



## LICENSING COMMITTEE

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MEETING TO BE HELD IN CIVIC HALL, LEEDS ON  
FRIDAY, 25TH MAY, 2012 AT 10.00 AM

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### MEMBERSHIP

#### Councillors

S Armitage - Cross Gates and Whinmoor;  
K Bruce - Rothwell;  
R Downes - Otley and Yeadon;  
J Dunn - Ardsley and Robin Hood;  
B Gettings - Morley North;  
T Hanley - Bramley and Stanningley;  
G Hussain - Roundhay;  
G Hyde - Killingbeck and Seacroft;  
A Khan - Burmantofts and Richmond Hill;  
P Latty - Guiseley and Rawdon;  
B Selby - Killingbeck and Seacroft;  
C Townsley - Horsforth;  
G Wilkinson - Wetherby;  
2 vacancies

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Agenda compiled by:  
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Helen Gray  
247 4355

# A G E N D A

| Item No | Ward/Equal Opportunities | Item Not Open |  | Page No |
|---------|--------------------------|---------------|--|---------|
| 1       |                          |               | <p><b>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</b></p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>   |         |
| 2       |                          |               | <p><b>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</b></p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p><b>RESOLVED</b> – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information</p> |         |

| Item No | Ward/Equal Opportunities | Item Not Open |   | Page No |
|---------|--------------------------|---------------|---|---------|
| 3       |                          |               | <p><b>LATE ITEMS</b></p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>  |         |
| 4       |                          |               | <p><b>DECLARATIONS OF INTEREST</b></p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members Code of Conduct</p>   |         |
| 5       |                          |               | <p><b>APOLOGIES FOR ABSENCE</b></p>   |         |
| 6       |                          |               | <p><b>MINUTES</b></p> <p>To approve the minutes of the last meeting held on 10<sup>th</sup> April 2012 as a correct record</p> <p>(Copy attached)</p>   | 1 - 4   |
| 7       |                          |               | <p><b>LICENSING COMMITTEE - ANNUAL GOVERNANCE ARRANGEMENTS</b></p> <p>To consider the report of the City Solicitor setting out the annual governance arrangements for the Licensing Committee, including the Terms of Reference for the Committee, the establishment of the Licensing sub committees, the terms of reference for the sub committees and the delegation of functions to officers</p> <p>(Report attached)</p> <p>(Please note that Appendix 2 will be despatched once the membership of the Committee has been confirmed at the Annual Council meeting scheduled for 21<sup>st</sup> May 2012)</p> | 5 - 24  |

| Item No | Ward/Equal Opportunities | Item Not Open |   | Page No |
|---------|--------------------------|---------------|---|---------|
| 8       |                          |               | <p><b>LICENSING PROCEDURE RULES AND CODE OF PRACTICE FOR DETERMINING LICENSING MATTERS</b></p> <p>To consider the report of the City Solicitor setting out the proposed Rules of Procedure to be followed by the Licensing Committee and the Licensing sub committees in respect of those meetings held under the provisions of the Licensing Act 2003 and the Gambling Act 2005. The report also refers to the Code of Practice for the Determination of Licensing Matters for Members' information</p> <p>(Report attached)</p> | 25 - 56 |
| 9       |                          |               | <p><b>CHANGES TO SECTION 182 GUIDANCE</b></p> <p>To consider the report of the Head of Licensing and Registration on major changes to the Licensing Act 2003 which came into effect on 25<sup>th</sup> April 2012 and the subsequent amendments to the Section 182 Guidance</p> <p>(Report attached)</p>  | 57 - 60 |
| 10      |                          |               | <p><b>LICENSING ACT 2003 STATEMENT OF LICENSING POLICY REVIEW</b></p> <p>To consider the report of the Head of Licensing and Registration on the work required to update the Statement of Licensing of Licensing Policy following the changes made to the Licensing Act 2003 which came into effect on 25<sup>th</sup> April 2012</p> <p>(Report attached)</p>  | 61 - 66 |
| 11      |                          |               | <p><b>LICENSING WORK PROGRAMME 2012/13</b></p> <p>To consider the Licensing Work Programme for the 2012/13 Municipal Year</p> <p>(schedule attached)</p>  | 67 - 72 |

| Item No | Ward/Equal Opportunities | Item Not Open |   | Page No |
|---------|--------------------------|---------------|---|---------|
| 12      |                          |               | <p><b>DATES OF FUTURE MEETINGS</b></p> <p>To note the dates of the meetings for the 2012/13 Municipal Year as: 26 June 2012, 24 July 2012, 14 August 2012, 11 September 2012, 16 October 2012, 13 November 2012, 18 December 2012, 15 January 2013, 12 February 2013, 12 March 2013, 9 April 2013 and 14 May 2013. All meetings will be held on Tuesdays at 10.00 am in the Civic Hall, Leeds</p> |         |

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## Licensing Committee

Tuesday, 10th April, 2012

**PRESENT:** Councillor S Armitage in the Chair

Councillors J Dunn, R D Feldman,  
T Hanley, G Hussain, G Hyde, P Latty,  
B Selby, C Townsley, D Wilson and  
G Wilkinson

### 83 Chairs Opening remarks

Councillor Armitage noted the contents of a Freedom of Information request from Adelphi Private Hire & Hackney Carriage Welfare Society received by all Members of the Committee and reported that the Chief Officer, Democratic & Central Services would respond on behalf of the Committee.

Members discussed the issues raised relating to decision making. Members commented that matters were determined on the basis of the facts and information presented to the Committee and/or its' sub committees. Members reiterated that licensing decisions were not made on a party political basis and strongly felt that this fact should be highlighted in the response.

**RESOLVED** – To note the discussions and request that a copy of the response to the Adelphi Private Hire & Hackney Carriage Welfare Society be provided to Members of the Committee in due course

### 84 Declarations of Interest

There were no declarations of interest

### 85 Apologies for Absence

Apologies for absence were received from Councillors Bruce, Downes, Gettings and Khan

### 86 Minutes

**RESOLVED** – That, subject to a correction to minute 78, bullet point 4 (Decision Making in Taxi & Private Hire Licensing) to delete the word "livelihood", the minutes of the meeting held 13<sup>th</sup> March 2012 be agreed as a correct record

### 87 Transport for the City Centre Night Time Economy

The Director of City Development submitted a report for information providing an overview of night time transport in the city. The report covered issues relating to public transport, public order management and street use and outlined proposals for future engagement with stakeholders.

The Committee discussed the following issues with the Acting Head of Transport Policy and the Principal Traffic Engineer:

- The limited availability of late night public transport
- Night time traffic regulations. It was reported that the Public Transport Box Regulations were relaxed between 22:00 to 05:00 hours to allow public use –

although it was felt that this was not widely known by the Private Hire (PH) trade

- Impact of local development on the night time economy and transport infrastructure. Members noted that the Leeds Arena and Trinity developments incorporated proposals for additional licensed premises and would bring increased numbers of visitors to the city. Members expressed views on the inability of the current transport network to deal with this and the increased likelihood of pedestrian/vehicle conflicts in hotspots areas of the city. Members heard that the Arena proposals included substantial pick-up/drop-off provision for patrons to Arena events and requested further information on the approved scheme
- The number of external agencies involved in the stakeholder meeting and the need to include other bodies such as the Chamber of Commerce, Private Hire and Hackney Carriage operators, Club operators and the Arena operator
- The comments that businesses could subsidise elements of late night transport proposals, noting the arrangements at Elland Road where a layover coach park was provided and whether a similar approach could be proposed in the city centre for the Arena/Clubs, subsidised by those businesses
- Discussed the suggestion that some dispensation could be considered for PH/HC vehicles working together to achieve safe transport of people out of the city, such as an allocated waiting area where PH vehicles could be issued with a "licence to stand"
- Commented on the outcome of the trial of the Transport Hub
- The ongoing request from HC trade to make use of bus lay-by's after the end of timetabled services, particularly in busy areas of city such as Albion Street where there is a high volume of pedestrians.

Members noted their role would be to participate in the workshop and provide comments with a view to a further report being presented to Committee early in the new Municipal Year

**RESOLVED –**

- a) To note the contents of the report and the comments made by the Committee
- b) That Committee endorse the proposals outlined in the report to review practice in other core cities; and to undertake a joint service site visit and stakeholder workshop to consider future strategy and actions for transport arrangements in relation to the city centre night-time economy

**88 Quarterly Report on Enforcement Activity - Entertainment Licensing**

The Head of Licensing and Registration submitted a report providing an overview of the activities undertaken by Entertainment Licensing Section Enforcement Team during the first quarter of 2012.

The report detailed formal operations undertaken by the Team and Members discussed the following matters with the Principal Liaison & Enforcement Officer:

- Late Night Refreshment venues – the labour intensive operations required to check compliance and pursue prosecutions. Members also heard that LCC had approached the Department for Business Innovation and Skills (BIS) (public consultation paper) seeking authorisation for officers to issue Fixed Penalty Notices (FPNs) to address non compliance. It was felt issuing



financial penalties to offenders would deliver a positive impact acting as an effective deterrent to repeated offending. Also, it would provide an alternative effective option in disposing of cases rather than solely prosecuting offenders, which is both costly to the department financially as well as staff hours gathering evidence and preparing prosecution packages for formal proceedings. Members supported this initiative and suggested that Leeds MP's be contacted to lend weight to this request for authority to issue FPNs

(Councillor Selby withdrew from the meeting for a short while at this point)

- the ongoing closer partnership working between the Team and partner agencies, such as West Yorkshire Police, UK Border Agency and Her Majesty's Revenue & Customs, required to gather evidence to tackle problem premises has delivered some excellent outcomes. There is scope to further develop closer partnership working with agencies to utilise agencies' resources and powers in an effective and efficient way, having regard to the Hampton Report.
- Use of media to highlight successful prosecutions and partnership working to act as a deterrent to offending.
- The use of a "Memorandum of Understanding" incorporating an Information Sharing Agreement between the Team and partner agencies to ensure data is securely shared between the agencies. Members requested further information on these documents, in particular inviting the Department for Work & Pensions to become a signatory to the Licensing Act 2003 joint enforcement protocol.
- The use of new initiatives such as "meet and greet" and compliance checks for drinks measures, irresponsible drinks promotions and availability of drinking water to continue to engage with the licensing trade.

#### **RESOLVED –**

- a) That the contents of the report be noted
- b) To request officers to draft a letter calling on all Leeds MP's to support the request to the Department for Business, Innovation and Skills, for appropriate officers to be authorised to issue Fixed Penalty Notices to address non compliance in Late Night Refreshment venues

#### **89 Licensing Act 2003 - Changes from 25 April 2012**

The Head of Licensing and Registration submitted a report setting out the changes to the Licensing Act 2003 due to be commenced on 25<sup>th</sup> April 2012 brought about by the Police and Social Responsibility Act 2011, and the implications of those changes on the work of the Licensing Committee and its sub committees.

Appended to the report was a copy of the relevant extract of Part 2 of the Act for reference. The Committee discussed issues relating to:

- The changing roles of local Primary Care Trusts and Licensing Authorities which would be recognised as Responsible Authorities
- The removal of the "in the vicinity" test and likely increase in the number of representations before a Sub Committee
- The changing role of LCC Area Committees and the licensing notification mechanisms likely to be used
- The amendment to the evidential burden
- Changes to the Temporary Event Notice process.

Members also noted that the changes would need to be reflected in the Statement of Licensing Policy and considered establishing a Working Group of Members and officers to review the Policy

**RESOLVED –**

- a) To note the contents of the report
- b) To agree to the establishment of a small Working Group of Members and officers to undertake a review of the Statement of Licensing Policy (Licensing Act 2003) in order to address the changes brought about by the Police Reform and Social Responsibility Act 2011.

**90 Licensing Work Programme**

**RESOLVED** – To note the contents of the Work Programme for the remainder of the 2011/12 Municipal Year

**91 Future meeting arrangements**

**RESOLVED** – To note the dates of future meetings as 15<sup>th</sup> and 25<sup>th</sup> May 2012 respectively

**92 Any Other Business**

Several additional matters were discussed:

Sub Committee meetings – the clerk tabled a list of sub committee meetings requiring three Members to attend and requested that Members consider their availability and respond in due course

Councillors Remuneration – Members noted proposals for the Independent Remuneration Panel to consider whether additional remuneration would be appropriate for Members of the Licensing Committee for 2012/13 given the increased workload due to the SEV licensing and Large Casino application process.

