

The Highland Licensing Committee

Meeting – 28 March 2017

Agenda Item	6
Report No	HLC/015/17

Extension of delegated powers – 29 March to 9 June 2017

Report by the Principal Solicitor – Regulatory Services

Summary

This report invites the Committee to extend officers' delegated powers during the period 29 March to 8 June 2017 to ensure that statutory deadlines in the processing of licence applications and suspensions can be met, and to note revised consultation arrangements in respect of notices of public processions received during the immediate post-election period.

1.0 Background

- 1.1 As a result of the local authority elections on 4 May 2017, there will be no meeting of the Highland Licensing Committee in the 11-week period 29 March 2017 to 8 June 2017 (inclusive).
- 1.2 In order to ensure that various statutory deadlines in the licensing process continue to be met during this period, extended delegated powers are sought as set out in paragraphs 2.0 to 4.3 below.

2.0 Pending applications – three-monthly consideration

- 2.1 Section 3 of the Civic Government (Scotland) Act 1982 ("the 1982 Act") requires every licensing authority to consider, within three months of an application having been made to them, each application so made. The 1982 Act provides for a period of six months for final the determination of the application.
- 2.2 The three-month consideration requirement is normally met by way of a report to each Committee meeting listing the pending applications requiring to be considered. While every effort has been made to include any applications likely to require such consideration in the report to the meeting on 28 March 2017, there may be some applications which are lodged after finalisation of the 28 March agenda and in respect of which the three-month consideration period will expire before the next Committee meeting on 9 June 2017.
- 2.3 Delegated powers are accordingly sought to enable the Principal Solicitor (Regulatory Services) and the Solicitor (Regulatory Services) to undertake, on behalf of the licensing authority, any such three-month considerations as may be required during the period 29 March to 8 June 2017.

3.0 Applications requiring determination before 9 June

3.1 The Council's Scheme of Delegation gives power to the Head of Corporate Governance, the Principal Solicitor (Regulatory Services) and the Solicitor (Regulatory Services) to grant, but not refuse applications, exemptions, renewals or transfers of licences where

- a) the application has attracted no relevant objection or relevant adverse representation;
- b) no member of the Council has requested that the application be decided by the Committee, and
- c) the application is one which the officer concerned considers should be granted, either without conditions or with conditions which are of a straightforward nature.

(hereinafter referred to as "existing delegated powers")

3.2 This power is conferred in respect of all applications for licences under the 1982 Act as well as applications for HMO licences under the Housing (Scotland) Act 2006 ("the 2006 Act").

3.3 Extended delegated powers are sought to enable the Principal Solicitor (Regulatory Services) and the Solicitor (Regulatory Services), acting on behalf of the licensing authority and in either case only with the agreement of the Head of Corporate Governance or, in his absence, the Depute Chief Executive/Director of Corporate Development, to also take the following actions.

- i. To grant applications for licences under the 1982 Act and the 2006 Act where the application requires to be determined before 9 June 2017 and where it has attracted a relevant objection or relevant adverse representation but the officers concerned, having given the applicant the opportunity to notify them in writing of his views on such objection or representation and having considered any such views, consider that the application should be granted.
- ii. In granting any licence, to impose such additional conditions on the licence (in addition to standard conditions) as the officers concerned consider appropriate, including conditions to address or mitigate any matter raised in a relevant objection or relevant adverse representation.
- iii. To refuse applications for licences under the 1982 Act and the 2006 Act where the application requires to be determined before 9 June 2017 and where it has attracted a relevant objection or relevant adverse representation and the officers concerned, having given the applicant the opportunity to notify them in writing of his views on such objection or representation and having considered any such views, consider that the application should be refused under any of the grounds set out in the relevant Act.

- 3.4 The likelihood of these extended powers having to be exercised is small. However, the power sought in paragraph i. above would cover any situation in which a new licence application for an event occurring before 9 June 2017 is received and any relevant objection or relevant adverse representation is not considered to give adequate grounds on which to refuse to grant the licence and/or can be addressed by appropriate conditions under the power sought in paragraph ii. above.
- 3.5 The refusal power sought in paragraph iii. above would cover a situation where an application which the officers concerned consider should be refused would, if not refused by 9 June 2017, be deemed granted under the relevant Act.

4.0 Suspensions under paragraph 11 of Schedule 1 to the 1982 Act

- 4.1 The Scheme of Delegation gives power to the Head of Corporate Governance, the Principal Solicitor (Regulatory Services) and the Solicitor (Regulatory Services) to order immediate temporary suspensions of licences under paragraph 12 of Schedule 1 to the 1982 Act. The officer concerned must first consult with the Depute Chief Executive/Director of Corporate Development or, in her absence, the Head of Corporate Governance, and with Police Scotland and, where appropriate, the Scottish Fire and Rescue Service. These paragraph 12 suspensions cease to have effect on expiry of a period of six weeks from the date the suspension order was made or on the date of any decision of the licensing authority whether or not to suspend the licence under paragraph 11 of Schedule 1, whichever is the earlier date.
- 4.2 A decision on whether or not to order a further period of suspension under paragraph 11 of Schedule 1 cannot be made without first giving the holder of the licence, any complainer and Police Scotland the opportunity to be heard. The power to make such decisions is reserved to the Committee.
- 4.3 In order to cover a situation in which an immediate suspension has been ordered by officers under paragraph 12 of Schedule 1, but the six-week period will expire before 9 June 2017 and, following consultation with the Depute Chief Executive/Director of Corporate Development, Police Scotland and, where appropriate, the Scottish Fire and Rescue Service, officers consider that there are grounds to consider ordering a longer-term suspension under paragraph 11 of Schedule 1, extended powers are sought to enable the Head of Corporate Governance, acting jointly with the Principal Solicitor (Regulatory Services) and the Solicitor (Regulatory Services) or either one of them, to exercise on behalf of the licensing authority the power to suspend licences conferred by paragraph 11 of Schedule 1 and to that end to conduct hearings before reaching a decision on the question of whether or not to suspend a licence under that paragraph.

5.0 Public procession consultations

- 5.1 The Scheme of Delegation permits the Depute Chief Executive/Director of Corporate Development, the Head of Corporate Governance and the Principal Solicitor and Solicitor (Regulatory Services) to make orders (and decide not to make orders) under sections 62 and 63 of the 1982 Act in respect of proposed

public processions of which notice of proposal is received. These are orders either imposing conditions which must be adhered to by the procession organisers or prohibiting the holding of the procession.

- 5.2 The Scheme requires that before making any such order, the officer concerned must consult with the Chairman and Vice-Chairman of the Community Services Committee, Police Scotland and Local Members. In terms of the 1982 Act, consultation with Police Scotland is also required before a decision to make or not to make an order is made.
- 5.3 During the period 4 May 2017 until appointment of members of the Community Services Committee at a full Council meeting, consultation with the Chairman and Vice-Chairman of that Committee will clearly not be possible. It is proposed therefore that, should any notice of proposal in respect of a public procession be received during that period, officers instead consult the Director of Community Services. Members are asked to note these revised consultation arrangements.

6.0 Recommendation

- 6.1 The Committee is invited to agree to extend officers' delegated powers during the period 29 March 2017 to 8 June 2017 to include exercise on behalf of the licensing authority of the extended powers set out at paragraphs 2.0 to 4.3 of this report and to note the revised consultation arrangements in respect of notices of public processions received during the immediate post-election period.

Officer Reference: Susan Blease

Date: 3 March 2017

Background Papers: Civic Government (Scotland) Act 1982, Housing (Scotland) Act 2006