

BOROUGH OF BARROW-IN-FURNESS

LICENSING COMMITTEE

Meeting, Thursday 1st September, 2016
On rising of the Licensing Regulatory
Committee (Drawing Room)

A G E N D A

PART ONE

1. To note any items which the Chairman considers to be of an urgent nature.
2. To receive notice from Members who may wish to move any delegated matter non-delegated and which will be decided by a majority of Members present and voting at the meeting.

3. Admission of Public and Press

To consider whether the public and press should be excluded from the meeting during consideration of any of the items on the agenda.

4. Declarations of Interest.

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

5. Apologies for Absence/Attendance of Substitute Members.
6. To confirm the Minutes of the meeting held on 30th June, 2016 (copy attached).

FOR DECISION

- (D) 7. Licensing Act 2003 & Gambling Act 2005 – Environmental Health Manager Delegations: Suspension & Revocation for Non Payment of Annual Fees.

Membership of Committee

Callister (Chairman)
Seward (Vice Chairman)
Biggins
Cassells
Derbyshire
Gill
Heath
W. McClure
Maddox
Proffitt
Wall
One Vacancy

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BOROUGH OF BARROW-IN-FURNESS

LICENSING COMMITTEE

Meeting: Thursday 30th June, 2016
at 3.50 p.m. (Drawing Room)

PRESENT:- Councillors Seward (Vice-Chairman), Biggins, Cassells, Derbyshire, Proffitt and Wall.

Officers Present:- Graham Barker (Principal Environmental Protection and Licensing Officer), Jennifer Curtis (Senior Licensing Officer), Jane Holden (Acting Principal Legal Officer) and Keely Fisher (Democratic Services Officer).

Legal Representative:- Paul O'Donnell (Local Authority Retained Solicitor).

4 – Apologies for Absence/Attendance of Substitute Members

Apologies for absence were received from Councillors Callister (Chairman), W. McClure and Maddox.

5 – Minutes

The Minutes of the meeting held on 12th May, 2016 were taken as read and confirmed.

6 – Licensing Act 2003 – Delegations: Film Classification

The Principal Environmental Protection and Licensing Officer reported that the Council, as the Licensing Authority, was responsible for authorising the public exhibition of films. Section 20 of the Licensing Act 2003 provided that where a Premises Licence or Club Premises Certificate authorised the exhibition of a film(s), the licence must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by the British Board of Film Classification (the BBFC) or by the Licensing Authority itself.

The Licensing Authority, had received an application requesting the classification of a film.

It was usual for most films to be released across the Country and therefore be classified by the BBFC. However, where a licensed premise sought to exhibit a film that had not been classified by the British Board of Film Classification (BBFC) then it would be the responsibility of the Licensing Authority to authorise that film. Under the Licensing Act 2003, the definition of the exhibition of a film was the exhibition of moving pictures and the definition of children was any person under the age of 18 years. The Licensing Authority when authorising film(s) should at all times take into account the Guidance issued under Section 182 of the Licensing Act 2003 (the National Guidance).

The current scheme of delegated functions of the Licensing Committee under the Licensing Act 2003, gave Members the authority to classify films. Additionally, the Licensing Committee could delegate this function to the Environmental Health Manager.

Paragraph 10.74 of the National Guidance states that:-

“The BBFC classified films in accordance with its published Guidelines which were based on extensive research into public opinion and professional advice. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a Licensing Authority to adopt this role”.

The classification system used by the BBFC was nationally understood and accepted. Therefore, the Principal Environmental Protection and Licensing Officer recommended that the Licensing Authority adopt this system, and any amendments thereto, as a reference point for determining its recommendation(s) on the restriction of access of children to the film. An extract of Classification Guidance was attached as an appendix to his report for Members' information. Members noted however that the Licensing Authority was not obliged to follow these guidelines.

The Licensing Authority recognised the principle that adults should be free to choose their own entertainment and would not normally override this principle, as such requests should not normally be refused. However, in all cases the Licensing Authority would expect an applicant to follow the BBFC's Guidelines for 18 and R18 restricted films.

Section 10(1)(b) Licensing Act 2003 required Licensing Committees to determine their own scheme of delegations in the exercise of their functions under the Act. This requirement bypassed Article 13.02 of the Council's Constitution which required these matters to firstly be considered by the Executive Committee prior to approval by Council. The Licensing Act 2003 – Table of Delegated functions was attached as an appendix to the Officer's report.

