

NOTICE OF MEETING

GENERAL PURPOSES COMMITTEE

Venue: Council Chambers
Midlothian House
Buccleuch Street
Dalkeith

Date: Tuesday 19 May 2015

Time: 2.00 pm

JOHN BLAIR
Director, Resources

Audio Recording Notice: Please note that this meeting will be recorded. The recording will be publicly available following the meeting, including publication via the internet. The Council will also comply with its statutory obligations under the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

AGENDA

- 1 Apologies.
- 2 Order of Business – including notice of new business submitted as urgent for consideration at the end of the meeting.
- 3 Declarations of Interest.
- 4 Minutes of Meeting of 31 March 2015 (**Circulated: Pages 3 – 5**).
- 5 Civic Government (Scotland) Act 1982 - Procedure for Disposing of Applications for Licences - Report by Director, Resources (**Circulated: Pages 7 – 10**).
- 6 Consultation - Primary Authority legislation - Report by Director, Resources (**Circulated: Pages 11 – 27**).
- 7 Alcohol (Licensing, Public Health and Criminal Justice)(Scotland) Bill - Report by Director, Resources (**Circulated: Pages 29 – 31**).

THE COMMITTEE IS INVITED (A) TO CONSIDER RESOLVING TO DEAL WITH THE BUSINESS SHOWN OVERLEAF IN PRIVATE IN TERMS OF PARAGRAPHS 3, 12 AND 14 OF PART 1 OF SCHEDULE 7A TO THE LOCAL GOVERNMENT (SCOTLAND) ACT 1973 – THE RELEVANT REPORT THEREFORE IS NOT FOR PUBLICATION; AND (B) TO NOTE THAT NOTWITHSTANDING ANY SUCH RESOLUTION, INFORMATION MAY STILL REQUIRE TO BE RELEASED UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 OR THE ENVIRONMENTAL INFORMATION REGULATIONS 2004.

- 8 Taxi Driver's Licence – Application for Renewal - Report by Chief Constable (**Circulated under separate cover**).
- 9 Private Hire Car Drivers' Licences – (a) Application for Renewal and (b) Applications (2) – Reports by Chief Constable (**Circulated under separate cover**).

12 May 2015

**General Purposes Committee
Tuesday 19 May 2015
Item No 4**

MINUTES of MEETING of the MIDLOTHIAN COUNCIL GENERAL PURPOSES COMMITTEE held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 31 March 2015 at 2.00pm.

Present:- Councillors Coventry (Chair), Bryant, Imrie, Johnstone, Milligan, Muirhead, Pottinger, Rosie, Wallace, de Vink and Young.

Apologies for Absence:- Councillors Baxter, Beattie, Bennett, Montgomery, Russell and Thompson.

1 Order of Business

The Committee noted that the proposed item about the Overprovision Policy relating to Houses in Multiple Occupation had been withdrawn.

2 Minutes

The Minutes of Meeting of 24 February 2015 were approved as a correct record, on the motion of Councillor Rosie, seconded by Councillor Muirhead.

4 Civic Government (Scotland) Act 1982 - Procedure for Disposing of Applications for Licences

There was submitted report, dated 19 March 2015, by the Director, Resources, concerning the procedure for disposing of applications for licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

5 Dalkeith Common Good Fund – Requests for Financial Assistance

There was submitted report, dated 24 March 2014, by the Director, Resources, requests for disbursements from the Dalkeith Common Good Fund from (a) Mrs Janet Findlay 19 Cowden Terrace Dalkeith, on behalf of the Organisers of the Woodburn Fun Day, for financial assistance in the amount of £600 for the hire of two inflatables on 26 July 2015; and (b) Ms Nicola Inglis, c/o 26 Sandyriggs Gardens, Dalkeith, on behalf of St Bernard's Boys Club for financial assistance towards the cost of purchasing a defibrillator for Ironmills Park, in the amount of £1,268.

In his report, the Director confirmed that disbursements from the Common Good Fund had to be unequivocally for the benefit of the inhabitants of the former burghal area of Dalkeith.

Appended to the report were outline potential conditions that could be applied.

