

Meeting: LICENSING & REGULATORY COMMITTEE

Date of Meeting: 22nd February 2010

Title of Report: LICENSING ACT 2003 – NEW CATEGORY OF “INTERESTED PARTY”

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This report contains	Yes	No
CONFIDENTIAL information		√
EXEMPT information by virtue of paragraph(s) ... of Part 1 Schedule 12A of the Local Government Act 1972		√
Is the decision of this report DELEGATED?	√	

Purpose of Report

To inform Members of a new category of “Interested party” inserted into the Licensing Act 2003 by the Police and Crime Act 2009.

Recommendation(s)

That Members note this Report and the changes made to the Licensing Act 2003.

Corporate Objective Monitoring

Corporate Objective		Positive Impact	Neutral Impact	Negative Impact
1	Creating a Learning Community		√	
2	Creating Safe Communities	√		
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening Local Democracy		√	
8	Children and Young People		√	

Financial Implications

None arising from this Report.

List of background papers relied upon in the preparation of this report

- The Licensing Act 2003.
- Guidance issued under Section 182 of the Licensing Act 2003 – 28th January 2010.
- Policing and Crime Act 2009.
- Statutory Instrument 125 / 2010 “The Policing and Crime Act 2009 (Commencement No. 3) Order 2010” – 21st January 2010.
- Report to Licensing & Regulatory Committee – “Certain provisions of the Policing and Crime Bill” – 19th January 2009.

Background

1. The Policing and Crime Act 2009 (“PCA09”) received Royal Assent on 12th November 2009.
2. Certain provisions of that Act were brought into effect by the Government on 29th January 2010, one of which was Section 33 which related to allowing members of licensing authorities to act as interested parties.
3. This Section was tabled and accepted at the Lords Report stage on 5th November 2009 and as such was not part of the proposed provisions reported to Members on 19th January 2009.

Definition of “relevant representations” and “interested parties”

4. Members will recall that the Licensing Act 2003 (“LA03”) states that “*where relevant representations are made, the Authority must hold a hearing to consider them, unless the Authority, the applicant and each person who has made such representations agree that a hearing is unnecessary*”.
5. “Relevant representations” being defined as those which:
 - (a) *are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,*
 - (b) *meet the requirements of subsection (7),*
 - (c) *if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and*
 - (d) *are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).*
6. Part of the requirements of subsection 7 are:
 - (a) *that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c).*
7. “Interested party” being defined as any of the following:
 - (a) *a person living in the vicinity of the premises,*
 - (b) *a body representing persons who live in that vicinity,*
 - (c) *a person involved in a business in that vicinity,*
 - (d) *a body representing persons involved in such businesses.*
8. With effect from 29th January 2010 the PCA09 has added to this list by inserting the following new category:
 - (e) *a member of the relevant licensing authority.*

Effect of the amendment

9. This amendment means that members of a licensing authority can now make representations or seek a review in their own right. The representations still need to be “relevant” (as per Paragraph 5 above) but the members are no longer

required to live in the vicinity in order to make the representation or seek the review. Similarly they will no longer need to have been asked to represent someone who does.

10. The term "member of the licensing authority" refers to Councillors, and not to Officers or other employees of the Authority, similarly it does not include Parish Councillors (unless they also sit as Councillors on the Council).

Further information

11. Attached within Annex 1 to this Report is an extract from the updated Guidance issued under S182 of the LA03 relating to these matters.
12. LACORS have produced a leaflet for Member's information containing suggested "Frequently asked questions" and this is attached within Annex 2 to this Report.

Extract from Guidance issued under Section 182 of the Licensing Act 2003 – 28th January 2010

- 8.5 The second group – “interested parties” – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:
- a person living in the vicinity of the premises in question;
 - a body representing persons living in that vicinity, for example, a residents’ association, or a parish or town council;
 - a person involved in a business in the vicinity of the premises in question;
 - a body representing persons involved in such businesses, for example, a trade association; and
 - a member of the relevant licensing authority, i.e. elected councillors of the licensing authority for the area in which a premises is situated (see paragraph 8.1).
- 8.6 It is expected that “a person involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.
- 8.7 Any of these individuals or groups may specifically request a representative to make a representation on their behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.
- 8.8 Further information on the role of interested parties is available in “Guidance for interested parties: applying for a review” which can be found on the DCMS website.