This Scheme of Delegation was adopted by Members (Minute No. 5 - Licensing Committee; 25th June, 2015), allowing the Environmental Health Manager to deal with any matter which was within the Scheme of Delegation as permitted by the Act and the Council's Constitution, Part 3(1) was amended accordingly.

Determining the classification or re-classification of films, by the Licensing Authority was a rarity, however the process was time consuming and likely to place undue burden on Council resources. It was also often difficult to find a convenient time for all Members to meet at relatively short notice.

It was a mandatory requirement of the Licensing Authority under the Licensing Act 2003 that all films shown at Licensed Premises were classified. At present there was no provision within the Act for Local Authorities to be able to charge for this function therefore costs must be met from within existing budget.

To ensure that films were classified quickly and efficiently, it was proposed that the Environmental Health Manager and Principal Environmental Protection and

Licensing Officer, in her absence, be given delegated authority to classify films on behalf of the Licensing Authority.

RESOLVED:- That:-

- (i) The Licensing Authority adopt the guidance issued by the British Board of Film Classification as a reference point for determining its recommendation on the restriction of access of children to films;
- (ii) The Environmental Health Manager and Principal Environmental Protection and Licensing Officer in her absence, be given delegated authority to classify films, which had not already been classified by the BBFC, on behalf of the Licensing Authority;
- (iii) That responsibility for the classification of films which had not already been classified by the BBFC and where the Environmental Health Manager and/or the Principal Environmental Protection and Licensing Officer were unable to make a formal classification be referred to the Licensing Sub-Committee; and
- (iv) That responsibility for the reclassification of films already classified by the BBFC be delegated to the Licensing Sub-Committee.

The meeting closed at 4.00 p.m.

LICENSING COMMITTEE		Part One
Date of Meeting:	1st September, 2016	(D)
Reporting Officer:	Environmental Health Manager	Agenda Item 7
<p>Title: Licensing Act 2003 & Gambling Act 2005 – Environmental Health Manager Delegations: Suspension & Revocation for Non Payment of Annual Fees</p> <p>Report Summary:</p> <p>The Council, as the Licensing Authority, has in place a detailed scheme of delegation in order to discharge its duties and powers under the Licensing Act 2003 and Gambling Act 2005 in an effective and professional manner.</p> <p>Having carried out a review of the Environmental Health Manager’s delegations, this report recommends additional powers be delegated from this Committee, in order to discharge administrative functions quickly and efficiently.</p>		

1. Background

- 1.1. The table of delegations, attached at **Appendix 1**, specific to the Licensing Act 2003 and Gambling Act 2005, mirror the recommendations of the Statutory Guidance issued by the Department of Culture Media and Sport as well as the Council’s Statements of Licensing Policy and Gambling Policy.
- 1.2. Section 10(1)(b) Licensing Act 2003 and Section 154 Gambling Act 2005 requires licensing committees to determine their own scheme of delegations in the exercise of their functions under these Acts. This requirement bypasses Article 13.02 of the Council’s constitution which requires these matters to firstly be considered by the Executive Committee prior to approval by Council.
- 1.3. This scheme of delegation was adopted by Members (Minute No.5: Licensing Committee; 25th June 2015), allowing the Environmental Health Manager to deal with any matter which is within the Scheme of Delegation as permitted by the Act and the Council’s constitution, Part 3(1) was amended accordingly.

2. Administrative Functions

- 2.1. The Police Reform & Social Responsibility Act 2011 amended the Licensing Act 2003 to enable Licensing Authorities to suspend a Premises Licence under Section 55A and a Club Premises Certificate under Section 92A, for Non-payment of the Annual Fee.

- 2.2. Section 193 of the Gambling Act 2005 (2005 Act) provides that Licensing Authorities can revoke Gambling Premises Licences, for Non-payment of the Annual Fee. A similar power is also available to suspend a Small Society Lottery registration, under Schedule 11, Section 54 of the 2005 Act, for Non-payment of the Annual Fee.
- 2.3. Licensing Committee has all the necessary power to discharge the above administrative licensing functions under the scheme of delegation. Additionally, the Licensing Committee can delegate this function to the Environmental Health Manager.