Decision

- (a) To approve the award of the disbursements, subject to appropriate conditions; and
- (b) To remit to the Director, Resources, in consultation with the Chair, to determine the conditions to be attached to the release of the funds and the extent of the contribution to the latter.

3 Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the Meeting during discussion of the undernoted items, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraph 3, 12 and 14 of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973.

Decision

Private Hire Car Driver's Licence – Application – to grant the licence, subject to a warning to the applicant about his future conduct.

The Meeting terminated at 2.20pm.

ADDENDUM to MINUTES of MEETING of the MIDLOTHIAN COUNCIL

GENERAL PURPOSES COMMITTEE held on Tuesday 31 March 2015

(relative to paragraph 3).

Sederunt

Councillors Imrie, Bryant, Milligan and de Vink left the meeting at this stage (2.20pm).

Private Hire Car Driver's Licence – Application

With reference to paragraph 1(b) of the Addendum to the Minutes of 24 February 2015, there was re-submitted letter, dated 23 January 2015, from the Chief Constable, concerning an application for a Private Hire Car Driver's Licence by Mr A Hares, 9 Arnprior Road, Gorebridge.

The Committee heard the representative of the Chief Constable and the Applicant, during which the latter endeavoured to explain the reason for non-declaration of convictions, apologised for his error and gave assurances of good behaviour in the future.

Decision

To agree to grant the licence on the standard conditions, subject to a warning to the applicant about his future conduct.

(Action – Legal Services Manager)

**Civic Government (Scotland) Act 1982
Procedure for Disposal of Applications for Licences**

Report by Director, Resources

1 Purpose of Report

This report outlines the procedure to be adopted for a Hearing; and this report should be considered along with each application.

2 Procedure for Considering Applications at Hearings

The Procedure for considering applications is as follows:-

- 1 The objectors are given the opportunity to explain the basis of their objection (copies of the representations have been previously circulated to the applicant).
- 2 The applicant and the Members are given the opportunity to question the objectors.
- 3 The applicant is given the opportunity to speak in support of the application; and respond to the comments which have been made.
- 4 The objectors and the Members are given the opportunity to question the applicant.
- 5 The objectors and then the applicant are given the opportunity to sum up.
- 6 The Committee take a decision on the matter in the presence of the applicant and the objectors. The Committee may first adjourn but only for the expressly stated purpose of seeking procedural or legal advice (normally from the Clerk or Legal Adviser) and not for the purpose of taking the decision in private. The reasons for making the decision should be explained when conveying the decision.

3 Disposal of Applications for Licences

In disposing of an application for the grant of a licence the Committee may:-

- (a) grant the licence unconditionally;

- (b) grant the licence subject to conditions; or
- (c) refuse to grant the licence.

The Committee may refuse an application for a licence if, in their opinion –

- (i) the applicant or any other person responsible for the management of the activity is not a fit and proper person to be the holder of the licence;
- (ii) the activity to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would be refused the grant of such a licence if he made application himself;
- (iii) where the application relates to premises, those premises are not suitable or convenient for the activity having regard to –
 - (i) the location, character or condition of the premises;
 - (ii) the nature and extent of the proposed activity;
 - (iii) the kind of persons likely to be in the premises;
 - (iv) the possibility of undue public nuisance;
 - (v) public order or public safety; or
- (iv) there is other good reason for refusing the application.

Otherwise the Committee must grant the application.

If the Committee grant conditionally or refuse the application, the applicant has the right of appeal to the Sheriff. The Sheriff may uphold an appeal only if he considers that the Licensing Authority in arriving at their decision:-

- (1) erred in law;
- (2) based their decision on any incorrect material fact;
- (3) acted contrary to natural justice; or
- (4) exercised their discretion in an unreasonable manner.

There is no right of appeal against the Council's decision in relation to applications for Temporary Licences.

4 Spent Convictions

Where the Chief Constable intends to libel convictions which are 'spent', if the Committee agree that justice could not be done without disclosure of these, the spent convictions shall be heard and details will be circulated if so agreed.

5 Treatment of Fixed Penalties, Police Warnings and other Alternatives to Prosecution (ATPs)

In terms of the Rehabilitation of Offenders Act 1974 certain convictions become "spent" after several years and cannot be considered by the Committee ie with the exception of taxi and private hire car drivers, which Licensing Authorities are permitted to consider.

