

BABERGH DISTRICT COUNCIL and MIDSUFFOLK DISTRICT COUNCIL

From: Head of Environment	Report Number: M56
To: Licensing and Appeals Committee	Date of meeting: 2 August 2012

LICENSING ACT 2003 AMENDMENTS VIA THE POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011: LICENSING AUTHORITY DELEGATION AS A RESPONSIBLE AUTHORITY

1. Purpose of Report

- 1.1 To seek appropriate delegations for officers to perform the relevant role of responsible authority on behalf of the Licensing Authority.
- 1.2 To seek approval of a Protocol (attached as Appendix A) to guide on the undertaking of these duties and the separation of roles necessary within the licensing process.

2. Recommendations

- 2.1 That the Corporate Manager (Licensing) and a senior Licensing Officer be delegated the authority to perform the responsible authority role on behalf of Babergh District Council.
- 2.2 That the Protocol for the Licensing Authority acting as a Responsible Authority under the Licensing Act 2003 (Appendix A) to guide on how the roles shall be performed and properly separated, be approved.
- 2.3 That the Council be asked to approve the appropriate update to the Council's Constitution to reflect the above decisions.

The Committee is able to resolve 2.1 and 2.2 above and make a suitable recommendation to Council with regard to 2.3.

3. Financial Implications

- 3.1 Failure to correctly delegate responsibility and separate the roles of officials acting on behalf of the Licensing Authority may increase the risk of legal challenge to the Authority.

4. Risk Management

- 4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to correctly authorise officers and adopt a protocol may put the Council at unnecessary risk of challenge.	Low risk of failing to address these issues	Critical impact if the issues are not adequately addressed	Resolve appropriate delegations and adopt a suitable and sufficient protocol to guide and support the relevant roles/duties.

5. Consultations

- 5.1 The issues referred to in this report and accompanying Protocol have been reviewed by the Councils' Legal Section.

6. Equality Analysis

- 6.1 There are no equality analysis impacts arising directly from the matters contained within this report.

7. Shared Service / Partnership Implications

- 7.1 The single licensing team serves both Babergh District Council and Mid Suffolk District Council. It is proposed that the delegation and protocol will apply to both Licensing Authorities. Mid Suffolk District Council have approved an identical protocol for delegation and separation of the roles at their Licensing Committee meeting of 20 July 2012.

8. Key Information

- 8.1 All licensing functions under the Licensing Act 2003 must be discharged by the Licensing Committee save for policy determination. A Licensing Committee may, subject to exclusions specified by Section 10(4) of the Licensing Act 2003, delegate functions to officers of the Licensing Authority.
- 8.2 With effect from 25 April 2012, the Police Reform and Social Responsibility Act 2011 amended the Licensing Act 2003 to designate Local Authorities as 'Responsible Authorities' in their own right. This is similar to the framework that already exists under the Gambling Act 2005 and is a role envisaged for officials of the Licensing Authority, rather than elected Members - whom already have a role in the decision making process and a separate right to raise representations, added previously by the Policing and Crime Act 2009.
- 8.3 The 2012 reforms enable an officer of the Licensing Authority to directly raise representations in the same way as the Police, Environmental Health, Trading Standards, Fire Service and the Planning Authority do already. This also applies to the review of a licence or certificate on issue. At the same time the Primary Care Trust (PCT) has also been designated as a responsible authority in respect of Licensing Act 2003 applications (a role likely to transfer to the Director of Public Health in due course).
- 8.4 The increased role for the Licensing Authority will serve to further promote the licensing objectives by better utilising the expertise and local knowledge of Licensing Officers. It enables a direct right of relevant representation, without the need to wait for another party to act upon issues relevant to promotion of the licensing objectives, or the right to instigate the review of a licence or certificate should early intervention be needed. This will assist in various ways including in representing the views of communities, who may be reluctant to engage in certain circumstances, sharing good practice, supporting local initiatives and integrating strategies priorities where these are linked to promotion of the licensing objectives.

- 8.5 It is however expected that a delegated Licensing Officer will only raise relevant representations in exceptional circumstances. 'Exceptionally' may be where another party has failed to act or there may be a delay that may compromise promotion of the licensing objectives. This may, for example, be a responsive power if there were a serious incident at a licensed venue (for example overcrowding incident) or a pro-active intervention with the licensing of a large outdoor temporary event where there may be serious public safety concerns.
- 8.6 The new role for the Licensing Authority as responsible authority may also aid the pre-application formative discussions with some licence applicants and also help to achieve balanced outcomes via closer linking to the Safety Advisory Group (SAG), Night Time Economy Core Group and Safer Neighbourhood Team (SNT) duties now performed by Licensing Officers from the joint team.
- 8.7 This responsibility is challenging for smaller Licensing Authorities, such as Babergh and Mid Suffolk, as for reasons of procedural fairness the officer raising representations would then be excluded from any part of the relevant application, any discussions with other team members over the merits of the application, committee preparation or hearing presentation and would merely be involved at the hearing as a 'responsible authority'.
- 8.8 In view of the integration of the Licensing Service for Babergh and Mid Suffolk it is proposed that to achieve transparency, consistency and build sufficient resilience into the service, which is reporting to two separate Licensing Committees, that the Protocol attached as Appendix A be approved by the Licensing Committee of both Mid Suffolk District Council and Babergh District Council. Mid Suffolk has already approved the Protocol with effect from 20 July 2012.
- 8.9 Officers will monitor emerging best practice in this area, and any national guidance or developments, and in the future will seek to revise the Protocol should it be considered necessary.