Late Night Levy & Early Morning Restriction Orders – Members approved the contents of the draft response for submission to the Home Office consultation

**93 Councillor R D Feldman**

The Chair noted this would be the last Licensing Committee meeting that Councillor R D Feldman would attend before his retirement in May 2012. Councillor Armitage expressed her personal thanks to Councillor Feldman for his valuable contributions to the work of the Committee, which were appreciated by Members of all political parties. All Members expressed their best wishes to Councillor Feldman for a happy retirement

## Report of the City Solicitor

## Report to Licensing Committee

**Date: 25 May 2012**

## **Subject: Licensing Committee – Annual Governance Arrangements**

|  |                              |  |
|--|------------------------------|--|
| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

## Summary of main issues

1. Under the Licensing Act 2003 and the Gambling Act 2005 the Licensing Committee is authorised to discharge the licensing functions of the Licensing Authority. This report deals with the annual governance arrangements for Licensing Committee.
2. The Licensing Act 2003 specifically dis-applies Section 101 of the Local Government Act 1972 in respect of the Licensing Committee. The 2003 Act specifically provides that the Licensing Committee may establish one or more sub-committees, and that the Licensing Committee may arrange for the discharge of any functions exercised by it by a sub-committee established by it, or by an officer of the Licensing Authority. This report therefore deals with the appointment and terms of reference of Licensing sub-committees, and the delegation of functions to officers.

## Recommendations

3. Members of the Licensing Committee are requested to note the terms of reference of the Licensing Committee as approved by full Council on 21 May 2012 as shown at Appendix 1.
4. Members of the Licensing Committee are asked to establish five licensing sub-committees to deal with ordinary business and a separate Large Casino sub-committee and a SEVs sub-committee, noting the arrangements for the membership as set out in paragraph 3.6

5. Members of the Licensing Committee are asked to approve the membership of each sub-committee as set out in Appendix 2 of this report.
6. Members of the Licensing Committee are asked to approve the terms of reference for the licensing sub-committees as set out in Appendix 3 of this report.
7. Members of the Licensing Committee are asked to approve the delegation of licensing functions to the Director of Resources as shown in Appendix 4 to this report.
8. Members of the Licensing Committee are asked to approve the delegation of the function of making an Alcohol Disorder Zone to the Director of Environment and Neighbourhoods as shown in Appendix 5 to this report.

## **1. Purpose of this report**

- 1.1 This report is presented to members to establish the governance arrangements for the Licensing Committee for the 2012/2013 municipal year, namely:
  - Noting the terms of reference of the Licensing Committee as agreed at the annual Council meeting on 21 May 2012.
  - To appoint licensing sub-committees for the 2011/2013 municipal year.
  - To approve terms of reference for the licensing sub-committees.
  - To approve the delegation of functions to Officers as appropriate.

## **2. Background information**

- 2.1 The Council is the Licensing Authority under the Licensing Act 2003 (“the 2003 Act”) and the Gambling Act 2005 (“the 2005 Act”).
- 2.2 In accordance with both the 2003 Act and 2005 Act, with the exception of specified functions (which largely relate to the Authority’s statement on licensing policy), all matters relating to the discharge by the Authority of its licensing functions are automatically referred to its Licensing Committee. This discretion does not extend to any licensing function referred to full Council or a licensing function where full Council has referred the matter to another committee.
- 2.3 The Licensing Committee is also authorised to delegate functions of the Licensing Authority to sub-committees and to officers.

### Legislation

- 2.4 Section 101 of the Local Government Act 1972 sets out the arrangements for the discharge of functions by Local Authorities. Section 101 is, however, amended by the 2003 Act to dis-apply these provisions in respect of any licensing functions of the Licensing Authority.
- 2.5 Instead the 2003 Act specifically provides that a Licensing Committee may establish one or more sub-committees consisting of three members of the committee

(Section 9). It also provides that regulations may make provisions about the proceedings of Licensing Committees, and their sub-committees (including the validity of proceedings and the quorum of the meeting).

- 2.6 Subject to any such regulations the Licensing Committee may regulate its own procedure and that of its sub-committees (Section 9(3) of the 2003 Act).
- 2.7 The 2003 Act also provides that the Licensing Committee may arrange for the discharge of any functions exercisable by it:
  - (a) by a sub-committee established by it, or
  - (b) by an officer of the Licensing Authority.
- 2.8 Where arrangements are made for a sub-committee to discharge functions, that sub-committee may in turn arrange for the discharge of the function by an officer of the Licensing Authority.
- 2.9 The powers of the sub-committee to delegate to officers are subject to any direction given by the Licensing Committee to the sub-committee (Section 10(5) of the 2003 Act).
- 2.10 The arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently (Section 10(3)).
- 2.11 There are limitations to the power to delegate in relation to a number of different functions. Generally where representations or objections have been made in respect of particular applications decisions cannot be delegated to an officer. These limitations are set out in Section 10(4) of the 2003 Act.

### **3 Main issues**

#### Licensing Committee Terms of Reference

- 3.1 The terms of reference for the Licensing Committee were agreed at the annual Council meeting held on 21 May 2012. The terms of reference are attached at **Appendix 1** of this report for members information.
- 3.2 Members should note that under Section 7(3) of the 2003 Act full Council may arrange for the Licensing Committee to discharge any function of the Authority which “relates to” a matter referred to the committee but which is not a licensing function.
- 3.3 Members should note that the power to make a Designated Public Places Order in respect of alcohol consumption under the Criminal Justice and Police Act 2001 was delegated by full Council to the Licensing Committee on 11 January 2006. The committee’s terms of reference have now been amended to make this clear as previously this function was contained in a footnote.
- 3.4 Members should also note that under the same provision in the Licensing Act full Council has delegated the Licensing Committee the power to designate an area of an Alcohol Disorder Zone under Section 16 of the Violent Crime Reduction Act

2006. This provision is due to be repealed when the remaining licensing provisions of the Police Reform and Social Responsibility Act 2011 are brought into force and at that point the terms of reference of the Licensing Committee will be amended.

#### Appointment of Sub-Committees

- 3.5 As referred to above, the Licensing Committee may establish one or more sub-committees consisting of three members of the committee. Previously five sub-committees were established each with three members. It is again proposed that five sub-committees are established in order to deal with the ordinary business under the 2003 Act, the 2005 Act and other routine matters. Due to changes in the membership of the Licensing Committee it is now necessary to re-appoint the sub-committees.
- 3.6 For the municipal year 2012/13 it is also proposed to create two further sub-committees, namely the Large Casino sub-committee and the SEVs sub-committee to deal with stage 1 of the process for licensing the large casino and the transition to the licensing of sexual entertainment venues (SEVs) under the Local Government (Miscellaneous Provisions) Act 1982.

#### Membership

- 3.7 The proposed membership of each sub-committee will be set out in **Appendix 2** to this report which will be tabled at the meeting as this cannot be completed until the full membership of the Licenisng Committee is confirmed at the council AGM. The rules on political balance do not apply to sub-committees however officers have suggested sub committee membership which takes into account levels of experience as well as ensuring a mix of political parties and wards.

#### Substitutes

- 3.8 The licensing procedure rules approved previously provide that the fifteen members of the licensing committee form a pool for the purposes of substitutions to the sub-committees. Therefore any member of the Licensing Committee can substitute for any other member of the Licensing Committee at any meeting of a sub-committee.
- 3.9 It is proposed that different rules apply to substitutes for the Large Casino sub-committee and the SEVs sub-committee. These are set out in a separate report on this agenda. For these sub-committees it is proposed that there be three members and two substitutes. This is to reflect the need for those members undertaking these duties to be available throughout the process and to be trained to undertake these additional duties.

#### Appointment of Chairs

- 3.10 Chairs are not appointed to each sub-committee, but instead, the members present at each meeting of a sub-committee appoint the chair from their numbers.

#### Quorum

- 3.11 The quorum of meetings of the Licensing Committee is five, and for the sub-committee, three. However, on 5 June 2007 the Licensing Committee did approve that in exceptional circumstances on the day of the sub-committee hearing and after all other avenues to seek a third member have been exhausted, a quorum of two will be permissible.
- 3.12 It is again proposed that different rules apply in relation to the Large Casino sub-committee and the SEVs sub-committee so that the quorum must be the full 3 members. These rules are set out in the proposed procedure rules set out in a separate report.

#### Sub-Committee Terms of Reference

- 3.13 The proposed terms of reference for the licensing sub-committees are set out at **Appendix 3** to this report. Members will recall that sub-committees do not deal with large scale or outdoor events like the Leeds Festival. Such events raise serious issues of public safety, crowd control and public nuisance. As such it was felt they should be the subject of consideration by the full Licensing Committee. Sub-committees will still deal with smaller outdoor events. These applications do not raise the same issues as large scale outdoor events. Sub-committees are also empowered to deal with reviews of premises licences.
- 3.14 There is one amendment to the list of matters dealt with by sub-committees under the 2003 Act. Previously the wording related to police objections to temporary event notices. Under the amendments to the Licensing Act brought about by the Police Reform and Social Responsibility Act 2011, objections can now be received from Environmental Health as well as the police. This amendment allows sub-committees to deal with objections from both responsible authorities.
- 3.15 Members will note a paragraph in the terms of reference which states that the sub-committee can also deal with any other hearing required under the 2003 or 2005 Acts, but which may not be specified in the terms of reference. This is to ensure that as legislation comes into force the sub-committee is able to continue to deal with all hearings relating to the council's licensing functions without having to necessarily amend the licensing sub-committees terms of reference each time. It is intended that the licensing sub-committees terms of reference will be regularly updated with any new legislation, this proposal is a measure designed to prevent potential difficulties with the timely disposal of licensing hearings.
- 3.16 The terms of reference also include some matters that were previously delegated to the Licensing and Regulatory Panel which was disbanded during the 2010/11 municipal year. Licensing Committee has previously delegated contract driver permit appeals, hypnotism and street collection licensing and appeals against an officer refusal to allow a trade representation to join the hackney carriage forum.
- 3.17 An additional item has been added to the proposed terms of reference so that all applications relating to sex establishment licences (including sexual entertainment venues) would be heard by a sub-committee wherever there is an objection or, if no objection is made, where officers consider that the matter should be determined by Members rather than under delegated powers.

- 3.18 The committee is asked to approve the licensing sub-committee terms of reference as shown at **Appendix 3**.

#### Officer Delegation Scheme

- 3.19 Members will recall as set out in paragraph 2.7 above that the Licensing Committee may arrange for the discharge of any functions exercisable by it to be carried out by an officer of the Licensing Authority. The Licensing Committee has previously delegated functions to the Director of Resources as set out in the Officer Delegation Scheme shown at **Appendix 4**. It is proposed to continue that delegation.
- 3.20 Members may be aware that the Police Reform and Social Responsibility Act 2011 allows the licensing authority to act as a responsible authority in relation to the 2003 Act and so to make representations on applications and seek reviews where appropriate. The Guidance issued by the Secretary of State recommends that there be separation between the roles of those involved in making representations or seeking reviews and those involved in making decisions on such matters. That separation should extend to keeping the role separate to that of the officers supporting the sub-committee decision making process. Both these roles are covered in the delegation by the Licensing Committee to the Director of Resources, however it is proposed to sub-delegate this new responsibility to the Liaison and Enforcement Team in Entertainment Licensing. This will separate the roles within the Licensing Section. Only at the level of Section Head, Head of Service or above will the functions be delegated to the same officers thus ensuring proper separation between those officers with day to day responsibility for the functions.

#### Alcohol Disorder Zones

- 3.21 The Violent Crime Reduction Act 2006 introduced Alcohol Disorder Zones (ADZs). These came into force in 2009 when regulations were made. An area can be designated an ADZ where there is a problem with alcohol related nuisance, crime and disorder, but there is no clear link between the problem and an individual licensed premises. A problem with an individual licensed premises can be tackled under current licensing legislation. The process for designating an ADZ is set out in the regulations and involves consulting on the proposals, obtaining the consent of the police, developing an action plan and operating and administering the ADZ.
- 3.22 This function has been delegated by full Council to the Licensing Committee under Section 7(3) of the Licensing Act 2003 as full Council considered it to be “related to” an existing licensing function, however it is not a licensing function under the 2003 Act. It is proposed that the function of making an ADZ is again delegated to the Director of Environment and Neighbourhoods however Members may wish to note that officers expect this power to be repealed when the Police Reform and Social Responsibility Act comes into full effect in October 2012.
- 3.23 Until this occurs, members are asked to approve the delegation of the function of Alcohol Disorder Zones to the Director of Environment and Neighbourhoods as contained in the delegation scheme shown at **Appendix 5**.

## **4 Corporate Considerations**



#### **4.1 Consultation and Engagement**

4.1.1 There are no implications for consultation and engagement arising from this report

#### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 There are no implications for equality and diversity or cohesion and integration arising from this report.

#### **4.3 Council policies and City Priorities**

4.3.1 The Licensing Committee must have regard to various council policies when making decisions. There are no policies which cover the matters set out in this report.

#### **4.4 Resources and value for money**

4.4.1 Adopting the recommendations of this report will ensure efficient decision making and reduce legal challenges.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1. A clear delegation framework with minimise the risk of legal challenge.

4.5.2. There are no matters contained in this report which are potentially exempt from the press and public.

4.5.3. The matters in this report are not eligible for call in as they relate to council functions.

#### **4.6 Risk Management**

4.6.1 The appointment of sub-committees to carry out the licensing functions and delegations to officers as appropriate, is consistent with good corporate governance arrangements.

### **5 Conclusions**

5.1 That the Licensing Committee should adopt the arrangements set out in this report.

### **6 Recommendations**

6.1 Members of the Licensing Committee are requested to note the terms of reference of the Licensing Committee as approved by full Council on 21 May 2012 as shown at Appendix 1.

