

THE LICENSING POLICY SCHEME OF DELEGATED POWERS - LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

Report By: Head of Environmental Health and Trading Standards

Wards Affected:

County-wide

Purpose

1. To consider amending the licensing policy scheme of delegated powers for personal licence with relevant convictions where no police objections are received. It is proposed to give delegated powers to the Licensing Officers to issue personal licenses under these circumstances, in accordance with the Licensing Act 2003 and guidance issued under section 182 of the Licensing Act 2003

Policy legal background

2. Section 5 of the Licensing Act 2003 requires the local authority to determine every three years its policy with respect to the exercise of its licensing functions and publish a statement of that policy before the beginning of the period. The first appointed date is 7 February 2005.
3. Section 182 of the Act requires the Secretary of state to issue guidance for licensing authorities on the discharge of their functions under the Act.
4. The licensing authority must have regard to the guidance issued by the Secretary of State under section 182 of the Act. The requirement is therefore binding on all licensing authorities to that extent.

However, it is recognised that the guidance cannot anticipate every scenario or set of circumstances that may arise and so long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so.

When doing so, licensing Authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken. (*Guidance issued under section 182 of the licensing Act 2003 Para 2.3*)

Background

5. The Licensing section has received a personal application made under section 117 of the Licensing Act 2003, which contains a relevant offence (Sec 15 Food Safety Act – Falsely describing food and drink).
6. In accordance with the Governments guidance notes (page 32) issued under section 182 of the Licensing Act 2003 by the Secretary of State; the Herefordshire Licensing Policy currently requires that an application for a personal licence with unspent relevant conviction shall in all cases be referred to the Licensing Sub Committee.
7. The application has been referred to the police for comment in accordance with section 120 (4); they have no comments to make.
8. Section 120(6) of the Act states that 'Where no objection is given within that period the authority must grant the licence'.
9. As a consequence of the government guidance and Herefordshire Council adopting this guidance within the policy, a Sub Committee would have to hear the case but would be unable to make any other decision than to grant the licence.
10. This would cost the Council unnecessary time and money to bring the report to the committee when the authority in this instance is legally bound to issue the licence.

Recommendation.

THAT the Licensing Policy be amended to allow Officers to determine personal applications that have unspent relevant convictions where there are no police objections in line with section 120(6) of the Licensing Act 2003.