9. Appendices

Title	Location
A: Protocol: Licensing Authority role as a Responsible Authority	Attached

10. Background Documents

- 10.1 None

AUTHORSHIP: Lee Carvell (Corporate Manager - Licensing)
 Tel: 01473 825719 email: lee.carvell@babergh.gov.uk

**PROTOCOL FOR THE LICENSING AUTHORITY ACTING AS A
RESPONSIBLE AUTHORITY UNDER THE LICENSING ACT 2003**

- (a) The Corporate Manager (Licensing) has been duly authorised by the Licensing Authority of Babergh District Council on **[Date]** to perform the Licensing Authority role as a ‘responsible authority’ on behalf of Babergh District Council and this enables in relevant circumstances the raising of relevant representations about applications, or seeking the review of a licence or certificate on issue, when and if considered reasonably necessary on a case-by-case basis.
- (b) Where it is considered inappropriate or otherwise impractical for the Corporate Manager (Licensing) to perform this role in any particular case, which may be:
- (i) for reasons of procedural fairness;
 - (ii) due to local knowledge or premises history;
 - (iii) urgency of the matter with consideration to promotion of the licensing objectives;
 - (iv) conflict of interests; or
 - (v) any other reasonable cause,

the responsible authority role will be performed by a senior Licensing Officer from the joint Licensing Team.

- (c) To ensure proper separation of the roles within the Joint Licensing Team, and to safeguard procedural integrity and fairness, the following protocol will be observed at all relevant times:
- (i) Each application or relevant matter shall be assessed on a case-by-case basis and due consideration given to whether it is appropriate to intervene or whether any other party is in a more appropriate position to raise a relevant representation on the substantive issues. It is noted that the statutory guidance issued under Section 182 of the Licensing Act 2003 [as revised April 2012] at paragraph 9.15 states that “*it is reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for that intervention falls within the remit of that other responsible authority*”.
 - (ii) Prior to submitting any formal representation to the Licensing Authority, the officer performing the responsible authority role shall co-ordinate with other responsible authorities, where viable, to discuss the relevant issues and establish who is the most appropriate party to act. This will help to avoid any conflict, duplication or uncertainty. It is also recognised that there may on occasion be representations from more than one authority and relevant to more than one licensing objective. Due to limited resources the Licensing Authority will not normally submit representations that are purely in support of another representation already made by an entitled party. It is only where additional or supplementary comments are considered reasonably necessary in the individual case to promote the licensing objectives that submission of a representation will be considered appropriate.

- (iii) If any other party in a position to act has failed to do so and the Licensing Authority is aware of relevant grounds and should intervene then it may choose to act in its capacity as a responsible authority.
- (iv) Any representation will be submitted to the Licensing Team in writing, and within any statutory timeframe applicable, as with any other responsible authority or other person entitled. The officer reviewing the representation in the administrative/case officer role will apply the same criteria and considerations as he/she does with any other representation.
- (v) Prior to the submission of any formal representation the relevant officer shall, where considered appropriate, contact the applicant or licence holder (or their agent) to raise the relevant issues and assess whether any remedial action, informal mediation or voluntary amendments to the licence or certificate may be viable and thus avoid the need to raise a formal representation or initiation of a review.
- (vi) Where a relevant representation has been made the relevant officer making the objection on behalf of the Licensing Authority shall not then participate in the processing of the application, and shall not discuss the merits of the case with the officer(s) performing the case management and administration, reporting or committee support role for the Licensing Authority. It is noted that the statutory guidance issued under section 182 of the Licensing Act 2003 [as revised April 2012] at paragraph 9.17 states that “*it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest*” and at 9.18 “*the officer advising the licensing committee...must be a different individual to the officer who is acting for the responsible authority*”.
- (vii) Where a relevant representation has been made, the relevant officer from the Licensing Authority will engage with the Licensing Authority in the capacity of a responsible authority, and in the same manner as other responsible authorities. It is noted that mediation may take place in appropriate cases and the relevant officer shall engage with that process in the same manner as other responsible authorities.
- (viii) The Licensing Officer shall, when considering the need for any appropriate remedial conditions or measures, act proportionately, reasonably and adopt a targeted approach to promotion of the licensing objectives. In making this assessment the relevant officer shall also give due consideration to the statutory guidance and potential impact of the measures/condition(s) and the need to avoid imposition of any unnecessary financial burden or deterrent to licensable events or venues via imposition of inappropriate/standard conditions. Whilst a recorded history will not be available for new premises the Licensing Officer’s comments will relate to the likely effect of the grant of a licence on promotion of one or more of the licensing objectives.
- (ix) Decisions on whether it is necessary to adjourn a hearing in the public interest, for example to ensure procedural fairness, will be a decision for the relevant Sub-Committee to make on a case-by-case basis.
- (x) It is envisaged that over time this role may evolve in the light of integrated service development, experience and any national/local precedents, case law and guidance. Where considered reasonably necessary this protocol may be revised accordingly.