Representations by the Chief Constable either objecting to applications or seeking suspension may also contain details of conduct of the applicant which are not convictions, classed as ATPs, the main types of which include (1) warnings given by the Police or Procurator Fiscal; (2) Conditional Offers and Compensation Offers made by the Procurator Fiscal under Section 302 of the Criminal Procedure (Scotland) Act 1995; (3) a Fixed Penalty offered by the Police under Section 129 of the Antisocial Behaviour etc (Scotland) Act 2004; and (4) certain foreign warnings or fixed penalties.

ATPs are "spent"; warnings become "spent" as soon as they are issued; and the remainder are regarded as "spent" within three months of issue.

Most ATPs appearing on such objections will be "spent"; offences that resulted in ATPs which are "spent" cannot be considered by the Committee; and the exemption allowing the Committee to consider "spent" convictions do not apply to ATPs.

The Chief Constable can ask the Committee to consider "spent" ATPs, by exercising discretion under Section 7(3) of the Rehabilitation of Offenders Act 1974, which permits the Committee to consider them if it is satisfied that justice cannot be done except by considering them ie subject to the driver being asked for a view as to whether the information should be submitted (and before the Committee decide whether or not to consider any ATPs).

Many road traffic offences are dealt with through the issue of Conditional Offers of Fixed Penalties under the Road Traffic Offenders Act 1988 which are not ATPs and therefore can be considered by the Committee.

Letters from the Chief Constable objecting to applications may also contain details of complaints and allegations against the driver which have not resulted in conviction or ATPs and details of pending criminal court cases; and as these are not convictions or ATPs, can be considered by the Committee.

6 Recommendations

The Committee is recommended to note the terms of the report.

5 May 2015

Contact Person: R G Atack **Tel No:** 0131 271 3161
Background Papers: File CG 10.1 (RGA)
Civic Government (Scotland) Act 1982.



General Purposes Committee

Tuesday 19 May 2015

Item No 6

**Consultation on Primary Authority Partnerships relating to
Devolved Regulatory Responsibilities of Local Authorities**

Report by Director, Resources

1 Purpose of Report

To ask the Committee to consider the submission of comments to the Scottish Government concerning the Consultation on Primary Authority Partnerships relating to Devolved Regulatory Responsibilities of Local Authorities.

2 Background

The Scottish Government has published the above mentioned consultation. It follows through on legislation designed to improve the way regulation is applied in practice across Scotland.

A specific and additional proposal emerged from a consultation in 2012 on Proposals for the Better Regulation Bill, namely that some equivalent of Primary Authority Partnerships – which were introduced by the UK Government through the Regulatory Enforcement and Sanctions Act 2008, and have been amended by the Enterprise and Regulatory Reform Act 2013 – should be adopted in Scotland, in the context of Scottish regulation. Primary Authority allows a business to form a partnership with one local authority in order to receive tailored support in relation to a range of regulations; and can assist a business by issuing assured advice, co-ordinating enforcement action across all locations used by the business, and developing an inspection plan for the business as a whole.

In response to the original proposal, this Council recommended that the Civic Government activities should not be targeted and it is confirmed that they have been removed from scope as other means are available to support and deliver consistency in this area while remaining sensitive to local circumstance.

However, in recognition of business views that Civic Government Licensing should be included in the scope of primary authority partnerships, the Scottish Government invite views on whether there are any specific aspects which could be within scope while still retaining the ability for local authorities to maintain legitimate variation and if so, whether having multiple local authorities responsible for different aspects of the same licence is both practical and desirable

The Consultation relates to Age-restricted sales (for devolved matters); Agriculture; Animal feeding-stuffs hygiene and standards *; Animal establishments Animal health and welfare Environmental protections Farm animal health; Food safety and hygiene Food standards; Housing and Pollution control. * is not listed separately by the Better Regulation Delivery Office (BRDO). Reserved matters in scope within UK scheme are Explosives licensing; Health and safety; Petroleum licensing; Product safety; Metrology and Fair Trading; and Road Traffic and General Licensing.

A copy of the Consultation has been placed in the Members' Library.

The comments made for the initial stages of the Bill are shown in **Appendix 1** hereto. The questions contained in the consultation are listed in **Appendix 2** with some answers. However, unless the concept of PA is supported, there appears little point in providing answers.

