

BRIDGEND COUNTY BOROUGH COUNCIL

LICENSING COMMITTEE

17 FEBRUARY 2010

**REPORT OF THE ASSISTANT CHIEF EXECUTIVE LEGAL AND
REGULATORY SERVICES**

**LICENSING ACT 2003: POLICING AND CRIME ACT 2009
ENHANCED MEMBER INVOLVEMENT IN LICENSING PROCESS**

1. Purpose of Report

- 1.1 To advise members of the Licensing Committee of changes to the Licensing Act 2003. This allows for any Councillor of the licensing authority i.e. all Members of the Council including the Licensing Committee Members, to make representations about applications for licences and certificates and to submit applications to review the licences of premises where problems are occurring. The change in the law enables all Members to more fully engage in the licensing process.

2. Connection to Corporate Improvement Plan / Other Corporate Priority

- 2.1 The duties of the Council under the Licensing Act are regulatory in nature. The licensing objectives of the prevention of crime and disorder, public safety, the prevention of nuisance and child protection, underpin many of the aims of the Corporate Improvement Plan and the Council's Corporate Priorities.

3. Background

- 3.1 The Licensing Act 2003 was implemented in 2005 and introduced the terms "responsible authorities" and "interested parties" defining who could make representations on licensing applications or apply to review a licence or certificate.
- 3.2 Responsible authorities are in general terms enforcement agencies. Interested parties were defined as persons living in the vicinity of the premises, a body representing persons who live in that vicinity, a person involved in a business in the vicinity of the premises and a body representing persons involved in these businesses. These provisions enable the public to comment on new applications which may have a direct impact on their lives, and for the statutory agencies to assess an application; the provisions also provide a mechanism for both types of consultee to apply to review the licences of problem premises when other types of intervention have not been successful. The role of

Members was therefore limited to acting on behalf of their ward constituents who lived within the vicinity of the premises in question.

- 3.3 The legislative change preserves existing rights so that a Committee Member may continue to represent local residents on a particular application and it preserves a Member's own right to submit a representation or review application if they themselves are affected by a premises in the vicinity of their house or business.

4. Current situation / proposal

- 4.1 Section 33 of the Policing and Crime Act 2009 amends section 13 (3) of the Licensing Act 2003 to extend the definition of an interested party to include "a member of the relevant licensing authority". The licensing authority is, by definition, the Council as a whole, and this entitlement will therefore apply to all Council Members, including the fourteen Members of the Licensing Committee. Councillors are no longer limited to making representations about premises in their own wards and are therefore able to use the formal licensing process to raise concerns about any premises in the County Borough Council area.
- 4.2 This report focuses on the impact of the change on Licensing Committee Members. The main considerations for Licensing Committee Members, when exercising the new powers, will be compliance with the Member Code of Conduct and regard to the Statutory Guidance to licensing authorities, issued under Section 182 of the Licensing Act 2003.
- 4.3 Many licensing applications allow for interested parties to make representations. For example, if a person applies to extend opening hours at a premises or open a new off licence, a Licensing Committee Member may have concerns about how this will impact on residents particularly in terms of an increase in noise nuisance or on crime and disorder.
- 4.4 In addition to the Code of Conduct and Statutory Guidance, the representation or application must satisfy the following tests; it must present evidence in support which relates to one or more of the licensing objectives, and it must clearly relate to the premises and the vicinity of the premises. There is one exception to these caveats as the Licensing Act 2003 allows the Council to adopt a special policy with regard to dealing with applications in areas where there is a large concentration of licensed premises. This is known as a Cumulative Impact area and where the Council has adopted such a policy, as is the case with Bridgend Town Centre, representations or review applications may relate to the wider negative impact of the premises on the promotion of the licensing objectives.
- 4.5 When submitting a representation or application, Members of the Licensing Committee must have regard to the Member Code of Conduct when exercising their new right as interested parties and when

dealing with applications submitted. Committee Members must consider whether they have a personal and/or prejudicial interest in the application itself or any subsequent hearing.

