

Committee: STANDARDS

Agenda Item

Date: 21 June 2010

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**Title: AMENDMENTS TO THE LICENSING ACT
2003**

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Item for decision

Summary

1. This report is to inform members of changes to the Licensing Act 2003 which give greater powers to members of the district council and to seek members' views as to whether guidance should be issued to members as to the exercise of these new powers in order to ensure compliance with the Code of Conduct.

Recommendations

2. That members determine what guidance (if any) they wish to offer regarding members making representations on licensing issues.

Background Papers

3. None.

Impact

- 4.

Communication/Consultation	The Licensing Act 2003 requires that applications for new licences and full variations of licences are publicised by an advertisement in a local newspaper and by being displayed on the premises. In addition to the statutory requirements the licensing team notify the ward member and the relevant town or parish council of any applications received. Notice is also sent to people living alongside, opposite or behind the subject premises. Applications for reviews of licences are advertised on or in the vicinity of the premises. The same applies to variations under the minor variations procedure but the licensing authority shall consult with such of the responsible authorities as it considers appropriate before reaching a decision.
Community Safety	Badly conducted licensed premises may

	impact upon community safety.
Equalities	None.
Finance	None.
Health and Safety	None.
Human Rights/Legal Implications	<p>Article 1 of the First Protocol of the European Convention on Human Rights (as contained in schedule 1 part 2 Human Rights Act 1998) provides that every natural or legal person is entitled to the peaceful enjoyment of their possessions. However, the state may enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The responsible minister for licensing has certified that in his view the Licensing Act complies with the requirements of the Human Rights Act.</p> <p>Under the Licensing Act 2003 the only persons entitled to make representations with regard to applications for licences or variations or to seek a review of the licence are responsible authorities and interested parties.</p>
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

5. The Licensing Act 2003 brought about a more relaxed approach to the control of premises selling or supplying alcohol, providing regulated entertainment or providing late night refreshment. However, all these activities still require a licence from the licensing authority. Uttlesford District Council is the licensing authority for the district.
6. The legislation provides for varying degrees of publicity for applications in connection with licensed premises which would depend upon whether the application is for a new premises licence or club premises certificate, a variation to such a licence or certificate, a minor variation or a request for a review. In each case there is the opportunity for representations to be made to the licensing authority. Representations are only valid however if they are made by responsible authorities or interested parties. Responsible authorities

include various public bodies such as the police, the fire authority, the child safeguarding authority, trading standards, the local planning authority and the local authority's environmental health department. Interested parties were initially defined as being persons living or carrying on business in the vicinity of the premises or bodies representing such persons. This meant that district councillors were not in a position to make representations with regard to applications under the Licensing Act 2003 nor could they call for a review of a premises licence unless they themselves lived or carried on business within the vicinity of the subject premises. Technically they were not in a position to make representations on behalf of constituents as individual councillors are not 'a body'. However, members could represent constituents at hearings to determine applications. Under the Licensing Act if no representations are made with regard to an application for a licence or an application for a variation, the licence/variation must be granted in the form applied for. Where representations are received from responsible authorities or interested parties there must be a hearing to determine the application.

7. The definition of 'interested party' has been recently amended to include 'a member of the relevant licensing authority'.
8. The Licensing Authority is Uttlesford District Council. It follows therefore that all members of the council are interested parties in respect of any premises within the district. The definition does not limit the interested party to being the ward member concerned. This could in certain circumstances lead to conflicts between members. In parliament there is a firm protocol that members do not become involved with members of the public in another member's constituency. Whilst the protocol is not so strictly applied at district council level, nevertheless members may feel a degree of resentment if non-ward members take steps which impinge upon that member's ward.
9. Depending upon the circumstances of the case it may well be that a non-ward member making representations regarding premises may be in breach of the Code of Conduct by failing to treat the ward member or members with respect and depending upon the facts of the case possibly even bringing the council or the office of councillor into disrepute.
10. Members may consider that a simple protocol could avoid these difficulties occurring. Members may wish to consider whether they wish to give guidance along the following lines:
 - i) When an interested party makes representations they can only be taken into account if they relate to one of the four licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. It may be useful to remind members if they are making representations they must be concerning one of these four objectives.
 - ii) Where a member is approached by an individual who is an interested party in respect of premises not within the member's ward, members may wish to consider whether in the first instance the interested party should be referred to the ward member or members for the ward with those premises.

In considering this point, members should be aware of the fact that there is a limited time (28 days) for making representations and that representations made outside that time cannot be considered.

- (iii) If members decide that it is not appropriate to refer the interested party to the relevant ward member either as a point of principle or because time does not allow members may wish to consider how far it would be appropriate for the non-ward member concerned to consult with the ward member or members.
- (iv) There may be circumstances where the member concerned is an interested party in their own right but is not a member for the ward in which they live or carry on business. In those circumstances, do members consider that representation should be made by the member as an individual rather than as a member of the licensing authority and in either event what consultation (if any) would be appropriate between the objecting member and the ward member.

Risk Analysis

11.

Risk	Likelihood	Impact	Mitigating actions
Members are seen to be in conflict with each other regarding licensing applications.	3, there may well be circumstances where a ward member supports an application and a non-ward member opposes or is asked to oppose it and vice versa.	3, if the circumstances of a conflict between members were to lead to an allegation that a member had failed to treat another with respect or had brought the council or office of councillor into disrepute the council would suffer reputational damage.	Members propose a reasonable protocol for adoption by the council.

- 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.