6.2 Members of the Licensing Committee are asked to establish five licensing sub-committees to deal with ordinary business and a separate Large Casino sub-committee and a SEVs sub-committee, noting the arrangements for the membership as set out in paragraph 3.6

6.3 Members of the Licensing Committee are asked to approve the membership of each sub-committee as set out in Appendix 2 of this report.

- 6.4 Members of the Licensing Committee are asked to approve the terms of reference for the licensing sub-committees as set out in Appendix 3 of this report.
- 6.5 Members of the Licensing Committee are asked to approve the delegation of licensing functions to the Director of Resources as shown in Appendix 4 to this report.
- 6.6 Members of the Licensing Committee are asked to approve the delegation of the function of making an Alcohol Disorder Zone to the Director of Environment and Neighbourhoods as shown in Appendix 5 to this report.

## **7 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

## The Licensing Committee

With the exception<sup>1</sup> of

- any licensing function under the Licensing Act 2003 (the 2003 Act) or the Gambling Act 2005 (the 2005 Act) reserved to full Council;<sup>2</sup> or
- any licensing function where full Council has referred a matter to another committee,<sup>3</sup>

the Licensing Committee is authorised to discharge<sup>4</sup> the following functions<sup>5</sup>:

1. to discharge the licensing functions of the licensing authority;<sup>6</sup>
- 2.1 to discharge any other function of the authority referred to it by full Council;<sup>7</sup>
- 2.2 pursuant to the provision in section 2.1 above full Council has delegated to the Licensing Committee the following functions:
  - 2.2.1 the power to make a designated public places order in respect of alcohol consumption under the Criminal Justice and Police Act 2001<sup>8</sup>
  - 2.2.2 the power to designate an area as an Alcohol Disorder Zone<sup>9</sup>
  - 2.2.3 hackney carriages and private hire vehicles<sup>10</sup>
  - 2.2.4 sexual entertainment venues, sex shops and sex cinemas<sup>11</sup>
  - 2.2.5 performances of hypnotism<sup>12</sup>

<sup>1</sup> In accordance with Section 7(2) of the 2003 Act or s154 (2) (a) and (c) of the 2005 Act.

<sup>2</sup> Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act and under the 2005 Act.

<sup>3</sup> Under the provisions of Section 7(5)(a) of the 2003 Act.

<sup>4</sup> The Committee may arrange for any of its functions to be discharged by one or more sub-committees, or by an officer, subject to the exceptions set out in Section 10(4) of the 2003 Act see also Section 154 of the 2005 Act.

<sup>5</sup> 'Functions' for these purposes shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.

<sup>6</sup> This includes the power to set fees under Section 212 of the 2005 Act

<sup>7</sup> Full Council may arrange for the Licensing Committee to discharge any function of the authority which relates to a matter referred to the Committee but is not a licensing function (Section 7(3)). It may also refer a matter to the Committee where a matter relates to both a licensing function and to a function of the authority which is not a licensing function, and arrange for the Committee to discharge the other function (Section 7(5)(b) of the 2003 Act). Before exercising this power, the Council must consult with the Committee.

<sup>8</sup> Item 49 of Para I of Schedule 1 to the 2000 Regulations

<sup>9</sup> Item 50 Para I of Schedule 1 to the 2000 Regulations

<sup>10</sup> Item 3 – 5 of Para. B of Schedule 1 to the 2000 Regulations

<sup>11</sup> Item 15 of Para. B of Schedule 1 to the 2000 Regulations and Section 27 Policing and Crime Act 2009 and Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

<sup>12</sup> Item 16 of Para. B of Schedule 1 to the 2000 Regulations

## 2.2.6 charitable collections<sup>13</sup>

- 3 in respect of any approval, consent, licence, permission, or registration which they may grant,
  - (a) To impose conditions limitations or restrictions;
  - (b) To determine any terms;
  - (c) To determine whether and how to enforce any failure to comply;
  - (d) To amend, modify, vary or revoke;
  - (e) To determine whether a charge should be made or the amount of such a charge.
4. to make recommendations to full Council in connection with the discharge of its functions as licensing authority;<sup>14</sup> and
5. to receive reports from, and to make recommendations and representations to other committees or bodies as appropriate.<sup>15</sup>

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<sup>13</sup> Item 39 of Para. B of Schedule 1 to the 2000 Regulations

<sup>14</sup> Including recommendations arising from the monitoring of the operation and impact of the licensing or Gambling policy by the Licensing Committee.

<sup>15</sup> Where the licensing authority exercises its power under Section 7(5)(a) of the 2003 Act the other Committee must consider a report of the Licensing Committee. Where the Council does not make arrangements under Section 7(3), it must (unless the matter is urgent) consider a report of the Licensing Committee with respect to the matter before discharging the function (Section 7(4)).

**Licensing Sub-Committees**

The Licensing Sub-Committees are authorised to discharge<sup>1</sup> the following functions<sup>2</sup> concurrently<sup>3</sup>:

1. functions<sup>4</sup> under:

- (a) section 18(3) of the 2003 Act (determination of application for premises licences where representations have been made);
- (b) section 31(3) of the 2003 Act (determination of application for provisional statements where representations have been made);
- (c) section 35(3) of the 2003 Act (determination of application for variation of premises licence where representations have been made);
- (d) section 39(3) of the 2003 Act (determination of application to vary designated premises supervisors following police objection);
- (e) section 44(5) of the 2003 Act (determination of application for transfer of premises licences following police objection);
- (f) section 48(3) of the 2003 Act (consideration of police objection made to an interim authority notice);
- (g) section 52(3) of the 2003 Act (determination of an application for review of a premises licence);
- (h) section 53A-C of the 2003 Act (summary expedited review hearings);
- (i) section 72(3) of the 2003 Act (determination of application for club premises certificates where relevant representations have been made);
- (j) section 85(3) of the 2003 Act (determination of application to vary club premises certificates where representations have been made);
- (k) section 88(3) of the 2003 Act (determination of application for review of a club premises certificate);
- (l) section 105(2)(decision to give counter notice following an objection to a temporary event notice);
- (m) section 120(7) of the 2003 Act (determination of application for grant of personal licence following police objection);
- (n) section 121(6) of the 2003 Act (determination of application for renewal of personal licences following police objection);
- (o) section 124(4) of the 2003 Act (revocation of licence where convictions come to light after grant or renewal of personal licences);
- (p) section 20(3) of the 2003 Act (making recommendations for restricting the admission of children to the exhibition of any film)
- (q) section 159 of the 2005 Act (determination of application for premises licences where representations have been made)<sup>5</sup>

<sup>1</sup> With the exception of those functions set out in paragraphs 1 and 2 above, and subject to any direction given by the Licensing Committee, the Licensing Sub-Committees may arrange for any of these functions to be discharged by an officer (Section 10(2) and (5) of the Licensing Act 2003 (the 2003 Act)).

<sup>2</sup> "Functions" for these purposes shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.

<sup>3</sup> Section 10(3) of the 2003 Act.

<sup>4</sup> Including agreeing whether a hearing is necessary.

- (r) section 187 of the 2005 Act (determination of application for variation of premises licence where representations have been made);<sup>5</sup>
  - (s) section 188 of the 2005 Act (determination of application for transfer of premises licences following objection);<sup>6</sup>
  - (t) section 195 of the 2005 Act (consideration of objection made to an application for reinstatement);<sup>6</sup>
  - (u) section 203 of the 2005 Act (determination of review of a premises licence);
  - (v) section 204 of the 2005 Act (determination of application for provisional statements where representations have been made);<sup>6</sup>
  - (w) section 224 of the 2005 Act (decision to give counter notice following an objection to a temporary use notice);
  - (x) schedule 10 of the 2005 Act (consideration of representations in relation to the proposed rejection of a family entertainment centre permit);
  - (y) schedule 14 of the 2005 Act (consideration of representations in relation to the proposed rejection of a prize gaming permit);
  - (z) schedule 13 of the 2005 Act (consideration of representations in relation to the proposed rejection of an alcohol licensed premises gaming machine permit);
  - (aa) schedule 12 of the 2005 Act (consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit);
2. Functions relating to any other hearings required under the 2003 Act or the 2005 Act that have not been reserved to the Licensing Committee.
  3. The function of hearing appeals against the refusal to grant a contract driver permit.
  4. The function of licensing performances of hypnotism<sup>7</sup> where an officer has considered not to exercise their delegated authority and has referred the matter to the sub-committee for determination.
  5. The function of licensing sex establishments<sup>8</sup> where either objections have been received, or an officer has decided not to exercise their delegated authority and has referred the matter to the sub-committee for determination.
  6. The function of licensing persons to collect for charitable and other causes<sup>9</sup> where either objections have been received, or an officer has decided not to

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<sup>5</sup> Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

<sup>6</sup> Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

<sup>7</sup> The Hypnotism Act 1952

<sup>8</sup> s2 and sch 3 of the Local Government (Miscellaneous Provisions) Act 1982

<sup>9</sup> Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

exercise their delegated authority and has referred the matter to the sub-committee for determination.

7. Hearing any appeal against an officer decision to refuse to recognise an applicant for the purposes of the constitution for the Hackney Carriage Trade Forum or the removal of recognition under the terms of that document.
  
8. To discharge any other function referred by the Licensing Committee, including making representations to the Licensing Committee in connection with the discharge of its functions.

### Exceptions

A Sub Committee is not authorised to discharge functions under paragraph 1 (a) to (e) above where the application relates to an event in the open air, in a temporary structure and where the proposed capacity of the event exceeds 30,000 people.

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## Director of Resources

1. The Director of Resources<sup>1</sup> is authorised to discharge the following Local Choice Functions which have been assigned to full Council (see Part 3 Section 1 of the Constitution):

|     |   |
|-----|---|
| (a) | To appoint review boards under the Social Security Act 1998 <sup>2</sup>  |
| (b) | To make arrangements for appeals against exclusion of pupils from maintained Schools  |
| (c) | To make arrangements for appeals regarding school admissions <sup>3</sup>   |
| (d) | To make arrangements for appeals by governing bodies <sup>4</sup>   |
| (e) | To make arrangements to enable questions to be put at Council meetings on the discharge of the functions of a police authority <sup>5</sup> |

2. Subject to the Exceptions listed below, the Director of Resources is authorised to discharge the following Council (non-executive) functions:

### Functions relating to Human Resources

|     |   |  |
|-----|---|--|
| (a) | Functions relating to local government pensions, etc  | Regulations under section 7, 12 or 24 of the Superannuation Act 1972 |
| (b) | To make arrangements to consider and determine employee appeals in relation to grievances, grading and dismissal <sup>6</sup> | Section 112 Local Government Act 1972                                |
| (c) | To determine employee terms and conditions  | Section 112 Local Government Act 1972                                |

<sup>1</sup> The fact that a function has been delegated to the Director does not require the Director to give the matter his/her personal attention and the Director may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Director remains responsible for any decision taken pursuant to such arrangements.

<sup>2</sup> s34 (4) Social Security Act 1998

<sup>3</sup> s94 (1), (1A) and (4) School Standards and Framework Act 1998

<sup>4</sup> s95 (2) School Standards and Framework Act 1998

<sup>5</sup> s20 Police Act 1996

<sup>6</sup> Except in relation to those which are to be determined by the Employment Committee.

**Functions relating to standing orders**

|     |   |  |
|-----|---|--|
| (a) | To make standing orders in relation to Finance and Officer Employment | Section 106 of, and paragraph 42 of Schedule 12 to the Local Government Act 1972 |
| (b) | To make standing orders as to contracts                               | Section 135 of the Local Government Act 1972                                     |

**Regulatory Functions**

|     |   |  |
|-----|---|--|
| (a) | *To license scrap yards                                 | Section 1 of the Scrap Metal Dealers Act 1964  |
| (b) | *To approve premises for the solemnisation of marriages | Section 46A of the Marriage Act 1949 and the Marriages (Approved Premises) Regulations 1995(SI 1995/510) |
| (c) | To register motor salvage operators                     | Part I of the Vehicles (Crime) Act 2001  |

**Exceptions<sup>7</sup>**

The Director of Resources is not authorised to discharge those functions marked \* above where objections have been received.

**Appointments to Committees Boards and Panels**

The Director of Resources is authorised to appoint members to vacancies during the period between the local elections and the Annual Council meeting, in consultation with appropriate whips, in order to secure that meetings necessary to be held during that period can proceed with adequate and appropriate membership levels.

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<sup>7</sup> Under this delegation scheme (council functions). The General Purposes Committee may however arrange for the discharge of any of its functions by the Director of Resources - (Section 101(2) Local Government Act 1972.