The Police, Fire and Rescue and Council Officers have been consulted.

The Head of Housing states that, there is no issue with the intent to implement a Scottish specific Primary Authority scheme for the devolved regulatory responsibilities of local authorities in Scotland, but main concerns are in the enforcement duties it will require of the local authority and associated costs, and difficulties in cost recovery.

(Housing provisions ie for area improvement, responsibilities of landlords, compulsory purchase and houses in multiple occupation, are in scope.)

The Trading Standards Manager broadly shares these concerns.

3 Resource Implication

The specific resource implications of this report do not impact on the Council at this stage.

3.1 Risk implications

There are no risk implications at this stage.

3.2 Policy Implications

Strategy and Consultation

The requests in this report do not relate to a strategy. Consultation with Officers has taken place.

3.3 Equalities and Sustainability

An equalities impact assessment has not been carried out. There are no sustainability implications.

3 Conclusion

Primary Authority allows a business operating in two or more local authorities to form a legally recognised partnership with one local authority in order to receive tailored advice and support in relation to a range of regulatory functions and the consultation seeks views on the proposed scope of a primary authority scheme in Scotland and how it would operate in practice.

The consultation runs for the standard 12 week period.

Comments made in respect of the initial proposals reflect the kind of problems that pursuing this concept will generate.

The responses to the questions reflect differences. But, concern is expressed that overly onerous obligations and restrictions may be placed on particularly smaller authorities and the prospect of potential differences of opinion and direction across differing regulatory regimes. The view has been expressed against entering into PAPs with locally headquartered businesses who trade nationally, given the disproportionate amount of time the workload required in drafting protocols. Also, there is the payment aspect. Under the PA system, a PA would be paid by a business for providing all the legal/enforcement advice in specific legislative areas (Fair Trading, Pricing, Age-restricted sales etc), advice which the business would subsequently rely upon, if an enforcement issue was raised by another LA. However, it is conceded that undoubtedly there are PAPs that appear to work well.

4 Recommendation

It is recommended that the Committee consider the report.

Contact – Bob Attack

Tel 0131 271 3161

Background Papers - **Consultation Paper and Questions**

Appendix 1

Consultation on Primary Authority Arrangements relating to the Devolved Regulatory Responsibilities of Local Authorities in Scotland

Answers

Q.1 - In principle, do you favour the introduction of Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland? Why? What impact would this have on current local discretion?

No. Because it is likely that it will have a detrimental effect on the ability of local licensing authorities to control essentially local situations. Especially in relation to Civic Government licensing, where the emphasis is on the prevention of crime and the preservation of public order and public safety, where the enforcement powers are exercised by the Police, there will be uncertainty as to who the enforcer is and duplication of effort. There will also be delays in relation to enforcement through having to defer to the Primary Authority and it probably being remote. It is unreasonable propose this approach so soon after the concept was rejected by the Scottish Parliament. There are significant resource issues for smaller LAs in acting as a PA even if these are fully funded by the partner business. There remains the risk of regulatory capture. What would happen in relation to premises licensed by Fire authorities now that this is a single service for Scotland?

Q1A - If you do not support, in principle, the introduction of Primary Authority arrangements for the devolved regulatory responsibilities of local authorities in Scotland, do you favour an alternative model which would optimise consistency and compliance, including costs and administration? Please provide details.

A better model can be arrived at by carrying out a review of the legislation, in consultation with local authorities (and other stakeholders) throughout Scotland; and the introduction of Best Practice Guidance under the existing legislation. There is no need to fragment it. It is unavoidable that there will be differences of approach depending on the local need. This is proposed in another part of the Bill in relation to the power to set national standard for example for street traders to be used by Local EH Departments when responding to s39 requests

Q2 - The UK approach lists relevant regulatory responsibilities in Schedule 3 to the Regulatory Enforcement and Sanctions Act. Should relevant devolved regulatory responsibilities of local authorities in Scotland also be specified in legislation as "in scope"? Why?

No. It is inappropriate to regulate activity in this way. That is the responsibility of the licensing authorities .

Q2A - Which specific devolved regulatory responsibilities of local authorities in Scotland should be specified in legislation as "in scope"? Why?