- 4.6 Firstly, all Licensing Committee Members should have regard to the Code of Conduct in terms of declaring any personal interests, for example membership of a club, business interests etc both in their role as a Member of the Committee and when making representations/submitting an application.
- 4.7 Secondly if a Member of the Committee wishes to make a representation about an application, or submits an application for the review of a premises licence, they will be considered to have a prejudicial interest in the licensing authority's decision and to any appeal to the Magistrates' Court on a decision. In brief, any Committee Member with a prejudicial interest must not exercise executive functions in relation to the particular application and must not seek to influence a decision on the case in any other way.
- 4.8 Members of the Licensing Committee who have made representations or who have submitted a review application, will be entitled to attend a Licensing Sub-Committee meeting, make their representations, answer questions from the applicant or give evidence, as long as they withdraw from the meeting immediately afterwards and therefore will play no part in the decision making process.
- 4.9 Thirdly, when considering representations or an application received from another County Borough Councillor, Members of a Licensing Sub-Committee must determine the relevance of the representations in terms of the licensing objectives and not on the basis of any political judgement. Any Member of a Sub-Committee who considers that their own interests are such that they are unable to consider the case impartially should disqualify themselves from the meeting. Committee Members may seek advice from the Monitoring Officer or Legal Officer to the Committee before a meeting.
- 4.10 In all cases, Members must not fetter the discretion of the authority by pre-judging or pre-determining an application.
- 4.11 Information on applications received will be published on the Council's website as part of the authority's statutory responsibility to maintain a register of licences and applications. Committee Members will also be able to inspect the register of applications. Where consultation is permitted under the Act, licensing applications will also be advertised on site and in a local newspaper and Members must submit representations within the statutory timescale. This process is aimed at minimising the risk of a legal challenge by an applicant that the licensing authority has actively solicited representations in respect of a particular application. However, subject to the Member Code of Conduct and the Statutory Guidance, the Act does not prevent Members from receiving updates on

licensing issues and problem premises where the information is required to inform their role as elected Members.

- 4.12 In the interests of transparency, representations and applications will normally be made public and be made available to the applicant for consideration unless there are exceptional circumstances for not doing so. There is provision within the statutory guidance for dealing with circumstances where a Member of the Committee, acting as an interested party, has concerns about disclosing personal information to an applicant. There is no change to the existing right for Council Officers or other designated agencies to make an application to review a licence or certificate in their own right. These powers are available to health and safety, planning, environmental health and child protection officers within the Council as well as the South Wales Police and South Wales Fire and Rescue Service. Any Member with concerns about the process may, in the first instance, contact the relevant responsible authority officer.

5. Effect upon Policy Framework & Procedure Rules

- 5.1 There is no effect upon the Policy Framework and Procedure Rules.

6. Legal Implications

- 6.1 Members must be aware of their obligations under the Member Code of Conduct and ensure that they declare any interest in the prescribed manner and abstain from participating in meetings where appropriate.

7. Financial Implications

- 7.1 There are no financial implications to this report.

8. Recommendations

- 8.1 Members are requested to note the above change to the Licensing Act 2009 and to the updated Statutory Guidance issued under Section 182 of the Act.
- 8.2 Members are requested to note that a letter is being sent to all Members setting out more detailed information on the licensing process.
- 8.3 Members are advised that a further information report will be presented to Council.

P A Jolley

Assistant Chief Executive Legal and Regulatory Services

Date:

11 FEBRUARY 2010

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Background documents:

Guidance issued to licensing authorities by the Secretary of State for Culture
Media and Sport revision dated 29 January 2010 available at
www.culture.gov.uk

Policing and Crime Act 2009 available at www.opsi.gov.uk

Member Code of Conduct available at www.bridgend.gov.uk