3. Recommendation

I recommend Members:

Amend the scheme of delegation for the purposes of the Licensing Act 2003 and Gambling Act 2005, allowing the Environmental Health Manager to deal with the following administrative functions:

Licensing Act 2003, Sections 55A & 92A. To suspend a Premises Licence or Club Premises Certificate, for Non-payment of the Annual Fee;

Gambling Act 2005, Section 193. To revoke a Premises Licence, for Non-Payment of the Annual Fee; and

Gambling Act 2005, Schedule 11, Part 5, Section 54. To cancel a Societies Registration under the Act.

4. Reason for Recommendation

The Licensing Committee can exercise this power, but there will be a delay in making that decision, because the determination meeting will be subject to the normal agenda / publishing deadlines. The delegation will allow the Licensing Authority to discharge its duties and powers under the abovementioned legislation in an efficient and professional manner.

5. Considerations

(i) Legal Implications

Section 10(1)(b) Licensing Act 2003 and Section 154 Gambling Act 2005 requires licensing committees to determine their own scheme of delegations in the exercise of their functions under these Acts.

Licensing Act 2003 (as amended) 55A - Suspension of premises licence for failing to pay annual fee

- (1) A licensing authority must suspend a premises licence if the holder of the licence has failed to pay the authority an annual fee that has become due under section 55(2).

Gambling Act 2005 (as amended) 92A - Suspension of club premises certificate for failing to pay annual fee

- (1) A licensing authority must suspend a club premises certificate if the holder of the certificate has failed to pay the authority an annual fee that has become due under section 92(2).

Gambling Act 2005, Section 193 - Revocation for failure to pay fee

- (1) Where the holder of a premises licence fails to pay the annual fee in accordance with regulations under section 184 the licensing authority shall revoke the licence.
- (2) But the licensing authority may disapply subsection (1) if they think that a failure to pay is attributable to administrative error.

Gambling Act 2005, Schedule 11, Part 5, Section 54 - Annual fee

- (1) A registered society shall pay an annual fee to the registering local authority.
- (2) An annual fee—
 - (a) shall be paid within such period before each anniversary of the registration as may be prescribed, and
 - (b) shall be of the prescribed amount.
- (3) If a registered society fails to comply with this paragraph the registering authority may cancel the society's registration.
- (4) If a local authority cancel a registration under sub-paragraph (3) the authority shall as soon as is reasonably practicable notify—
 - (a) the formerly registered society, and
 - (b) the Commission.

(ii) Financial Implications

The recommendation has no financial implications.

(iii) Health and Safety Implications

The recommendation has no implications.

(iv) Council Priorities and Objectives

This recommendation supports Priority 4 - **Service Delivery** – which states that the Council strives to provide good quality, efficient and effective services while reducing overall expenditure.

(v) Equality and Diversity

The recommendation has no detrimental impact on service users showing any of the protected characteristics under current Equalities legislation.

(vi) Human Rights Implications

The recommendation has no implications.

(vii) Health and Well-being Implications

The recommendation has no adverse effect on the Health and Wellbeing of users of this service.

Background Papers

Minutes of the Licensing Committee; 25th June 2015



Part 3(1) - Schedule 1

Extract from Barrow Borough Council's Licensing Policy

Licensing Act 2003 – Table of Delegated Functions

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Application for personal licence		If objection made	If no objection made
Application for personal licence, with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary premises licence/club premises certificate by way of a minor variation			All cases
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as a designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Application for Interim Authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious etc.			All cases
Decision to object when local Authority is a consultee and not the relevant authority considering the application		All cases	

Determination of a police objection to a temporary event notice		All cases	
Determination of film classification		All cases	

A Full committee will consist of 12 Members, with a quorum of 3.

A Sub-Committee will consist of 3 Members.



Part 3(1) - Schedule 2

Extract from Barrow Borough Council's Licensing Policy

Gambling Act 2005 – Table of Delegated Functions

Matter to be dealt with	Full Committee	Sub-Committee	Officers
Final approval of three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)		X	
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence		X	
Application for club gaming/club machine permits		Where objections have been made (and not withdrawn)	Where no objections made/objections have been withdrawn
Cancellation of club gaming/club machine permits		X	
Applications for other permits		X (in excess of 5 machines)	X (up to 4 machines)
Cancellation of licensed premises gaming machine permits			X

Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	

X - Indicates at the lowest level to which decisions can be delegated.