

**REPORT TO: LICENSING COMMITTEE 23 OCTOBER 2013**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: NICKII HUMPHREYS**

**Licensing Act 2003 - Proposed Delegation of Powers to Head of Health, Safety and Licensing - Withdrawal of a Club Premises Certificate**

**1. PURPOSE OF REPORT**

The purpose of this report is for the Licensing Committee to consider a proposal to extend powers of delegation to the Head of Health, Safety and Licensing so as to permit the giving of notice under section 90 of the Licensing Act 2003 ("the Act") to withdraw a Club Premises Certificate ("CPC") where a Club ceases to satisfy the conditions required to be a qualifying Club in relation to a qualifying club activity.

**2. RECOMMENDATIONS**

**RECOMMENDED:**

- a) That the Licensing Committee note the contents of the report;***
- b) That the Licensing Committee delegates responsibility to the Head of Health, Safety and Licensing to give notice under Section 90 of the Licensing Act 2003 to withdraw a Club Premises Certificate where it appears that a Club ceases to satisfy the conditions required to be a qualifying Club in relation to a qualifying club activity.***

**REASONS:**

- a) For operational reasons and expediency with regard to the regulation of club premises, it would be more efficient for officers to be able to issue the notice of withdrawal, thus minimising the risk of failed clubs continuing to operate contrary to the law.***

**2. BACKGROUND AND LEGAL CONSIDERATIONS**

2.1 In order for a Club Premises Certificate (CPC) to be granted under the Licensing Act 2003, clubs must be qualifying clubs which have general conditions that it must satisfy. These are:

- A person cannot be a member without an interval of 48 hours from when an application is made and then granted;
- That the club is established and conducted in good faith;
- That the club has a least 25 members;

- That alcohol is only supplied to members on the premises on behalf or by the club;
- Additional conditions in relation to the supply of alcohol must also be complied with which are:
  - That any alcohol purchased for and supplied by the club is done by members of the club who are over 18 years of age and are elected to do so by the members;
  - That no person at the expense of the club receives any commission, percentage or other similar payment in regard to the purchase of alcohol by the club;
  - That there are no arrangements for anyone to receive directly or indirectly a pecuniary benefit from the supply of alcohol by or on behalf of the club to members or guests.

2.2 The overall effect of the qualifying conditions on a members club once a certificate has been issued is that if at any time during the life of the club it ceases to abide by the conditions as listed above, it will consequently fail to qualify as a club and the licensing authority must issue a notice withdrawing the club premises certificate in accordance with Section 90 of the Act.

2.3 The Act states:

*"Where it appears to the relevant licensing authority that the club does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates (see section 61 of the Act), the authority must give a notice to the club withdrawing the certificate, so far as relating to that activity."*

2.4 In those circumstances where the membership falls below 25, the notice gives a three month period of grace, starting from the date the notice is issued, before it takes effect. If at the end of that period of time the membership has grown back to at least 25 members, the notice withdrawing the CPC will not take effect.

2.5 Currently, in accordance with existing delegations, any decision to withdraw a club premises certificate would have to be made by the Licensing Committee as the Constitution does not delegate authority to officers to issue withdrawal notices for CPCs.

2.6 Given the time period that may elapse between the problem coming to the attention of officers and any delays before the matter can be determined by the Licensing Committee, there is potential for a club to continue to operate under its CPC when notice should have been served withdrawing the certificate. This approach carries the risk of condoning and prolonging breaches of the Act.

2.7 The Act places the Licensing Authority under a duty to withdraw a CPC in circumstances as set out earlier in this report. It is suggested that in order to ensure the proper and effective administration and enforcement of the Act that Officers should have the authority to withdraw certificates as soon as it appears to them that a Club is no longer meeting the conditions for being a qualifying club.

2.8 Members are reminded that qualifying clubs enjoy enhanced benefits which are recognised in the Statutory Guidance issued in accordance with section 182 of the Act. For example, no DPS or personal licence holder is required to supply alcohol, late night refreshment is an automatic entitlement to members and both the Police and authorised officers of the Council have limited powers of entry.

For those reasons, any club activity which is provided contrary to the conditions outlined in paragraph 2.1 above should be dealt with robustly and promptly.

2.9 The proposal to delegate authority to the Head of Service is human rights compliant as there is an appeal process available against any decision which may be made by the Club which holds or held the club premises certificate as applicable (Schedule 5, part 2, paragraph 15 of the Act) to the Magistrates' Court within the period of twenty one days from the date of receipt of the notification of the decision.

### **3.0 APPENDICES**

Appendix A - Proposed Notice of Withdrawal of a Club Premises Certificate.

Licensing Manager