**Licensing Functions delegated by Licensing Committee**

|  |  |
|--|--|
| <p>Subject to the exceptions listed below, the Director of Resources is authorised to discharge the licensing functions<sup>1</sup> of the licensing authority.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> <li>• any licensing function<sup>2</sup> reserved to full Council<sup>3</sup>; and</li> <li>• any licensing function where full Council has referred a matter to a committee other than the Licensing Committee<sup>4</sup>; and</li> <li>• any licensing function within the terms of reference of the Licensing Sub-committees<sup>5</sup>; and</li> <li>• to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act</li> </ul> <p>The Director of Resources is authorised to appoint members to vacancies during the period between the local elections and the Annual Council meeting, in consultation with appropriate whips, in order to secure that meetings necessary to be held during that period can proceed with adequate and appropriate membership levels.</p> | <p>Licensing Act 2003 and the Gambling Act 2005.</p> |
|--|--|

**Functions related to the Licensing Functions delegated by Licensing Committee<sup>6</sup>**

Subject to the exceptions listed below, the Director of Resources is authorised to discharge the functions set out in the following table that are delegated to the Director of Resources by Licensing Committee

|     |  |   |
|-----|--|---|
| (a) | To license hackney carriages and private hire vehicles | (a) As to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976<br>(b) As to private hire vehicles, sections |
|-----|--|---|

<sup>1</sup> "Licensing functions" means functions under the 2003 Act and the 2005 Act.

<sup>2</sup> "Licensing functions" means functions under the 2003 Act and the 2005 Act.

<sup>3</sup> Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

<sup>4</sup> Under the provisions of Section 7(5)(a) of the 2003 Act

<sup>5</sup> Except where a Licensing sub-committee has arranged for the discharge of any of their functions by an Officer

<sup>6</sup> These functions were delegated to the Licensing Committee by full Council on 14 July 2010

*Officer Delegation Scheme (Council (non-executive) functions)*

|     |   |   |
|-----|---|---|
|     |   | 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976   |
| (b) | To license drivers of hackney carriages and private hire vehicles       | Section 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976                                       |
| (c) | To license operators of hackney carriages and private hire vehicles     | Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976  |
| (d) | * To licence sex shops and sex cinemas and sexual entertainment venues. | The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3, the Policing and Crime Act 2009, Section 27.       |
| (e) | To license performances of hypnotism.                                   | The Hypnotism Act 1952  |
| (f) | * To license persons to collect for charitable and other causes         | Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939 |

**Exceptions**

The Director of Resources is not authorised to discharge those functions marked \* above where objections have been received.

**Director of Environment and Neighbourhoods**

The Director of Environment and Neighbourhoods<sup>1</sup> is authorised to discharge the following Council (non-executive) functions:

|     |  |   |
|-----|--|---|
| (a) | To issue licences authorising the use of land as a caravan site (“site licences”)                                      | Section 3(3) of the Caravan Sites and Control of Development Act 1960   |
| (b) | To license the use of moveable dwellings and camping sites   | Section 269(1) of the Public Health Act 1936  |
| (c) | To license premises for acupuncture, tattooing, ear-piercing and electrolysis  | Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982   |
| (d) | To license premises for the breeding of dogs   | Section 1 of the Breeding of Dogs Act 1973 and Section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999  |
| (e) | To license pet shops and other establishment where animals are bred or kept for the purposes of carrying on a business | Section 1 of the Pet Animals Act 1951, section 1 of the Animal Boarding Establishments Act 1963, the Riding Establishments Act 1964 and 1970, section 1 of the Breeding of Dogs Act 1973 and sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999 |
| (f) | To register animal trainers and exhibitors   | Section 1 of the Performing Animals (Regulation) Act 1925   |
| (g) | To license zoos  | Section 1 of the Zoo Licensing Act 1981   |
| (h) | To license dangerous wild animals  | Section 1 of the Dangerous Wild Animals Act 1976  |
| (i) | To grant consent for the operation of a loudspeaker  | Schedule 2 to the Noise and Statutory Nuisance Act 1993   |
| (j) | To issue licences for the movement of pigs   | Article 12 of the Pigs (Records, Identification and Movement) Order 1995 (SI 1996/11)   |
| (k) | To license the sale of pigs  | Article 13 of the Pigs (Records, Identification and Movement) Order 1995  |
| (l) | To license collecting centres for the movement of pigs   | Article 14 of the Pigs (Records, Identification and Movement) Order 1995  |
| (m) | To issue a licence to move cattle from a market  | Article 5(2) of the Cattle Identification Regulations 1998 (SI 1998/871)  |
| (n) | To sanction use of parts of buildings for storage of celluloid   | Section 1 of the Celluloid and Cinematograph Film Act 1922  |
| (o) | Duty to enforce Chapter 1 and regulations  | Section 10(3) of the Health Act 2006  |

<sup>1</sup> The fact that a function has been delegated to the Director does not require the Director to give the matter his/her personal attention and the Director may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Director remains responsible for any decision taken pursuant to such arrangements.

*Officer Delegation Scheme (Council (non-executive) functions)*

|     |  |   |
|-----|--|---|
|     | made under it  |   |
| (p) | Power to authorise officers  | Section 10(5) of, and paragraph 1 of Schedule 2 to, the Health Act 2006   |
| (q) | Functions related to fixed penalty notices                               | Paragraphs 13,15 and 16 of Schedule 1 to the Health Act 2006. Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 (SI 2006/760) |
| (r) | Power to transfer enforcement functions to another enforcement authority | Smoke-free(Premises and Enforcement) Regulations 2006 (SI 2006/3368)  |

| <b>Functions related to Licensing Functions delegated by Licensing Committee</b> |  |  |
|--|--|--|
| (s)  | Power to make or revoke an order designating a locality as an alcohol disorder zone. | Section 16 of the Violent Crime Reduction Act 2006 |

**Report of the City Solicitor**

**Report to Licensing Committee**

**Date: 25 May 2012**

**Subject: Licensing Procedure Rules and Code of Practice for Determining Licensing Matters.**

|  |   |
|--|---|
| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

**Summary of main issues**

1. This report sets out the proposed Rules of Procedure to be followed by the Licensing Committee and the licensing sub-committees in respect of all meetings including those held under the provisions of both the Licensing Act 2003 and the Gambling Act 2005.
2. It is necessary for the Licensing Committee to re-affirm the Rules of Procedure each time the Committee is appointed.
3. It also highlights the Code of Practice for the Determination of Licensing Matters for Members' information. This code was approved by Standards Committee.

**Recommendations**

4. That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report and note the contents of the associated information sheet attached at **Appendix 2**.
5. That Members note and follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 3**.

## **1. Purpose of this report**

- 1.1 To put forward for Members' consideration, draft procedure rules relating to hearings and other meetings of the Licensing Committee and sub-committees and to seek the approval of Members to the adoption of these to govern committee procedure.

## **2. Background information**

- 2.1 Under the Licensing Act 2003 Leeds City Council is appointed as the licensing authority for the Leeds district. With the exception of certain functions (most notably the development of a licensing policy), the Act automatically refers all matters relating to the discharge of licensing functions to a licensing committee, which had to be created and which must discharge those functions on behalf of the authority.
- 2.2 Section 9 (2) of the 2003 Act provides that the Secretary of State may issue regulations governing
- The proceedings of licensing committees and their subcommittees (including provision about the validity of proceedings and the quorum for meetings)
  - Public access to the meetings of those committees and subcommittees
  - The publicity to be given to those meetings
  - The agendas and records to be produced in respect of those meetings
  - Public access to such agendas and records and other information about those meetings
- 2.3 Subject to the regulations, a licensing committee may regulate its own procedure and that of its sub-committees.
- 2.4 On 12 January 2005 the Secretary of State issued regulations under Section 9(2) of the 2003 Act<sup>1</sup> in respect of licensing matters, although these only apply to the procedure to be followed in respect of hearings as defined in column 1 of schedule 1 to the Regulations. Effectively this relates to the normal business of licensing-sub committee such as determining applications for premises licences and certificates, variations and transfers of licences and certificates and reviews.
- 2.5 On 2 March 2005 the Licensing Committee approved two sets of procedure rules under the 2003 Act and the associated regulations. The first sets of rules were referred to as the Licensing Committee General Procedure Rules and the second as the Licensing Committee Hearings Procedure Rules. The second set mirrored the Regulations issued by the Secretary of State referred to in paragraph 2.4 above.
- 2.6 Under the Gambling Act 2005 the functions of the council as licensing authority for gambling are also automatically referred to the Licensing Committee created under the 2003 Act. Section 154(5) of the 2005 Act ensures that the provisions of section 9 of the 2003 Act apply to the proceedings of Licensing Committee and Sub Committees when exercising functions under part 8 of the 2003 Act (premises licensing). The Secretary of State can therefore use this provision to make

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<sup>1</sup> Licensing Act 2003 (Hearings) Regulations 2005 SI 2005/44



regulations that may apply to both licensing and gambling functions, or may make separate regulations for each Act.

- 2.7 On 27 January 2007 the Secretary of State issued regulations in respect of premises licensing under the 2005 Act<sup>2</sup>. These regulations apply only to the exercise of functions in respect of premises licensing and provisional statements under the 2005 Act. Therefore there are two separate sets of regulations which apply to the conduct of Licensing Committee and sub-committees dependant upon which functions are being exercised.
- 2.8 On 3 April 2007 the Committee considered whether the provisions of the Gambling Regulations could be incorporated into the then existing Procedure Rules and concluded that they could not. The Committee then considered whether two full sets of rules should be drafted in relation to the gambling and licensing functions but agreed instead that a revised set of Rules be approved which cross refer to the two sets of regulations without setting out the full provisions of either.

### **3. Main issues**

#### **Licensing Committee Procedure Rules**

- 3.1 The Committee has previously approved one set of Licensing Committee Procedure Rules, which apply to proceedings under both the 2003 Act and the 2005 Act and which cross refer to the relevant regulations. The Rules proposed for adoption by the Licensing Committee and sub-committees at **Appendix 1** to this report are almost identical to those approved previously. The minor amendments made reflect different arrangements for quorum and substitutes for the proposed Large Casino sub-committee and the SEVs sub-committee which are explained in the Annual Governance Report. These changes are shown as tracked changes on the document for ease of reference.
- 3.2 In relation to hearings by a licensing sub-committee, these must follow the relevant regulations. **Appendix 2** is attached for Members' information as an aide memoir to the provisions. A legal advisor is present at all hearings of the sub committee and will provide advice on the regulations as required.

#### **Licensing Code of Practice**

- 3.4 The Code of Practice for the Determination of Licensing Matters was approved by the Standards Committee of the council following consultation with the Licensing Committee. It substantially follows the guidance previously produced by LACORs (Local Authority Coordinators of Regulatory Services).
- 3.5 The code applies to all licensing decisions made including decisions of the Licensing Committee, decisions of the licensing sub-committee and any delegated decisions within the terms of reference of the preceding bodies. The code also

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<sup>2</sup> The Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

applies at all times when Members are involved in the licensing process, such as meetings with the public.

- 3.6 The aim of the code of practice is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or not well founded in any way.
- 3.7 The Code of Practice for the Determination of Licensing Matters is attached at **Appendix 4** for the information of Members.
- 3.8 The council will shortly adopt new arrangements for standards and conduct matters. It is anticipated that existing codes of practice such as this which all form part of the council's constitution will be withdrawn at that point for immediate review by the new Standards and Conduct Committee to be created. Until that occurs Members will need to have regard to the existing code.

#### **4. Corporate Considerations**

##### **4.1 Consultation and Engagement**

- 4.1.1 No implications

##### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 No implications

##### **4.3 Council policies and City Priorities**

- 4.3.1 The Licensing Committee must have regard to various council policies when making decisions. There are no policies which cover the matters set out in this report.

##### **4.4 Resources and value for money**

- 4.4.1 There are no resource implications in adopting the rules.

##### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Failure to adopt and adhere to relevant procedure rules might render decisions susceptible to challenge.
- 4.5.2 There are no potentially exempt matters referred to in this report.
- 4.5.3 This decision is not eligible for call in as it relates to a council function.

##### **4.6 Risk Management**

- 4.6.1 Following the Procedure Rules and the Code Of Practice for the Determination of Licensing Matters will assist in preventing claims that decisions have been biased, partial or not well founded.

## 5. Conclusions

- 5.1 That Members should adopt the proposed procedure rules and note the requirements of the Code of Practice for the Determination of Licensing Matters.

## 6. Recommendations

- 6.1 That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report and note the contents of the associated information sheet attached at **Appendix 2**.
- 6.2 That Members note and follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 3**.

## 7. Background documents<sup>3</sup>

- 7.1 None

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<sup>3</sup> The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

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**LICENSING COMMITTEE AND SUB COMMITTEE PROCEDURE RULES**

**1. INTERPRETATION**

‘The Chair’ means the Chair of the Licensing Committee.

‘The Committee’ means the Licensing Committee or Licensing Sub Committee.

‘The Relevant Regulations’ means the Licensing Act 2003 (Hearings) regulations 2005 SI 2005/44 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

‘The 2003 Act’ means the Licensing Act 2003

‘The 2005 Act’ means the Gambling Act 2005

**2. SCOPE**

These Procedure Rules will apply in respect all matters which are dealt with by the Committee under either the 2003 Act or the 2005 Act

**3. APPLICATION OF COUNCIL PROCEDURE RULES/ACCESS TO INFORMATION PROCEDURE RULES**

Except where the Relevant Regulations provide differently, the Council Procedure Rules and Access to Information Procedure Rules (in so far as they apply to committees and sub-committees) will be followed for all meetings of the Committee.