No Civic Government activity. No Food control related Environmental Health (Scotland) issues until the new Food Body is established as this could fetter the discretion of that organisation in the future. There may be other issues that have not been identified that ought not to be included.

There appears to be little evidence of demand for the extension of categories across the board. It appears unwise to base the way forward on such scant information with undue haste.

Q2B - Are there any specific devolved regulatory responsibilities of local authorities in Scotland which should not be specified in legislation as "in scope"? Please explain your rationale for such exclusion?

All. The Police provide the enforcement but they do not appear to have been consulted to any large extent. Confusion and a lack of confidence will develop owing to the lack of powers.

Q3 - Should business eligibility to engage in a Primary Authority Partnership be restricted to "any business, charity or other organisation that is regulated by two or more local authorities in respect of a relevant function"? Please explain your view.

Yes.

These are largely discretionary powers to which the LAs have given much thought. All of that will have to be swept aside and reviewed. The transitional phase is likely to be problematic. The spread in the cost of enforcement is likely to be higher.

Q4 - Should Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland follow the current or planned UK model in terms of the focus on assured information and advice, inspection plans and enforcement action? Please explain your view, particularly in relation to any scope to optimise consistency and compliance, including costs and administration.

If it is decided to go ahead, there should be greater thought afforded to the concept. Full dialogue without the pressure of a threat of any 2nd reading of a bill.

Q5 - Should Primary Authority Partnership arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland follow the UK model in terms of fees and charging regimes? If not what alternative model should be adopted? Please explain your view.

If it is decided to proceed regardless, the position ought to be one of Full Cost of Provision of Service recovery basis.

Q6 - What, if any, additional considerations should be taken into account in considering whether or not to introduce Primary Authority arrangements relating to the devolved regulatory responsibilities of local authorities in Scotland? What measures, if any, should be considered to avoid the potential for forum shopping? Please explain your view.

This is a real danger. Nothing can be done to prevent it.

There appears to be a notion afoot that a national licence ought to be introduced, where hitherto, the consensus has always been that regulation should be reviewed from the stronger position ie inside the framework of the current legislation. Naturally, the commercial sector will be selective in whom they seek advice and guidance.

All of this gives the trade a false expectation of successful introduction and implementation of and an improvement through intervention on their behalf.

APPENDIX 2

Consultation on Primary Authority Partnerships Relating to Devolved Regulatory Responsibilities of Local Authorities

CONSULTATION QUESTIONS

Question 1 – Do you agree that the categories of regulation set out in the consultation document (paragraph 18) should be in scope for primary authority partnerships in Scotland?

Yes ☐ No ☐

If no, please explain your answer

Comments Partly : the matters of Food Safety & Hygiene and Food standards are likely to benefit from PAPs in attaining transparency, consistency and proportionality of enforcement. However, Food Standards Scotland was established in April 2015 and this could fetter the discretion of that organisation in the future.

On the other hand, many of the matters relating to Environmental Protections are more likely to be essentially local situations depending on individual circumstances e.g., noise sensitive neighbours etc.

Question 2 – Does the legislation listed in Annex A represent the main primary legislation for the regulatory functions which are proposed to be in scope for primary authority partnerships in Scotland?

Yes ☐ No ☐

If no, please provide more details

Comments

Question 3 – Are there any specific section of the Civic Government (Scotland) Act 1982 which could be included as in scope while still retaining the ability for local authorities to maintain legitimate variation?

Yes ☐ No ☒

If yes, please list the relevant sections of the Act and explain your view

Comments The licensing of street traders with specific regard to Food matters may be assisted by the introduction of a PAP where businesses are sufficiently large to have units trading in multiple authorities, however in a small LA where the vast majority of businesses are family businesses trading within the boundary of one LA the availability of a PAP would be meaningless.

The application to Public Entertainment Licensing for 'mobile' events who rotate across many LAs e.g., funfairs could benefit.

Question 4 - Would an arrangement including specific aspects of Civic Government Licensing be workable?

Yes ☐ No ☒

Please explain your answer.

Comments The local authorities individually exercise the generally discretionary powers in different ways; and the PA is likely to create problems across Scotland; and under the current proposals a PAP is considered unlikely to influence those matters which require a licence but would allow improved consistency once the need for licensing has been established.