THE ROLE OF LOCAL COUNCILLORS

- 8.9 Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Local councillors can also, as elected members of the licensing authority, make representations in their own right if they have concerns about any premises, regardless of whether they live or run a business in the vicinity of those premises. For example, councillors may apply for a review of a licence if problems at a specific premises which justify intervention are brought to their attention.
- 8.10 Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a ‘prejudicial’ interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest). In cases where a local councillor makes a representation as an interested party, they will be considered to have a ‘prejudicial’ interest in the local authority’s decision on a resulting review and in the local authority’s representation to any appeal on this decision.
- 8.11 According to the Model Code of Conduct, councillors with a ‘prejudicial’ interest must not exercise executive functions in relation to that business and must not seek improperly to influence a decision about that business. Councillors with a prejudicial interest are allowed to attend relevant meetings to make representations, answer questions or give evidence,

provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.

- 8.12 The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. For example, where a councillor has made representations in their capacity as an elected member of the licensing authority. In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence in any other way.
- 8.13 In addition, councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews.
- 8.14 The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.
- 8.15 Where an officer of the authority, such as a licensing officer, has information that raises concerns about a licensed premises, they are entitled to bring that information to the attention of an elected councillor. For example, in the case of underage alcohol sales, they may wish to alert the child protection portfolio holder or the chair of the licensing committee, who may then wish to consider calling for a licence review (subject to the points raised above).



Elected members as Interested Parties: FAQ

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*
- *This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.*

Please note that this list is not exhaustive and will be updated whenever new questions and scenarios are submitted to LACORS.

Q. Can all councillors in England and Wales make representations and call for reviews?

A. Nearly all councillors are now “interested parties” under the Licensing Act 2003 and can make representations in their own right in response to premises licence and club premises certificate applications in the area of the authority for which they are also members.

If your council is a licensing authority for the premises or club in question, then you are an interested party. If your council is not a licensing authority then you are not an interested party.

Q. What is the status of Parish/Town councillors?

A. Parish/town councillors are not interested parties in their own right, but can be involved as representatives of interested parties, including the parish/town council itself, instead. For example, a parish or town councillor can speak at a hearing on behalf of a parish/town council, individual resident or organisation that has made a representation.

Q. What is the status of elected mayors?

A. Elected mayors are not interested parties. This is because elected mayors are not included in the statutory definition of “member of the relevant licensing authority”. Section 39(5A) of the Local Government Act 2000 states that a reference in any enactment to a member or councillor of a local authority does not include a reference to an elected mayor. There are specific exceptions to this provision, which are listed in other regulations, and the Licensing Act 2003 is not included in those regulations.

Q. Do I need to represent the ward in which the premises is located?

A. No, you can make representations or apply for a review in relation to any premises in any ward within your council’s area.

Q. Can I make representations or call for a review even when none of my constituents has approached me formally to do so?

A. Yes. The new provisions mean that all elected members of local authorities that are licensing authorities are now “interested parties” in their own right under the Licensing Act 2003 in the area of the authority for which they are also members.

Q. Can I act as a representative at a hearing on behalf of a resident or local business or other local organisation who have asked me to speak on their behalf?

A. Yes; you can represent another interested party (or parties) who has made a representation. You are subject to the rules of conduct for councillors set out in the National Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007 (“the Model Code”) when you take part in the hearing.

In this scenario you do not need to have made a representation in your own right, but you must ensure that you can demonstrate to the licensing authority that you have been requested to represent the interested party or parties in question.

Q. I am a member of the licensing committee. Can I make representations and call for reviews? Can I address the licensing sub-committee as an interested party at a hearing?

A. Yes, but the Model Code prohibits you from sitting as a member of the sub-committee when it considers the application that you are involved in. You should also consult the DCMS Guidance which addresses this point in detail.

Please also see LACORS leaflet “Elected Member Guidance on the Licensing Act 2003” for more information, and take advice from your council’s monitoring officer for more specific guidance.

Q Does a representation or call for review by a councillor carry more weight than those submitted by residents?

A. No. There is no provision within the Licensing Act 2003 for councillor representations or review applications to be given any priority or additional consideration by the licensing sub-committee.

