

Report of the City Solicitor

Report to Licensing Committee

Date: 10 June 2014

Subject: Licensing Procedure Rules, the Code of Practice for Determining Licensing Matters and Prescribed Licensing Training.

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| Are specific electoral Wards affected? 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? If relevant, Access to Information Procedure Rule number: 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 previously approved by Standards Committee but, following changes to the Member Code of Conduct in 2012, the Standards Committee resolved to transfer responsibility for reviewing, amending and approving the Code of Practice to Licensing Committee.
4. Finally the report sets out the arrangements for the prescribed Member Training on licensing under the provisions of Article 8A of the constitution and the Code of Practice.

Recommendations

5. That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report.
6. That Members approve and follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 2**.
7. That Members note the arrangements for the prescribed training programme.

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.
- 1.2 To put forward for members' consideration the Code of Practice for the Determination of Licensing Matters previously approved by Standards Committee and to ask members to approve and resolve to follow the Code.

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 Act¹ 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.

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

- 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 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 Act². 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 hearings before the 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 identical to those approved previously.
- 3.2 In relation to hearings held under the 2003 or 2005 Acts before a licensing sub-committee, these must follow the relevant regulations. 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

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

- 3.4 The Code of Practice for the Determination of Licensing Matters was previously approved by the Standards Committee of the council following consultation with the Licensing Committee. It substantially followed 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 applies at all times when Members are involved in the licensing process, such as meetings with the public. 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.
- 3.6 The revised Code of Practice for the Determination of Licensing Matters is attached at **Appendix 2** for Members to consider.
- 3.7 A new Members Code of Conduct was adopted by full Council on 12th September 2012 and this reflected new guidance issued by DCLG. In addition, the Standards and Conduct Committee met on Friday 11th January 2013 and considered a report on the review of the Codes of Practice. Members concluded that the Licensing Committee was better placed to formulate the contents of the Code of Practice than the Standards and Conduct Committee. They also agreed that the Code of Practice should not contain repetition of the requirements of the Members' Code of Conduct and instead should deal with issues affecting the legality of the decision, such as bias and predetermination. This means that complaints about potential breaches of the Codes of Practice can no longer be dealt with by the Standards and Conduct Committee under the code of conduct complaints process.
- 3.8 The Code of Practice has been amended to remove any repetition of the Members' Code of Conduct and to make clear that the Standards and Conduct Committee is no longer responsible for overseeing it. Responsibility for amending and approving the Codes of Practice has now been transferred to the Licensing Committee.
- 3.9 The Code of Practice has also been revised to ensure that there is clarity for Members about the need to give the members Code of Conduct primary consideration followed by the need to avoid a finding of bias and pre-determination in decision making. The section on committee membership has been removed and the section on membership of parish councils and other bodies now includes Area Committee membership and makes it clear that providing the Code of Conduct is observed and questions of bias and pre-determination have been considered, there is no bar on dual hatted members taking part in decision making.
- 3.10 Members are requested to consider the Code in the light of their requirements as a Licensing Committee and determine whether or not to approve the Code and if so, to resolve to follow it.

Licensing Training

- 3.11 Members will note from paragraph 10 of the Code of Practice at Appendix 2 that Members on Licensing Committee are required to attend two sessions of licensing training in each municipal year. These are
- a Licensing Update session, to receive guidance in relation to regulations and procedures; and
 - a Governance and Conduct session, for training on disclosable pecuniary interests and the Members' Code of Conduct.
- 3.12 In addition Article 8A of the constitution provides that Members of the Licensing Committee must complete all compulsory training and shall not sit as a member of the committee or its sub-committees unless such training has been undertaken in accordance with the Council's prescribed training programme.
- 3.13 Members are asked to note that the prescribed training programme consists of two sessions for newly appointed committee Members: namely an introduction to licensing and a session on committee procedures and for returning Members the two sessions referred to in (will need to check this numbering) above.
- 3.14 In addition to the prescribed training programme officers will continue to offer briefings and training on relevant developments as appropriate and that these will be added to the work programme when they are scheduled.

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 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, approve the requirements of the Code of Practice for the Determination of Licensing Matters and note the arrangements for the prescribed training programme.

6. Recommendations

- 6.1 That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report
- 6.2 That Members approve and resolve to follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 2**.
- 6.3 That Members note the arrangements for the prescribed training programme

7. Background documents³

- 7.1 None

³ 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.