Question 5 – Do you agree that the regulations with regards to carrier bag charging should also be included as in scope?

Yes ☒ No ☐

Comments The vast majority of retailers locally needing to comply are small shops with few staff and their business is local – PAPs are highly unlikely in these situations. A proportionate enforcement policy is needed. The big stores (supermarkets etc), for which the legislation was really brought into being for, are almost entirely headquartered in England, hence any PAP will be with LAs there.

Question 6 – Are there any other devolved regulatory areas of local authorities which should be considered for inclusion in scope?

Yes ☐ No ☒

If yes, please provide details and the associated legislation:

Comments

Question 7 – Should the definition of ‘enforcement action’ contained in the Act additionally be supported by an explicit list of all sections of relevant legislation citing the specific actions which count as ‘enforcement action’?

Yes ☐ No ☒

Please explain your answer

Comments The definition provided is considered sufficient.

There is a danger in being either overly prescriptive or exclusive by drawing up an explicit list

Question 8 – Do you agree that a Scottish primary authority partnership scheme should enable the primary authority to direct the enforcing authority to take action?

Yes ☐ No ☒

Comments A PAP should not remove the autonomy of the enforcing LA for the specific issue.

Question 9 – Do you agree that the primary authority should have five working days to respond to proposed enforcement action?

Yes ☐ No ☐

If not, what alternative timescale do you propose? Please explain your view.

Comments A maximum of five working days for a Primary Authority to respond is considered too onerous, particularly in the early stages of the partnership.

Alternative: a requirement to acknowledge within 5 working days and respond within a longer time period 14 / 21 days. Small LAs acting as PAs are likely to have a reduced number of staff who are the lead officer for a business and other demands on their time are likely to require a greater response time to ensure robust and reliable advice is issued. It may be that in complex matters the PA would require to seek further advice e.g., from a Public Analyst or other specialist .

Question 10 – If a primary authority has powers to direct, are there any circumstances, other than those described in paragraph 35) where this requirement should not apply?

Yes ☐ No ☐

Comments Powers to direct should not apply

Question 11 - If a primary authority did not have powers to direct an enforcing authority not to take action, which model would provide the best process for engagement on enforcement action?

Notification only ☐

Notification and discussion ☐

Notification and discussion with dispute mechanism ☐

Comments If there are no powers to direct Notification and discussion is the preferred process, a dispute mechanism should not be required in this instance.

If powers to direct then a dispute mechanism is essential. It is likely the number of dispute will be v. small in number. A dispute mechanism should be via a national mechanism; requiring each PAP to develop a local dispute mechanism is considered cumbersome.

The financial element of dispute require clarification

Question 12 – is there any other option which you would suggest?

Yes ☐ No ☐

If yes, please provide details

Comments

Question 13 - Which of the options do you prefer?

- a. ☐
- b. ☐
- a. or b. only ☐
- a. or b. with c. as appropriate to the appeal ☐

Please explain your answer

Comments

Question 14 – Are there any other alternative options which you would suggest for an appeals panel or body?

Yes ☐ No ☐

Comments

Question 15 – Should an appeals panel include an independent business representative?

Yes ☐ No ☐

Comments The provision of an independent business representative may assist with transparency and proportionality issues. However it may result in delays in the process. The identification of an ‘independent’ suitable to all parties may be difficult particularly if the nature of the event is specialised or commercially sensitive e.g., a recipe requires to be disclosed for food standards reasons.

Question 16 - Should an independent body or individual regulate agreements and oversee appeals in order to ensure fairness?

Yes ☐ No ☐

Comments

Question 17 – Do you agree with the proposed appeals process?

Yes ☐ No ☐

Comments The proposal is broadly supported although clarity / further explanation is required

Para 43. “.....applicants apply for consent.....” to whom would such application be made

Para 43 . 2) requires the matter to be considered within 28 days, there is no stated time frame for determination.

Question 18 – Do you think that timescales for application are appropriate?

Yes ☐ No ☐

Please explain your answer

Comments In terms of time scales as indicated above [Q9] the proposed 5 working days is considered too onerous for a PA

“.....28 days.....” working / calendar days?