**4. APPLICATION OF THE RELEVANT REGULATIONS**

The provisions of the Licensing Act (Hearings) Regulations 2005 shall apply to any hearings conducted under the provisions of the Licensing Act 2003<sup>1</sup> and in the event of any conflict between the relevant regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to such hearings the provisions of the relevant regulations shall prevail.

The provisions of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 shall apply to the exercise of functions under Section 162 (1) and (2) and Section 201 (4) of the Gambling Act 2005 and in the event of any conflict between the relevant regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to the exercise of such functions the provisions of the relevant regulations shall prevail.

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<sup>1</sup> Hearings are defined as those matters referred to in column 1 of schedule 1 to the regulations

## 5. APPOINTMENT OF CHAIR

The Authority shall appoint the Chair of the Licensing Committee at its AGM.

The Chair of each Licensing Sub-Committee shall be elected by the Sub-Committee at the start of each meeting.

## 6. QUORUM

Five Members (including the Chair) shall form a quorum for meetings of the Licensing Committee.

Three Members shall normally form a quorum for meetings of a Licensing Sub-Committee.

In exceptional circumstances such as illness or unanticipated none availability of a Sub-Committee Member it shall be possible for an ordinary business sub committee to conduct a hearing with only two Members present provide that

- Attempts have been made to identify a Member who can substitute for the Member who is not available without success and
- The parties present agree to a quorum of two and
- The resultant decision is unanimous

The Large Casino Sub-committee and the SEVs Sub-committee may not operate to a quorum of less than 3 Members present.

Except where authorised by statute, business shall not be transacted a meeting unless a quorum is present.

## 7. SUBSTITUTE MEMBERS

### Allocation

No substitute Members are appointed for the Licensing Committee.

In relation to each ordinary business Licensing Sub-Committee, the Licensing Committee has appointed substitute Members, comprising all other Members of the Licensing Committee.

In relation to the Large casino Sub-committee and the SEVs Sub-committee the Licensing Committee has appointed 5 Members to each sub-committee. That pool of 5 Members will form a sub-committee of three Members with two substitute Members if required.

### Substitution

A substitute Member shall be entitled to attend in place of a regular Member provided that the Committee Clerk has been notified of this before the meeting begins. Once the meeting has begun, the regular Member in respect of whom notification has been received, shall no longer be entitled to attend that agenda item as a Member of the Licensing Sub-Committee concerned.

#### Powers and duties

A substitute Member will have all the powers and duties of any regular Member of the Licensing Sub-Committee but will not be able to exercise any special powers or duties exercisable by the person for whom s/he is substituting.

A substitute Member shall be for all purposes a duly appointed Member of the Licensing Sub-Committee to which s/he is appointed as a substitute Member for the meeting in question and shall have the like duties, powers and responsibilities as the member whom s/he is replacing.

## **8. MEETINGS OF THE COMMITTEE**

The Chair of the Committee or the Chief Executive may call a meeting at any time.

A special meeting of the Committee may be called on the requisition of any 3 Members of the Committee delivered in writing to the Chief Executive. The summons to such a special meeting shall set out the business to be considered and no business other than that set out in the summons shall be considered at that meeting.

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## COMMITTEE PROCESS

| LICENSING ACT 2003   | GAMBLING ACT 2005  |
|--|--|
| <p>Time within which hearing is to be held:-</p> <ul style="list-style-type: none"> <li>- Set out in Schedule 1 – generally 20 working days starting the day after the end of the period for representations.</li> </ul>   | <p>Time within which hearing is to be held:-</p> <ul style="list-style-type: none"> <li>- As soon as reasonably practicable after the end of the period for representations</li> </ul>   |
| <p>Hearings longer than 1 day to be held on consecutive days.</p>  | <p>Hearings longer than 1 day to be held on consecutive days.</p>  |
| <p>Notice of hearing:-</p> <ul style="list-style-type: none"> <li>- Generally 10 working days<br/>Shorter periods for tens, interim authority notice (2 days) and review of closure order (5 days)</li> </ul>  | <p>Notice of hearing:-</p> <ul style="list-style-type: none"> <li>- Sent so it is received no later than 10 working days before the first day of the hearing</li> </ul>  |
| <p>Notice to be given to:-</p> <p style="padding-left: 40px;">Licence holder/applicant and those who made reps.</p>  | <p>Notice to be given to:-</p> <ul style="list-style-type: none"> <li>- Licence holder, applicant and those who made reps.</li> </ul>  |
| <p>Information to be given with notice:-</p> <ul style="list-style-type: none"> <li>- Rights of the parties</li> <li>- Consequences of failing to attend</li> <li>- Procedure at hearing</li> <li>- Points requiring clarification</li> <li>- Copies of relevant reps</li> </ul> | <p>Information to be given with notice:-</p> <ul style="list-style-type: none"> <li>- Rights of the parties under reg 8 and 9.</li> <li>- Consequences of failure to attend.</li> <li>- Procedure at the hearing.</li> <li>- Time limit (if any) for informing that the party:- <ul style="list-style-type: none"> <li>• Wishes to attend.</li> <li>• Wishes to be represented.</li> <li>• Will be calling witnesses.</li> <li>• Wishes to withdraw representations.</li> <li>• Is content to have the matter determined without a hearing.</li> </ul> </li> <li>- Points requiring clarification</li> </ul> |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>- Copy documents to licence holder/applicant</li> <li>- Right to request documents to those making reps.</li> </ul>   |
| <b>LICENSING ACT</b>   | <b>GAMBLING ACT</b>  |
| <p>Action following notice of hearing:-</p> <ul style="list-style-type: none"> <li>- Parties to return counter notice to include:-                             <ul style="list-style-type: none"> <li>• Request for permission to call witnesses</li> <li>• Whether he will attend/be represented</li> <li>• Whether he considers a hearing to be necessary</li> </ul> </li> </ul> |  |
| <p>Dispensing with a hearing:-</p> <p>All parties give notice that they consider a hearing is unnecessary <u>and</u> the Authority agrees.</p> <p>Notice that hearing has been dispensed with must be given forthwith</p>  | <p>Dispensing with a hearing:-</p> <p>All parties notify the Authority that they consent to matter being dispensed with.</p> <p>Notice that hearing has been dispensed with must be given as soon as reasonably practicable.</p> |
| <p>Withdrawal of representations:-</p> <ul style="list-style-type: none"> <li>- In writing up to 24 hours before hearing.</li> <li>- Orally at the hearing.</li> </ul>   |  |
| <p>Power to extend time:-</p> <ul style="list-style-type: none"> <li>- Any time limit can be extended unless it relates to a review following closure order.</li> <li>- If time limit is extended a notice to that effect must be given forthwith</li> </ul>   | <p>Power to extend time:-</p> <ul style="list-style-type: none"> <li>- Applies only to time for determining an application or review following a hearing.</li> </ul>   |

### HEARING PROCEDURE

| <b>LICENSING ACT</b>   | <b>GAMBLING ACT</b>  |
|--|--|
| <p>Postponing/adjourning the hearing:-</p> <ul style="list-style-type: none"> <li>- Where it is considered necessary the hearing may be adjourned to a specified date.</li> <li>- Notice of adjournment must be given forthwith.</li> </ul>  | <p>Postponing/adjourning the hearing:-</p> <ul style="list-style-type: none"> <li>- If necessary to consider any information or documents.</li> <li>- Or if necessary having regard to the ability of any party, representative or witness to attend.</li> <li>- Notice of adjournment must be given as soon as reasonably practicable.</li> </ul>   |
| <p>Hearings in public:-</p> <ul style="list-style-type: none"> <li>- General rule that the hearing must be in public.</li> <li>- May exclude the public if the public interest in excluding the public outweighs the public interest in having a public hearing.</li> <li>- A party or representative may be regarded as a member of the public.</li> </ul>  | <p>Hearings in public:-</p> <ul style="list-style-type: none"> <li>- General rule that the hearing must be in public.</li> <li>- May exclude the public if necessary in the circumstances having regard to:-                             <ul style="list-style-type: none"> <li>• Any unfairness that is likely to result to a party from a public hearing</li> <li>• The need to protect as far as possible the commercial or other legitimate interests of a party.</li> </ul> </li> </ul>   |
| <p>Failure to attend:-</p> <ul style="list-style-type: none"> <li>- If a party has indicated they will not attend the hearing may proceed in his absence.</li> <li>- If a party has not notified the Authority it may either adjourn the hearing or proceed in his absence.</li> <li>- If the hearing proceeds in absence the party's application, representation or notice must be considered.</li> </ul> | <p>Failure to attend:-</p> <ul style="list-style-type: none"> <li>- If a party has indicated they will not attend the hearing may proceed in his absence.</li> <li>- If a party has failed to notify the Authority whether he intends to attend the hearing may proceed in his absence.</li> <li>- If a party has left the hearing in circumstances where the committee reasonably concludes he does not intend to participate further the hearing may proceed in his absence.</li> <li>- If a party has said they intend to attend but does not the Authority may adjourn if it is in the public interest to do so or proceed in his absence.</li> <li>- If the hearing proceed in absence the party's application or representation must be considered.</li> </ul> |

| <p style="text-align: center;"><b>LICENSING ACT</b></p>   | <p style="text-align: center;"><b>GAMBLING ACT</b></p>  |
|---|---|
| <p>Representation at the hearing:-</p> <p>A party may attend and be assisted or represented by any person whether or not they are legally represented (subject to exclusion of the public or disruptive persons).</p> | <p>Representation at the hearing:-</p> <p>A party may attend and be assisted or represented by any person whether or not they are legally represented (subject to exclusion of the public or disruptive persons).</p> |
| <p>Rights of a party:-</p> <p>A party has a right to address the committee.<br/>A party has a right to give further information on any matter where clarification has been requested.</p>                             | <p>Rights of a party:-</p> <p>A party has a right to address the committee.<br/>A party has a right to give further information on any matter where clarification has been requested.</p>                             |
| <p>Calling Witnesses:-</p> <p>If given permission by the committee following a request in a party's notice of intention</p>   | <p>Calling Witnesses:-</p> <p>Right to call witnesses to give evidence on a matter relevant to the application or representation.</p>   |
| <p>Questions of other parties:-</p> <p>Only if given permission to do so by the committee.</p>  | <p>Questions of other parties:-</p> <p>Party must be allowed to question any other party or representative on any relevant matter where the committee considers it appropriate to do so.</p>                          |
| <p>Documents in support:-</p> <p>May be considered where produced before the hearing or (with the consent of all parties) at the hearing.</p>   | <p>Documents in support:-</p> <p>Must be considered if produced before the hearing or at the hearing with the consent of all those in attendance.</p>   |
| <p>Time Limits:</p> <p>All parties must have equal maximum periods of time to exercise their rights.</p>  | <p>Time Limits:-</p> <p>No provision.</p>   |
| <p>Disruptive Parties:-</p>   | <p>Disruptive Parties:-</p>   |

Appx 2

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|--|--|
| <p>May be required to leave and not permitted to return or may impose conditions on their return.<br/>But such a person may before the end of the hearing make submissions in writing.</p> | <p>May be required to leave and not permitted to return or may impose conditions on their return.<br/>But such a person may before the end of the hearing make submissions in writing.</p> |
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## CODE OF PRACTICE FOR THE DETERMINATION OF LICENSING MATTERS

### 1.0 BACKGROUND

- 1.1 This Code of Practice for the determination of licensing matters substantially follows the Guidance produced by LACORs (Local Authority Co-ordinators of Regulatory Services) in consultation with the Standards Board for England, the Association of Council Secretaries and Solicitors (ACSeS), the Association of London Government (ALG) and the Society of Local Authority Chief Executives (SOLACE) for Licensing Committee Hearings under the Licensing Act 2003 (Updated October 2007).

### 2.0 SCOPE

- 2.1. This code **applies** to all licensing decisions including  
Decisions of the Licensing Committee  
Decisions of any Licensing Sub committee  
Delegated decisions within the terms of reference of the above bodies

All decisions made by the above bodies will be referred to within this code as decisions of the licensing authority

This code **also applies** at all times when Members are involved in the licensing process. This includes taking part in decision making meetings of the Council in exercising the functions of the licensing authority and on less formal occasions such as meetings with officers or the public and consultative meetings. It applies as equally to licensing enforcement matters, reviews, or site specific issues as it does to licensing applications.

- 2.2 **The aim of this code of good practice is** to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 2.3 Sections 3-5 apply to all Members. Sections 6-14 apply particularly to Members of the Licensing Committee. . Sections 15-16 apply to officers. Sections 17-19 deal with procedures, monitoring and review
- 2.4 **If you have any doubts** about the application of this Code, you should seek early advice, preferably well before any meeting takes place from the Monitoring Officer.

### 3.0 RELATIONSHIP WITH THE MEMBERS CODE OF CONDUCT

- 3.1 Leeds City Council's Members Code of Conduct was adopted by the Council on the 24th May 2007 and must be complied with throughout the decision making process.

