

7. DELEGATION OF THE POWER TO APPOINT INSPECTORS UNDER THE SALE OF LIQUOR ACT 1989



General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
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PURPOSE OF REPORT

1. The purpose of this report is for the Regulatory and Planning Committee to recommend the Council to delegate the power to appoint inspectors under the Sale of Liquor Act 1989 (SOLA) to the Chief Executive.

EXECUTIVE SUMMARY

2. At present the Council Hearings Panel has a delegation from the Council of its District Licensing Agency (DLA) function to appoint inspectors under section 103 of SOLA. While the Council Hearings Panel also has powers of sub-delegation and can delegate to the Secretary or any subcommittee, it can only sub-delegate any of the Council Hearings Panel's powers that "*relate to any matter that is the subject of an application to which no objections have been received*". The power to appoint inspectors is not something that relates to such an application.
3. This means for a delegation of this power to be given to anyone else, it must be given by the Council. The legal considerations section below outlines the power of the Council to make such a delegation.
4. The Liquor Licensing team seeks that such a delegation be made because it is something of an anomaly that what is essentially an employment matter also comes within the powers of the Council Hearings Panel. The Unit Manager is usually the one who makes the decision to employ someone to carry out the role of a Licensing Inspector. As with all appointments, referee checks and Ministry of Justice checks are carried out on preferred applicants prior to an offer of employment being made. With the current delegations, that manager may employ someone for the role, but they cannot appoint them as an inspector because formal approval for this is required from the Council Hearings Panel.
5. The risk related to this is that the Council Hearings Panel could potentially refuse to appoint this person even though the manager has already agreed to their employment as an inspector. Although the employment of the person could be made subject to the appointment as an inspector also being approved by the Hearings Panel, this simply adds another layer of unnecessary and time-consuming process.
6. This is also at odds with similar powers which are delegated to the Inspections and Enforcement Manager. The Manager is able to appoint and warrant Enforcement Officers, HSNO Officers, Dog Control Officers, Environmental Health Officers, Litter Control Officers and Litter Wardens, Bylaw Inspectors, Parking Wardens and other positions within the Council.
7. In this case it is recommended that the delegation to appoint inspectors under SOLA be given to the Chief Executive and then the Chief Executive will sub-delegate to the appropriate Manager. The delegation to the Council Hearings Panel should also be revoked.

FINANCIAL IMPLICATIONS

8. There are no financial implications arising from this decision.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

9. The appointment of inspectors is an employment matter coming within the Inspections and Enforcement Unit Budget. The Liquor Licensing component of that budget is funded fully through the collection of Liquor Licensing fees, with the consequence that there is no rates component to that budget.

LEGAL CONSIDERATIONS

10. Under SOLA the Council is the District Licensing Agency (DLA) and the Chief Executive of the Council is the Secretary of the DLA (see sections 99 and 102).
11. Section 103 of SOLA provides that "*for the purposes of this Act, the District Licensing Agency shall appoint one or more inspectors*", who have the powers conferred on them under SOLA. The fact that a person is in the employment of the Council is not a bar to his or her appointment as an inspector under SOLA.
12. All three positions (DLA, Secretary and Inspectors) have certain powers that they can exercise under SOLA. The inspector's duties are largely to inquire into and file reports with the DLA on applications for new licences and managers' certificates, and on the renewal of managers' certificates. They also have the right to apply for the variation, suspension, or cancellation of licences and managers' certificates, and for orders restraining the continuing breach of any licence condition.
13. Section 104(1) of SOLA provides that a "*local authority may delegate to any committee appointed under clause 30 of Schedule 7 of the Local Government Act 2002 such of its powers, duties, and discretions under this Act as it considers necessary*".
14. Section 104(2) then provides that the "*committee to which any such powers, duties, or discretions have been delegated may, with the approval of the local authority, subdelegate to the Secretary or to any subcommittee such of those powers, duties, and discretions as relate to any matter that is the subject of an application to which no objections have been received*." This is the exact wording of the power of sub-delegation given to the Council Hearings Panel. As noted above (paragraph 2) the power of appointment of inspectors is not directly relevant to powers exercised in relation to applications to which no objections have been received.
15. However, the Council can delegate the power of appointment under section 103 directly to someone other than a "committee" by relying on its powers under the Local Government Act 2002. Section 99(2) of SOLA specifies that "*except as otherwise provided in this Act, in exercising its powers as the District Licensing Agency a local authority shall be governed by the provisions of the Local Government Act 2002*".
16. The phrase "*except as otherwise provided in this Act*" does not appear to apply in this instance. If the power we were suggesting to be delegated related to "*any matter that is the subject of an application to which no objections have been received*" then it is likely that it would be considered something which the Act has already provided for. However, section 104 of the SOLA does not state that a local authority cannot delegate any of its other DLA powers to any other person or body: it simply provides that "it may" delegate such of its powers as it considers necessary to a committee appointed under the Local Government Act 2002.
17. As the Council is also to be governed by the Local Government Act 2002 in exercising its DLA powers (unless SOLA provides otherwise), staff consider that it can delegate the power to appoint inspectors under section 103 by applying clause 32(1) of Schedule 7 of the Local Government Act 2002. That clause provides that "*unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers*" except certain matters, none of which relate to SOLA powers.

Have you considered the legal implications of the issue under consideration?

18. This is not a decision of high significance, and simply allows the power of appointment of inspectors to be dealt with more effectively and efficiently by the Council.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. Not relevant.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

20. Not relevant.

ALIGNMENT WITH STRATEGIES

21. Not relevant.

Do the recommendations align with the Council's strategies?

22. Not relevant.

CONSULTATION FULFILMENT

23. The Inspections and Enforcement Unit and Legal Services Unit have worked together on this report.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee recommend to the Council to:

- (a) Delegate to the Chief Executive its power under section 103 of the Sale of Liquor Act 1989 to appoint one or more inspectors for the purposes of the Sale of Liquor Act 1989.
- (b) Revoke the delegation to the Council Hearings Panel to appoint inspectors under section 103.