Q. What concerns can I include in my representation?

A. Only “relevant representations” can be considered by the licensing authority. Representations complaining about general problems in an area or the fact that there are “too many” licensed premises in an area, for example, **are not** relevant representations. Representations should address the effect of the application on one or more of the licensing objectives, i.e.:-

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Q. What other factors should I be aware of when making a representation?

A. A representation must not be withdrawn, frivolous or vexatious in order to qualify as a relevant representation, i.e. to be considered by the licensing sub-committee. (A representation can only be withdrawn by the person who made it.)

“Frivolous” representations are, for example, concerned with irrelevant details, or details that are not connected to the licensing objectives.

A “vexatious” representation, for example, would be where an interested party makes a representation to annoy or intimidate an applicant rather than on the basis of the licensing objectives.

A DCMS guide for interested parties making representations is available at http://www.culture.gov.uk/images/publications/Guidance_for_interested_parties.pdf.

Q. Who decides whether my representation is frivolous or vexatious?

A. The licensing authority itself makes this decision, and the Guidance issued under section 182 of the Licensing Act recommends that this decision is delegated to a licensing officer.

Q. Can I just outline my concerns about a licensed premises verbally to the licensing officer and ask that they draft my representation and obtain supporting evidence from other departments on my behalf?

A. You are again reminded of the need to comply with the Model Code. You can request information about how to apply for a review, and can ask for information about how to obtain supporting evidence that is publicly available, but you cannot request more assistance from officers than any other interested party.

Q. I have a legal enquiry relating to a review I have initiated as an interested party. Can I obtain advice from the Council’s legal officer?

A. No, for the same reasons as above, i.e. it would constitute an improper use of advantage in breach of the Model Code.

Q. My constituents have suggested that I should discuss a licensing application that I have made a representation on with a member of the licensing sub-committee in order to point out the strength of their case. Is this problematic?

A. Yes. This would constitute an attempt to improperly influence a decision, and would therefore be a breach of the Model Code. You should not discuss your representations with members of the licensing sub-committee.

Q. I want to have a premises licence reviewed. How do I make a review application?

A. There is a standard application form, which must be completed and sent to the licensing authority, the premises licence holder and a series of statutory bodies known as “responsible authorities”. DCMS has provided detailed guidance on how to apply for a review online: <http://www.culture.gov.uk/images/publications/060918GuidanceforInterestedPartiesReviews2007.pdf>

Q. My application for a review has been heard by the licensing sub-committee and I am not happy with the outcome. Can I appeal?

A. You may appeal the decision. The time limit for lodging an appeal is 21 days from the date that you received notice of the licensing sub-committee’s decision. Appeals are made to the Magistrates’ Court for the “petty sessions” area in which the premises is situated. Further guidance is available in the DCMS leaflet “[Guidance for Interested parties - Appealing licensing decisions in the courts](#)”

Q. What happens if I incur legal costs as an interested party if I decide to appeal the decision of the licensing authority in the courts? Must my council indemnify me?

A. LACORS has received the following advice from the Department for Communities and Local Government:

“Certainly it is a reasonable expectation that a local authority will provide indemnification to their members so that members are not left liable for costs arising from their actions taken in relation to their duties. If the member is acting on behalf of the local authority in seeking a review of an existing premises license then one would expect the local authority to meet costs. (A councillor cannot be entitled to indemnification against a costs order by the local authority unless s/he is acting with the authority of the local authority. It would be quite inappropriate for all local authorities to give a blanket indemnification of any action by a local councillor.)

If a councillor acts on his or her own initiative in some legal proceedings, there is little reason for treating them any differently as regards the costs of any litigation than how any other litigant is treated. In short, if the member was acting in a non-official capacity then the indemnity would not apply.”

Q. I have not been involved in licensing matters before. Where do I find out more information about the procedure involved?

A. LACORS has produced a [Licensing Act 2003 Councillor Handbook](#), available via the link below, which gives an overview of the Act:

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=46BEF40&id=18031>

DCMS have provided an extensive overview of the Act, “[Licensing Act 2003 Explained](#)” via its website: http://www.culture.gov.uk/what_we_do/beer_and_entertainment/4051.aspx