**Do** apply the rules in the Members Code of Conduct first and at all times.

**Do** then apply the rules of this Code which seek to explain and supplement the Members Code of Conduct for the purposes of licensing. If you do not abide by this Code you may put:

- the Council at risk of proceedings on the legality or maladministration of the related decision; and
- yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Members Code of Conduct, a complaint being made to the Standards Committee.

#### **4.0 DECLARATIONS OF INTERESTS UNDER THE MEMBERS CODE OF CONDUCT**

4.1 It is your responsibility to declare any personal or prejudicial interest you may have, or be perceived as having, in a matter at any relevant meeting, including informal meetings or discussions with officers and other Members preferably at the beginning of the meeting. You should declare the existence and nature of that interest.

**If your personal interest** in a matter arises due to solely from your membership of, or position of control/ management on:

- Any other body to which you were appointed or nominated by the authority;
- Any other body exercising functions of a public nature (for example another local authority).

The Model Members Code of Conduct states<sup>1</sup> that in these cases, provided that you do not also have a prejudicial interest, you only need to declare that interest if you intend to speak on the matter.

**If you have** a personal or prejudicial interest in a matter do then act accordingly depending on the interest that you have declared.

**Where your interest is personal and prejudicial** you should withdraw from the room or chamber where the meeting is being held:-

**Do not** participate or give the appearance of trying to participate in any part of the meeting which involves the matter in which you have a prejudicial interest. You may however make representations, answer questions on a matter or give evidence on a matter if the public also have the right to do so<sup>2</sup>. You only have the same right as the public to make representations You will be brought into the meeting when the other parties are called in. You will be subject to the same time limits as all other parties and have the same rights i.e. to make representations, give evidence and answer questions but not to cross examine other parties You must leave the room immediately after making representations, answering questions or giving evidence

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<sup>1</sup> Paragraph 9(2) Model Code of Conduct for Members

<sup>2</sup> Paragraph 12(2) Model Code of Conduct for Members



and must take no part in the decision making. If the public have no right to make representations, answer questions on a matter or give evidence on a matter then you must withdraw from the meeting room when the matter in which you have a prejudicial interest is discussed.

Where you have a prejudicial interest in the matter is to be determined by a Licensing Sub Committee you should ensure that you have arranged for a substitute to attend the hearing in your place as although you may have a right to make representations, answer questions on a matter or give evidence on a matter you are not able to take part in the decision.

**Do not** get involved in the processing of the application.

**Do not** seek to improperly influence a decision on a matter in which you have a prejudicial interest. Not all attempts to influence a decision will be improper. Improper influence would be any attempt to use your position to further your own interests in a way that would not be open to an ordinary member of the public. Do not seek or accept any preferential treatment or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a Councillor.

**Do** be aware that, whilst you are not prevented from seeking to explain or justify a proposal in which you have a personal or prejudicial interest to an appropriate officer, the Code places greater limitations on you than would apply to an ordinary member of the public and sensible steps must be taken to ensure openness and fairness in the decision making process. In particular you should:

- Notify the Monitoring Officer in writing of your own application (or that of a relative or employer where known) or where you are employed as an agent.
- Consider whether it is advisable to employ an agent to act on your behalf in dealing with officers and any public speaking at a licensing hearing.

## **5.0 MEMBERS SPEAKING AT LICENSING HEARINGS**

5.1 All Members of the Council should be aware of the planning case involving a North Yorkshire Councillor, Councillor Richardson. The Councillor was not a member of the Planning Committee but sought to represent the views of his constituents. However his property was affected by the application and the Standards Board for England disqualified him from being a Councillor on the basis that he did not disclose a Personal and Prejudicial interest even though he was not the decision maker and was making representations as either the ward member or in an individual capacity. The Court of Appeal upheld the Standards Board decision.

As a result of this case the Model Members Code of Conduct was amended and now provides that you can make representations, answer questions on a matter or give evidence on a matter in which you have a prejudicial interest if the public also have the right to do so. You must leave the room immediately after making representations, answering questions or giving evidence.

You only have the same right as the public to make representations. You will be brought into the meeting when the other parties are called in. You will be subject to the same time limits as all other parties and have the same rights i.e. to make representations, give evidence and answer questions but not to cross examine other parties. You must not remain in the room when the decision is made even if you are not making the decision.

## **6.0 BIAS AND PREDETERMINATION IN THE LICENSING PROCESS**

6.1 Given the requirement that Members of the Licensing Committee or Sub committee should exercise an independent mind and decide proposals in accordance with the relevant licensing considerations, Members must not favour any person, company, group or locality or commit themselves to a particular point of view on a licensing application prior to its full consideration at the Licensing Committee or Sub committee.

**Do not** make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the decision making meeting and of your hearing the officer's presentation and the evidence and arguments on both sides.

**Do** be aware that you are likely to be biased or pre-determined where the Council is the landowner or applicant **if** you have been or are perceived as being, a chief advocate for the proposal. This will not necessarily arise from being a member of the proposing board or the Executive but through a significant personal involvement in preparing or advocating the proposal by which you may be perceived as being unable to act impartially or determine the proposal purely on its licensing merits and in the public interest.

**Do remember** that you are, of course, free to listen to a point of view about a licensing proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate licensing officer.

**Do not** use any political group meetings prior to the Licensing Committee or Sub committee meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Licensing Officer's report and documents and information considered at the Hearing.

**The Standards Board for England** have provided advice and guidance on bias and pre-determination which can be obtained from [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk).

## **7.0 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES**

- 7.1 This section concerns the position of Members of Leeds City Council who are also Parish Councillors or members of an outside body. These should be recorded on your register of interests.

**Do** consider if you have a prejudicial interest in a matter by virtue of you being a member of the Parish Council or a Member of the outside body. If the matter affects the financial position of the Parish Council or outside body, or the matter relates to an application made by the Parish Council or outside body then it is capable of being a prejudicial interest.<sup>3</sup> (If the matter does not affect the financial position or relate to an application made then it cannot be a prejudicial interest)

If the matter is capable of being a prejudicial interest then you should go onto consider whether the interest is one that a member of the public with knowledge of all the relevant facts would reasonable regard as so significant that it would be likely to prejudice your judgement of the public interest.<sup>4</sup>

**Do not** take part in the licensing decision making process but withdraw from the meeting or arrange a substitute when you have a prejudicial interest in that matter by virtue of you being on the Parish Council or a member of the outside body. (However you may make representations, answer questions on a matter or give evidence on a matter if the public also have the right to do so)

**Do** consider yourself able to take part in a licensing debate and vote on a proposal at a meeting of the Parish Council or outside body is a consultee provided:

- The proposal does not substantially affect the well being or financial standing of the consultee body.
- You make it clear that that you are keeping an open mind and may vote differently at the licensing hearing when full details are available.
- You do not commit yourself so far to a particular point of view that you cannot be considered as open to persuasion at a licensing hearing when the proposal is decided.
- You disclose a personal interest regarding your membership or role when the proposal comes to a licensing hearing.

## **8.0 AREA COMMITTEES**

- 8.1 The introduction of Area Committees within Leeds City Council also requires recognition of the “Dual Hatted” roles which members of the Licensing Committee and Area Committees must consider. It is unlikely you would have a Personal and Prejudicial Interest for the purpose of the Members Code of Conduct purely by being a member of the Area Committee but there is a possibility that you may be

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<sup>3</sup> Paragraph 10(2) Model Code of Conduct for Members

<sup>4</sup> Paragraph 10(1) Model Code of Conduct for Members

## Code of Practice for Determining Licensing Matters

considered as pre determining a matter if you have spoken in support or against it or are closely associated with such a decision taken at the Area Committee.

**Do** consider whether it is appropriate for you to speak at the Area Committee if you wish to speak also on the application at a licensing hearing.

**Do** consider, whatever your own views, whether as Chair of the Area Committee or a member of any Panel, Committee or Sub Committee, you would be so closely associated with that decision that it would be unreasonable to expect you to disregard it.

**Do** remember that you can speak and vote on an application which is before the Area Committee for consultation so long as you make it clear that you have only formed a provisional view and will still approach the issue with an open mind and be open to persuasion when the matter is discussed at the licensing hearing.

**Do** remember that it is not always sufficient to make such a statement if it is not demonstrably genuine. The more controversial the application and or the more vehemently you have supported or opposed it, the more difficult it will be to show that you have not predetermined the matter and therefore render the decision susceptible to challenge. In those circumstances you should not attend the hearing for that application.

### 9.0 SPOUSE/PARTNER COUNCILLORS

9.1 There may be occasions when the spouse or partner of a Member, usually a member for the same Ward, is also a Member of the Licensing Committee or Sub Committee. That Member might quite properly refer constituents who wish to make representations to his or her spouse or partner rather than be directly lobbied. Generally the fact that the spouse or partner Councillor has been approached will not affect your ability to speak and vote at a licensing hearing.

**Be** aware that the Members Code of Conduct defines that you have a personal interest in any business of the authority where a decision in relation to that business might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision.

**Relevant person**<sup>5</sup> includes your spouse or partner.

**Acknowledge** that in certain circumstances, such as a particularly controversial application in the run up to an election, there is the possibility that a Personal and Prejudicial interest could exist.

**Consider** if your spouse or partner is so closely involved with the support for, or opposition to, an application that a member of the public might reasonably think that

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<sup>5</sup> Paragraph 8(2) Model Code of Conduct for Members  
Part 5 (j)  
Page 6 of 15  
Issue 1 – 2011/12  
8 April 2011

the involvement is such that you must be biased or have predetermined the application.

## **10.0 EXECUTIVE BOARD MEMBERS**

- 10.1 There is no Constitutional or legal reason why an Executive Board Member should not also be a Member of the Licensing Committee and take part in the decision making processes which are not part of the executive function.

**Be** aware that you should not speak or vote on any matter which you have discussed at Executive Board unless you have demonstrated there and can do so at the licensing hearing that you have not predetermined the application.

**Do not** take part in any meeting of the Licensing Committee or Sub Committee on a matter in which you may have been seen as advocating a proposal as an Executive or Deputy Executive Member.

## **11.0 CONTACT WITH APPLICANTS AND OBJECTORS**

- 11.1 In order to maintain impartiality, it is preferable that Members are not involved in pre-application discussions but there will be occasions when this can be unavoidable. The following guidance is given:

**Do not** agree to any formal meeting with applicants, or groups of objectors where you can avoid it. Where you feel that a formal meeting would be helpful in clarifying the issues, you should not arrange it yourself, but request the Licensing Officer to do so. The officer will then ensure that those present are aware that any discussion will not bind the Council and maintain a written file record of the meeting.

**Do** refer those who approach you for advice to officers.

**Do** follow the rules on lobbying

**Do** report any significant contact with the applicant or other parties to the Monitoring Officer explaining the nature and purpose of the contacts and your involvement and ensure that this is recorded on the licensing file.

**Do not** attend a presentation by an applicant unless an officer is present and/or it has been arranged by an officer.

**Do** ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other members might vote.

**Do** make it clear that the presentation is not part of the formal decision making process and any view is both personal and provisional since not all relevant information will be to hand and the views of interested parties will not have been obtained.

## **12.0 MEMBERSHIP OF A LOBBY GROUP**

12.1 Lobbying by Councillors is a legitimate activity but in the case of Members of the Licensing Committee or Sub Committee significant care needs to be taken to avoid any challenge of bias or predetermination or an allegation of bringing the Council into disrepute.

**Do** declare the existence and nature of your interest in any lobby group at a licensing hearing so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.

**Do** not take part in any matter that affects the financial position of the lobby group or that relates to the determination of any application for approval, consent, licence, permission or registration made by the lobby group of which you are a member. If the Licensing Committee or Sub committee is discussing such a matter you should consider whether you have a prejudicial interest and should act accordingly.

**You may** take part in a matter than involves issues upon which your lobby group has simply campaigned as long as your involvement has not resulted in you being biased and/or predetermining the matter. You will have personal interest in this matter as the lobby group should be registered on your register of interests and a personal interest arises when the matter directly affects the lobby group, or where the lobby group is otherwise concerned about the outcome of the matter.

**Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you are biased or have pre-determined a matter. The factors are:

- the nature of the matter to be discussed
- the nature of your involvement with the lobby group
- the publicly expressed views of the lobby group
- what you have said or done in relation to the particular issue

**Do not** lead, be part of the management of, or represent an organisation whose primary purpose is to promote or oppose licensing proposals. If you do, you may have fettered your discretion (be biased/pre-determined) and have to withdraw.

**Do not** become a member of an organisation whose primary purpose is to promote or oppose specific licensing proposals or those within a limited geographical area as you may be perceived as having fettered your discretion (be biased/pre-determined).

**Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals such as a local Civic Society but declare a personal interest where that organisation has made

representations on a particular proposal and make it clear to both the organisation and the Committee that you have not made up your mind on each separate proposal

**Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as being the Chairperson or a member of the Board or Committee, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may consider that you are biased and/or pre-determined and should withdraw from the meeting.