Question 19 – Do you think that the timescales for determination of a decision are appropriate?

Yes ☐ No ☐

Please explain your answer

Comments There is a stated time frame for consideration but none for determination clarification required.

Question 20 – Do you agree with this approach for legal agreements?

Yes ☐ No ☐

Comments

Question 21 – Would it be helpful to have additional guidance on cost recovery?

Yes ☒ No ☐

Comments

Question 22 – Please provide any comments on the partial Business and Regulatory Impact Assessment (Annex B)

Comments



General Purposes Committee

Tuesday 19 May 2015

Item No 7

Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

Report by Director, Resources

1 Purpose of Report

To ask the Committee to consider the submission of comments to the Scottish Government concerning the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

2 Background

Dr Richard Simpson MSP has introduced his member's bill to make provision for reducing and dealing with the abuse of alcohol; to amend the legislation in relation to applications for, and to vary, licences for the sale of alcohol; and for connected purposes.

The Bill contains ten distinct measures with a single common theme – namely, the consumption (and over-consumption) of alcohol. The two main aims are to improve public health by discouraging irresponsible alcohol consumption, and to tackle the consequences in terms of antisocial and criminal behaviour. Subsidiary aims include reforming aspects of licensing law, and promoting more effective public policy on alcohol. Taken together, the measures in the Bill:

- ☐ place restrictions on the retailing and advertising of alcoholic drinks;
- ☐ make changes to licensing laws;
- ☐ place obligations on the Scottish Ministers to publish, review and report on its alcohol education policy; and
- ☐ direct certain people whose offending or antisocial behaviour is attributable to alcohol consumption towards treatment or restrictions on that consumption.

A copy of the Bill has been placed in the Members' Library.

The Police and Fire and Rescue Service and the Council's Officers have been consulted.

The Environmental Health and Licensing Standards Officer is of the view that:-

Section 1 which relates to new mandatory conditions to be imposed by Licensing Boards on the pricing of multi packs should be supported since it does not encourage the purchase of additional alcohol to make savings.

Members should however be aware that it appears the drinks manufacturers are frustrating this presently by repackaging alcohol in containers of differing sizes.

Members should be aware that this proposal if enacted in law will result in increased time resource requirement to check compliance by the Licensing Standards Officer (LSO).

Section 2 which introduces new licence conditions to limit caffeine levels in alcohol products which if introduced nationally would have minimal implications for local authorities but would have little effect except on the sales of one particular brand of tonic wine since caffeine drinks are often consumed in tandem with alcohol but from separate containers.

Section 4 enables Licensing Boards to vary existing premises licences requiring marking of drink containers to identify the source of the alcohol – this if imposed on outlets around where underage and street drinking is a problem would likely fall to be enforced by the LSO and would then enable the Police to identify the source of confiscated drinks or street litter in problem areas.

Sections 6 to 13 relate to restrictions or bans on advertising e.g. near schools and make provision for fixed penalties for failure to comply in addition to criminal prosecution which should be welcomed both from the viewpoint of efficiency and expediency. Monitoring and/or dealing with complaints would likely fall to the LSO.

Part 2 brings in provisions for Drink Banning Orders (DBOs) whereby the local authority or the police can apply to restrict or prevent individuals who have engaged in criminal or disorderly behaviour whilst under the influence of alcohol from entering premises licensed for the consumption of alcohol on the premises.

This provision ought in my view to be supported since it reinforces and assists pubwatches and provides protection to communities in areas where pubwatches do not exist or are not particularly effective.

As at the time of writing, no other comments have been received.

3 Resource Implication

The specific resource implications of this report do not impact on the Council at this stage.

3.1 Risk implications

There are no risk implications at this stage.

3.2 Policy Implications

Strategy and Consultation

The requests in this report do not relate to a strategy. Consultation with Officers has taken place.

3.3 Equalities and Sustainability

An equalities impact assessment has not been carried out. There are no sustainability implications.

4 Conclusion

Comments have been made by the Licensing Standards Officer.

Committee is asked whether the comments ought to be submitted to the Scottish Government.

5 Recommendation

It is recommended that the Committee consider the report.

Contact – Bob Attack

Tel 0131 271 3161

Background Papers - Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill