animals. It is in the public interest that the premises be inspected and officers satisfied that the welfare of animals will not be compromised before a licence is issued.
Scrap metal dealers – Scrap Metal Dealers Act 1964	30	N/A	This is a registration, not a consent

§ Scrap metal dealers – Scrap Metal Dealers Act 2013 (NB – this will replace the 1964 Act from a date to be fixed)	§ 10	§ Yes	§ There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Sex establishments – Local Government (Miscellaneous Provisions) Act 1982	40	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Society lotteries – Gambling Act 2005	10	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Street collections – Police, Factories etc Miscellaneous Provisions Act 1916	30	Yes	There appear to be no compelling public interest considerations which would make the application of tacit consent undesirable.
Temporary events notices	2	N/A	This is a notification, not a consent.
Zoos – Zoo Licensing Act 1981	30	No	The grant of licenses involves consideration of issues of public safety, public nuisance, whether the applicant is a suitable person to hold a licence and animal welfare. It is in the public interest that officers be satisfied on these issues before a licence is granted.