**Do not** excessively lobby fellow members regarding your concerns or views or attempt to persuade them that they should decide how to vote in advance of the hearing at which the decision is to be made. It is difficult to define 'excessively' but you need to consider whether a member of the public, knowing the facts would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.

**Do not** publicly support a particular outcome on a proposal or actively campaign for it if you wish to take part in the decision making process. Although in most circumstances this would not amount to a prejudicial interest, it would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the Application in accordance with the law.

## **13.0 SITE VISITS**

13.1 Site Visits can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise.

They are not to be used to determine a proposal prior to a hearing.

Due to the tight timescales involved in licensing decisions, site visits must be viewed as an exception rather than the rule

When undertaking a site visit Members should have regard to the following paragraphs of the Code of Practice for Determining Licensing Matters

- ✓ Paragraph 6 Fettering Discretion in the Licensing Process
- ✓ Paragraph 11 Contact with Applicants/Objectors

## **13.2 THIS SECTION APPLIES TO MEMBERS REQUESTS FOR A SITE VISIT**

- If a Member feels, on receipt of the report on an application that a site visit would be beneficial, s/he should first discuss their concerns with the Principal Licensing or Gambling Officer. Officers have powers to request additional information from parties, which can then be discussed at the hearing. This information may resolve

## *Code of Practice for Determining Licensing Matters*

the issues without the need for a site visit. If a Member still feels that a site visit is necessary then, in the interest of fairness, it is preferable that concerns should be expressed at the scheduled hearing since Members may find that the applicant, interested parties or responsible authorities can provide verbal information to the satisfaction of the Members present.

- Views of the parties present must be canvassed and considered before a site visit is agreed since that is likely to result in a delay to the decision making.
- In the case of a Sub Committee hearing, three Members or a 2:1 majority must be in favour of a site visit for arrangements to be made. The same three Members will be expected to undertake the requested site visit and attend the hearing for the application, which will be re-convened at a later date
- In the case of a meeting of the Licensing Committee , a majority of the Members present must be in favour of a site visit  
The same Members will be expected to undertake the requested site visit and be able to attend the re-convened meeting which will consider the application subsequent to the site visit
- **DO** raise the need for a site visit at a hearing and be prepared to give reasons why it is of real benefit. The reason will be recorded in the Minutes.
- **DO NOT** request a site visit unless there is a real benefit from viewing the site.

This might arise where:-

- ∇ Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- ∇ There are significant policy or precedent implications and specific site factors need to be carefully addressed or
- ∇ Relevant factors cannot be fully ascertained from any supporting information or the plans submitted to the Licensing Officer and available at the hearing, to Members satisfaction

### **13.3 THIS SECTION APPLIES TO SITE VISITS AS PROPOSED BY OFFICERS**

- The Principal Licensing or Gambling Officer may suggest the Committee or a Sub Committee undertake a Site Visit without prior discussion at a hearing, where in the professional opinion of the Officer there is a real benefit from viewing the site.
- In such cases, officers will approach Members seeking a date for the site visit and hearing – usually in the form of an e-mail in the first instance



- The e-mail should set out the proposal for a site visit, the reasons behind the request; the projected benefit for Members; the address of the premise; the type of application and set out the arrangements for the day.
- In such cases it is usual for the site visit to commence at 9.30 am (departing from the Civic Hall) and for the formal meeting to commence at 11.00 am in the Civic Hall to determine the application. As such it is anticipated that hearings will not conclude until the afternoon.
- Having done this, officers will seek confirmation from the Members able to attend that they are happy to undertake the propose site visit

#### **13.4 ON THE SITE VISIT**

- **DO** ensure that any information gained from the site visit is reported back at the subsequent hearing.
- **DO** ensure that you treat the site visit as an opportunity to seek information and to observe the site. It is not to be used to determine a matter prior to the hearing
- **DO** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **DO** be prepared to listen to and ask questions of fact from the Applicant or other parties
- **DO** be aware that Officers will make all parties aware of the site visit. All parties may attend subject to being granted access by the owner (see below). If only one party is present be particularly careful only to obtain information and ensure that that information is repeated at the public meeting where the other parties have a right to comment on it.
- **DO** be aware that access to the site is at the discretion of the owner. The owner can legitimately refuse access to objectors and even Members. If access is to be refused consider whether it is still appropriate to undertake the visit.
- **DO NOT** be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind

**Note that** the decision can only be made at the Licensing Hearing and you should make this clear to any applicant or other party

- **DO** note comments of the applicant or other parties which are made solely for the purpose of making members aware of any specific local circumstances and issues relevant to the application site.
- **DO NOT** express opinions or views to anyone which can suggest bias or predetermination.

## *Code of Practice for Determining Licensing Matters*

As indicated above, you should make it clear that formal consideration of the proposal will take place in public at the subsequent hearing/meeting.

- **DO NOT** enter a site which is subject to an application otherwise than on a formal site visit although this does not prevent you from viewing the site from the highway or other publicly accessible area.

### **14.0 TRAINING**

14.1 Members making licensing decisions must attend two training sessions each and every year: a Licensing Update session, to receive guidance in relation to regulations and procedures and a Governance and Conduct session for training on declaration of personal and prejudicial interests. Failure to undertake either or both sessions will result in the Elected Member being unable to sit on Licensing Committee or Sub Committee.

- **Do not** participate in decision making on licensing matters if you have not undertaken mandatory training.
- **Do** try to attend any other specialised training session provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures and Policies beyond the minimum required and assist you in carrying out your role properly and effectively.
- **Do** revisit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public, confidence in the licensing system, and can help with reviews of planning policies.

### **15.0 OFFICERS**

15.1 Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Officers are employed by the Council and not by individual Councillors and instructions can only be given through a decision of the Council, the Executive or a Panel or Committee. A successful relationship can only be based on mutual respect, trust, courtesy and understanding of each others positions.

15.2 The role of the Legal officer is to assist the committee in gathering evidence and understanding all relevant issues in order for Members to make a decision; to advise on the sub committees legal duties under the relevant legislation and on the admissibility of evidence.

15.3 All legal advice should be given or repeated in open session for all parties to be made aware of

15.4 The role of the Governance Officer is to facilitate the smooth running of

the hearing; advise on the Rules of Procedure and Regulations relating to hearings; make notes of the proceedings and reasons for granting or refusing applications and ensure that decision letters are sent to all parties as soon as possible after the hearing.

- 15.5 The role of the Licensing Officer is neutral. They will make no recommendations to the Committee and attend hearings only to provide a summary report of the application, giving details of the representations received and any relevant legislative or policy considerations.

**Do not** put pressure on officers to put forward a particular recommendation.

**Do** recognise that officers are part of a management structure and only discuss an application, outside of any arranged meeting with those officers who are authorised to deal with the application at Member level.

**Do** recognise and respect that officers involved in the processing and determination of licensing application must act in accordance with the Council's Employee Code of Conduct. As a result, officers reports will be presented on the basis of their overriding obligation of professional independence

## **16.0 RELATIONSHIP WITH THE EMPLOYEE CODE OF CONDUCT**

- 16.1 The Council has an approved Employee Code of Conduct.

That Code applies at all times when officers are involved in the licensing process. This includes decision making by officers under delegated powers and attendance at meetings whether those are formal decision making meetings or informal meetings with members or the public.

Officers must apply the rules in the Employee Code of Conduct at all times. If they do not they may put the Council at risk of proceedings on the legality maladministration of any related decision put themselves at risk of disciplinary action.

- 16.2 Generally licensing officers have little discretion in making licensing decisions. For example they may only grant licences where there are no objections. However there may be situations where they are called upon to exercise discretion such as deciding whether an objection is relevant. Other officers such as those employed by Environmental Health or Development have discretion on whether to object. Legal officers and committee clerks remain in the room with Members when decisions are made.

In all cases officers must avoid any improper conduct or occasion for suspicion of the appearance of improper conduct and should:-

- Ensure that they have given notice of any financial interest in any contract which has been or is proposed to be entered into by the Council

## *Code of Practice for Determining Licensing Matters*

- Not accept gifts, entertainment, hospitality or any benefits in kind as set out in the Employee Code of Conduct
- Declare to their Director by completing the Register of Interests Form any personal interests which may conflict with licensing applications such as
  - § any involvement with an outside organisation which has an interest in any licensing application
  - § any financial interest in any licensing application
  - § any other interest where others may think that a conflict of interest may arise
  - § Examples of such situations include where the officer lives adjacent to any licensed premises or visits the premises in a personal capacity on a regular basis

16.3 Officers should also consider whether their spouse, partner or close relative has a financial or other interest in a licensing application which may give rise to the suspicion of the appearance of improper conduct and where the officer may therefore need to declare an interest.

16.4 Where an officer has declared an interest he or she should not participate in the processing of a licensing application but should instead refer the matter to his or her Manager who will arrange for another officer to discharge the duties.

### **17.0 PROCEDURES AT LICENSING HEARINGS**

17.1 Procedure Rules exist for hearings before the Licensing Committee and Sub committees.

### **18.0 MONITORING AND REVIEW**

18.1 The Monitoring Officer will report annually to the Standards Committee regarding whether the arrangements set out in this Code have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.

18.2 In particular, the Monitoring Officer shall monitor the following:-

- the number of complaints made about breaches of the Code and the outcome of those complaints
- the number of appeals upheld
- any external inspection reports in respect of relevant issues
- any ombudsman complaints or reports in respect of relevant issues

### **19.0 BREACHES OF THE CODE OF PRACTICE**

19.1 Maintaining high ethical standards enhances the general reputation of the Council, its Members and its officers. Open and transparent decision making enhances local

democracy and should lead to better informed citizens. This Licensing Code, along with Leeds City Council's Members Code of Conduct, and the Employee Code of Conduct are intended to promote these standards.

**Do** be aware of your responsibilities under this Code and the Members Code of Conduct

**Do** report any apparent breaches of either Code to the Monitoring Officer.

**Do** seek advice if you are in doubt.

- 19.2 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee – Assessment Sub-Committee who can, in certain circumstances disqualify a Councillor. Failure to comply with this Licensing Code may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.
- 19.3 Allegations of breach of this Licensing Code of Practice by Members may be referred to the Monitoring Officer for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the Party.
- 19.4 Allegations of breach of this Licensing Code by Officers will be referred to the relevant Director for consideration under the Council's Disciplinary Procedure.

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## Report of the Head of Licensing and Registration

### Report to Licensing Committee

**Date:** 25th May 2012

**Subject:** Changes to S182 Guidance

|  |   |
|--|---|
| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

### Summary of main issues

1. Major changes to the Licensing Act 2003 came into effect on the 25th April. As a consequence the guidance issued by the Home Office under S182 of the Licensing Act 2003 has been amended
2. This report provides a summary of the changes.

### Recommendations

3. That Licensing Committee notes the contents of this report.

## **1.0 Purpose of this report**

- 1.1 To advise Licensing Committee of the changes made to the S182 guidance issued by the Home Office.

## **2.0 Background information**

- 2.1 The Police Reform and Social Responsibility Act 2011 received Royal Assent in September 2011 and brought a number of changes to the Licensing Act 2003 which were designed to give power back to local communities and to make it easier for Licensing Authorities to deal with problem premises and the problems associated with late night drinking.

## **3.0 Main issues**

- 3.1 The majority of the changes came into effect on 25th April 2012. The remaining changes (late night levy, early morning restriction orders, locally set fees and the repeal of alcohol disorder zones) are likely to come into effect in October.
- 3.2 As a consequence of these changes, and promises made in the Government Coalition Agreement, changes have been made to the S182 guidance issued by the Home Office. The guidance was laid before Government and came into effect on the 25th April 2012. Officers will provide a document highlighting the changes at the meeting.

## **4.0 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 As this is an advisory report, there are no consultation and engagement issues.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 As this is an advisory report there are no issues relating to equality, diversity, cohesion and integration.

### **4.3 Council Policies and City Priorities**

- 4.3.1 The changes to the S182 guidance does impact on the council's Statement of Licensing Policy. These have been dealt with in a separate report.

### **4.4 Resources and Value for Money**

- 4.4.1 The changes to the S182 guidance has limited impact on resources.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 There are no legal implications for this report.



## **4.6 Risk Management**

4.6.1 There are no issues relating to risk management.

## **5 Conclusions**

5.1 The Police Reform and Social Responsibility Act and the promises made in the Coalition Agreement have necessitated changes to the S182 guidance issued by the Home Office. These changes will affect the determinations made by Licensing Committee and the licensing sub-committees.

## **6 Recommendations**

6.1 That Licensing Committee considers the contents of the report.

## **Background Papers**

Amended Guidance Issued Under Section 1982 of the Licensing Act 2003.

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Report author: Susan Holden  
Tel: 51863

**Report of the Head of Licensing and Registration**

**Report to Licensing Committee**

**Date: 25th May 2012**

**Subject: Licensing Act 2003 Statement of Licensing Policy Review**

|  |   |
|--|---|
| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

**Summary of main issues**

1. Major changes to the Licensing Act 2003 came into effect on the 25th April. As a consequence the council's Statement of Licensing Policy requires review and amendment.
2. This report provides a summary of the work required to update the policy and provides options for member involvement.

**Recommendations**

3. That Licensing Committee considers the contents of the report and decides the way forward.

## **1.0 Purpose of this report**

- 1.1 To advise Licensing Committee of the issues relating to the revision of the Statement of Licensing Policy and to present options for member involvement.

## **2.0 Background information**

- 2.1 The Police Reform and Social Responsibility Act 2011 received Royal Assent in September 2011 and brought a number of changes to the Licensing Act 2003 which were designed to give power back to local communities and to make it easier for Licensing Authorities to deal with problem premises and the problems associated with late night drinking.
- 2.2 The majority of these changes came into effect on 25th April 2012. The remaining changes (late night levy, early morning restriction orders, locally set fees and the repeal of alcohol disorder zones) are likely to come into effect in October.
- 2.3 These changes make fundamental changes to the way licence applications are determined and therefore there is a need to review the Statement of Licensing Policy.
- 2.4 In the past, although Licensing Committee have been informed at all stages of the review, there has been no direct involvement on these matters of policy. The changes to the Licensing Act were designed to give greater control to the Licensing Committee in their determinations of licence applications and it is appropriate that members of the Licensing Committee are more involved in the policy setting process although final approval to any new policy must be given by full council..

## **3.0 Main issues**

- 3.1 Changes brought about by the PRSR Act.
- 3.2 There are a number of changes to the Licensing Act that will necessitate amendments to the Policy. For example the removal of the vicinity test for representations and the removal of the definition of interested party will require minor rewriting of the policy. There are a number of other minor amendments, such as the addition of NHS Leeds as a responsible authority.
- 3.3 Review of the cumulative impact policies
- 3.4 The section S182 Guidance issued by the Home Office has been amended to lower the evidential requirement for cumulative impact policies.
- 3.5 In addition officers have received a request from the South Leeds Alcohol Group to investigate the possibility of a cumulative impact policy in south Leeds.
- 3.6 Experience of operating to the current policy in decision making and appeals should also feed into the review of the city centre cumulative impact policy wording.

- 3.7 As a consequence it may be appropriate to review all the current policies to ensure they are fit for purpose in light of the changes to the guidance and to decide if the current CIPs should remain or be amended, whether further CIPs are appropriate or if there are other ways of achieving the same result.
- 3.8 Late night levy/early morning restriction orders/locally set fees
- 3.9 In October 2012 it is expected that the Government will commence the powers to set a late night levy, early morning restriction orders and locally set fees. The governance arrangements for these vary but in all cases there will be a need to consult with partners and stakeholders, and then to do a wider public consultation.
- 3.10 Local information to assist applicants
- 3.11 As part of the amended guidance, applicants are expected to include positive proposals in their application on how they will manage any potential risks. It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. The guidance states that the majority of the information which applicants will require should be available in the licensing policy, but that they could also use other sources such as crime mapping websites, neighbourhood statistics websites; websites or publications by local responsible authorities etc.
- 3.12 There is an opportunity for the council to provide, in its licensing policy, specific information relating to localities in Leeds that could shape the way premises are licensed. This information will need to be gathered, in liaison with area committees, area community safety officers and local residents and business owners. In other areas partners such as NHS Leeds and West Yorkshire Police may also be able to provide useful information.
- 3.13 It appears from the guidance that the council has a choice over where to place this information - in the policy or on the website, but the impact of either choice will need careful consideration.
- 3.14 Zoning
- 3.15 In previous versions of the Guidance licensing authorities were clearly advised not to deliberately zone areas and to set standard opening times.
- 3.16 However the new guidance states:  
“The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.”

3.17 Therefore it may be appropriate to make a statement in the policy regarding opening hours in certain parts of the city, once discussions with responsible authorities and other appropriate persons have taken place.

### 3.18 The way forward

3.19 The changes to the Licensing Act have already been commenced but the council was not given enough time to amend the policy before this happened. Therefore, although the policy is now out of date the council does have time to consider any amendments carefully. It is suggested that, especially with the licensing authority's current workload, to start discussions and local consultations on the policy over the summer. By the autumn further detail around late night levy and EMROs will be published and the consultation process could extend to these two new powers at that point. Officers would hope to be able to take the amended policy out to a public consultation over winter 2012/13 with possible adoption by Council in April 2013.

3.20 In order to progress these matters, members may be minded to assist officers with these decisions in a number of ways:

- Working group - members may decide to form a working group of 3 or 4 members of the Licensing Committee to work with officers, to hear from responsible authorities and to make recommendations as above.
- Representatives - members may decide to nominate one or two members to meet with officers on a regular basis to receive feedback on work carried out and be involved in the formulation of the new policy.
- Regular updates - members may decide to ask officers to report back regularly to Licensing Committee

## **4.0 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 The changes to the Licensing Act were consulted upon by HM Government over the last two years. The licensing authority is required, by the legislation, to consult upon any amendments to the licensing policy. Normally the council follows the Government guidance on Consultations and undertakes a 12 week postal consultation. In addition officers and members may decide to undertake more directed consultation with area committees, local community safety officers, residents groups and local business owners. Responsible authorities, designated by the Licensing Act, will be involved from an early stage.

### **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 All of Entertainment Licensing's work is assessed for the impact on equality, diversity, integration and cohesion every three years as per the Council policy.

### **4.3 Council Policies and City Priorities**

4.3.1 This report discusses the impact on the Licensing Act 2003 Statement of Licensing Policy, and the options that are open to the council.

### **4.4 Resources and Value for Money**

4.4.1 The review and consultation on the Statement of Licensing Policy will have an additional impact on resources, as this is an unplanned amendment on a policy that was only set last year. However we have taken advice from the Home Office and have been told that we will need to amend our Licensing Policy, but that the scale of the consultation should be commensurate with the changes.

### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 There are no legal implications for this report, as the decision to be made by the Licensing Committee relates to their involvement in the review of the licensing policy. The amended policy will be assured by Legal Services before approval.

### **4.6 Risk Management**

4.6.1 Licensing Committee could decide not to be involved until such time that the draft policy is placed before Licensing Committee just before consultation and before starting the approval process but there is a risk that the process would be delayed should the Committee decide to make changes to the policy at such late stage.

## **5 Conclusions**

5.1 The Police Reform and Social Responsibility Act 2011 and the resulting changes to the section 182 Guidance have meant that the council's Statement of Licensing Policy will require reviewing and amending. There is an opportunity for Licensing Committee to be more involved in the policy development. This is especially pertinent as the changes increase the scope for the licensing authority to modify or refuse licence applications and to modify or revoke licences on review.

## **6 Recommendations**

6.1 That Licensing Committee considers the contents of the report.

6.2 That Licensing committee decides whether to:

- Form a working group to work with officers, partner agencies and stakeholders
- Provide a representative to work with officers, partner agencies and stakeholders
- Require officers to report to Licensing Committee regularly during the review process, and the frequency of those reports

or

- Require officers to report once the new policy is in draft form and prior to public consultation and approval, as previously.

**Background Papers**

Briefing Note - Police Reform and Social Responsibility Act 2011



**Report of the Chief Officer, Democratic and Central Services**

**Report to the LICENSING COMMITTEE**

**Date: 25th MAY 2012**

**Subject: LICENSING COMMITTEE WORK PROGRAMME FOR 2012/13 MUNICIPAL YEAR**

|  |   |
|--|---|
| Are specific electoral Wards affected?<br>If relevant, name(s) of Ward(s):   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Is the decision eligible for Call-In?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information?<br>If relevant, Access to Information Procedure Rule number:<br>Appendix number: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

**Summary of main issues**

1. This report presents items for inclusion in the draft Work Programme for the Licensing Committee for the 2012/13 Municipal Year.

**1 Purpose of this report**

1.1 The purpose of this report is to propose items for inclusion in the Licensing Committee Work Programme for the 2012/13 Municipal Year. Members are invited to prioritise the items throughout the forthcoming year

**2 Background information**

2.1 The Licensing Committee adopted a Work Programme approach in 2009 in order to schedule presentations from external organisations appropriate to the remit of the Committee, as well as timetabled reports from the relevant LCC Sections.

**3 Main issues**

3.1 Several matters considered during the 2011/12 Municipal Year will be carried over into the forthcoming year as work continues on those issues, including:

- NVQ/VRQ qualifications and matters arising from the NVQ WG
- Half yearly City Centre Policing update
- The Large Casino Application Process

3.2 A few issues have not been discussed during 2011/12 and may be included in the 2012/13 Work Programme if the Committee sees fit:

- Review of regular renewal of CRB checks for Licence Holders
- Planning and Licensing
- Alcohol Harm Reduction Policy

3.3 New matters likely to be forthcoming this year include reviews of the LA2003 Statement of Licensing Policy and GA 2005 Statement of Licensing Policy and the creation of a DPPO for Harehills.

3.4 The attached schedule includes the proposed 2012/13 meeting dates and Members are asked to consider the issues listed in order to populate the Work Programme for the forthcoming year, along with any other matters they identify for inclusion

#### **4 Corporate considerations**

This report is presented purely to introduce the matter for discussion and it is not necessary to address the LCC Corporate Considerations

##### **4.1 Consultation and Engagement**

None

##### **4.2 Equality and Diversity / Cohesion and Integration**

None

##### **4.3 Council policies and City Priorities**

None

##### **4.4 Resources and value for money**

None

##### **4.5 Legal Implications, Access to Information and Call In**

None

##### **4.6 Risk Management**

None

#### **5 RECOMMENDATIONS**

5.1 The Committee is asked to consider and prioritise matters for inclusion in the 2012/13 Work Programme

#### **Background documents**

Work programme 2011/12

LICENSING COMMITTEE WORK PROGRAMME 2012/13- LAST UPDATED 10 May 2012 (hg)

| ITEM  | DESCRIPTION   | NOTES                            | TYPE OF ITEM |
|---|---|----------------------------------|--------------|
| <b>Items Currently Unscheduled</b>                                    |   |                                  |              |
| <b>Regular Renewal of CRBs for Licence Holders</b>                    | Review, timetable to be agreed having regard to necessary public consultation   | D Broster                        | RP           |
| <b>City Centre Policing Update</b>                                    | Discussion on city centre premises, licensing and policing (June/July 2012)(Feb 2013)   | WYP                              | B            |
| <b>TPHL Policy Review – ongoing review of the policies/conditions</b> | Review timetable was agreed Feb 11, they will return to Committee at the conclusion of the necessary consultation period (to include driver licences nationality & immigration status checks) | D Broster (Sept 2011 – Jan 2012) | DP           |
| <b>Planning &amp; Licensing</b>                                       |   | S Holden/C Sanderson             | B            |

| ITEM   | DESCRIPTION  | Officer    | TYPE OF ITEM |
|--|--|------------|--------------|
| <b>Meeting date: FRIDAY 25 MAY 2012</b>      |  |            |              |
| Annual Governance arrangements               | Terms of Reference, procedure rules and Establishment of the Sub Committees, work programme        | G Marshall | PM           |
| Policy WG                                    | Establishment of the Working Group to review the Statement of Licensing Policies (GA2005 & LA2003) | S Holden   | RP           |
| S182 Guidance                                | Update on amendments within the revised Section 182 Guidance (LA2003)                              | S Holden   | PM/B         |
| SEV Training                                 | Training session on SEVs at the conclusion of the Committee  |            | PM           |
| <b>Meeting date: 26 JUNE 2012 (proposed)</b> |  |            |              |
| NVQ/VRQs for drivers                         | Review ongoing arising from the Working Group  | D Broster  | B            |
| Law Commission Consultation                  | Government proposals to reform the legal framework relating to HC & PH vehicles                    | J Mulcahy  | B/SC         |
| Harehills DPPO                               | Proposals to establish a Designated Public Places Order for Harehills                              | B Yearwood | DP           |

**LICENSING COMMITTEE WORK PROGRAMME 2012/13- LAST UPDATED 10 May 2012 (hg)**

| ITEM                                       | DESCRIPTION | Officer | TYPE OF ITEM |
|--|-------------|---------|--------------|
| Meeting date: 24 JULY 2012 (proposed)      |             |         |              |
| Meeting date: 14 AUGUST 2012 (proposed)    |             |         |              |
| Meeting date: 11 SEPTEMBER 2012 (proposed) |             |         |              |
| Meeting date: 16 OCTOBER 2012 (proposed)   |             |         |              |
| Meeting date: 13 NOVEMBER 2012 (proposed)  |             |         |              |
| Meeting date: 18 DECEMBER 2012 (proposed)  |             |         |              |
| Meeting date: 15 JANUARY 2013 (proposed)   |             |         |              |
| Meeting date: 12 FEBRUARY 2013 (proposed)  |             |         |              |
| Meeting date: 12 MARCH 2013 (proposed)     |             |         |              |
| Meeting date: 9 APRIL 2013 (proposed)      |             |         |              |
| Meeting date: 14 MAY 2013 (proposed)       |             |         |              |

**LICENSING COMMITTEE WORK PROGRAMME 2012/13- LAST UPDATED 10 May 2012 (hg)**

Key:

RP – Review of existing policy

DP – Development of new policy

PM – Performance management

B – Briefings

SC – Statutory consultation

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