



Report of the: Assistant Chief Executive (Corporate Governance)

General Purposes Committee

Date: 18 May 2010

Subject: Changes to Licensing Arrangements Proposed by the Labour Group

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report details amendments put forward by the Labour Group to the current arrangements for exercising licensing functions within Leeds City Council, whereby functions under the Licensing Act 2003 and the Gambling Act 2005 are exercised by the Licensing Committee (who may delegate the functions to sub committees or officers) whilst functions relating to the licensing of sex establishments and taxi and private hire licensing are delegated to the Licensing and Regulatory Panel. It is suggested that merging these functions will bring benefits to the city by allowing a more strategic approach to licensing the night time economy. It may also assist in implementing new powers relating to the licensing of lap dancing venues including the setting of a policy on the numbers and locations of such venues. The report highlights the legal issues involved and suggests that the objectives can be achieved by identifying functions from the remit of the Licensing and Regulatory panel which can be said to be 'related to' the functions of the existing Licensing Committee and arranging for the discharge of those functions by the Licensing Committee. The remaining functions of the Licensing and Regulatory Panel will continue to be exercised by officers under delegated powers with provision under the existing terms of reference of General Purposes Committee for Members to take any decisions which are particularly significant or contentious. The reports sets out a number of amendments to the constitution including articles 8 and 8A, the Terms of Reference of the Licensing Committee and Council Procedure Rules to enable this approach to be adopted.

1.0 Purpose of this report

- 1.1 This report informs Members of the proposal brought forward by the Labour Group to merge the related licensing functions of the Licensing Committee and the Licensing and Regulatory Panel to create one committee with responsibility for licensing functions on behalf of the Council. It is anticipated that by merging the functions into one committee, Members will be able to gather more information and take a more strategic approach to licensing the evening economy. This will enable them to be appraised of and involved in issues relating to the granting of licences, the review of licences in premises giving rise for concern and the dispersal of customers at the end of the evening. It will also assist in the adoption of the new powers relating to lap dancing establishments, including the setting of a policy which might cover the numbers or locations of such establishments within the city.

2.0 Background information

- 2.1 The Licensing Committee was created under the Licensing Act 2003 ('the 2003 Act'). Its initial terms of reference were to deal with all the different types of licence granted under that Act. Functions under the Gambling Act 2005 ('the 2005 Act') were added to the terms of reference in January 2007. The current Terms of Reference are attached as **Appendix 1**. The statute provides that the Licensing Committee must consist of between ten and fifteen members. The Leeds Licensing Committee currently consists of fifteen members. Under current arrangements the Licensing Committee meets bi-monthly as a full committee and weekly as a sub committee of three Members to deal with individual applications. Licensing Sub Committees deal with all hearings required under the legislation with the exception of the grant of licences for large outdoor events. Decision making in full Licensing Committee is largely restricted to Designated Public Places Orders (DPPOs) with the remaining business being update or position statement reports on licensing matters and forthcoming changes in legislation. On occasion special additional meetings have to be called to deal with DPPOs as the gap to the next scheduled meeting is considered to be too long to ensure the order is in place when required. It is unlikely that the volume of business transacted by the Panel will increase in 2010/11.
- 2.2 The Licensing and Regulatory Panel deals with other licensing matters such as sex establishments and taxi and private hire licensing. It also has a wide range of terms of reference covering miscellaneous licensing functions and permissions which are invariably dealt with by officers under delegated powers. A copy of the current Terms of Reference are attached as **Appendix 2**. The current panel consists of ten Members all of whom are also on the Licensing Committee. It meets bi-monthly on alternate months to the Licensing Committee. The Licensing and Regulatory Panel has no sub-committees and always meets as a full panel. It is extremely rare for anything other than taxi and private hire licensing matters to come on to the agenda of the Licensing and Regulatory Panel and it is common for agendas to consist of a single item. It is unlikely that the volume of business transacted by the Panel will increase in 2010/11 subject to paragraph 2.4 below.
- 2.3 In 2009/10, there were 6 scheduled meetings of the Licensing and Regulatory Panel. Of those meetings, only 2 dealt with a substantive issue, namely the age criteria for vehicles and the unmet demand survey. One meeting received information reports only and one meeting dealt solely with a hypnotism licence. Two meetings were cancelled. There were 5 additional meetings called on an ad hoc basis due to the fact that an urgent item had come up which could not wait for the next scheduled meeting (up to 8 weeks away). Three of those meetings dealt just

with hypnotism. Prior to this municipal year, hypnotism licences were dealt with under delegated powers by officers. However due to an error in drafting, that power was not delegated this year. This will be picked up with the next set of constitution amendments when it will be proposed that these licences will again be granted by officers under delegated powers. Realistically therefore the Panel will not be dealing with hypnotism licences in 2010/11.

- 2.4 During 2010 the council will have new powers to regulate lap dancing and similar venues to be known as sexual entertainment venues. These powers come from amendments in the Policing and Crime Act 2009 to the Local Government (Miscellaneous Provisions) Act 1982 which already deals with sex shops and sex cinemas. Leeds has previously adopted the existing powers and they are currently delegated to the Licensing and Regulatory Panel. Normally officers would suggest that these additional powers (if adopted) be delegated in the same manner to the same Panel. However these venues will require separate licences for the alcohol and entertainment from the element of lap dancing. If the new functions are delegated to the Licensing and Regulatory Panel a venue could potentially require two separate licences from two separate committees. However if the functions are delegated instead to the Licensing Committee then officers would usually propose that the licensing of sex shops and sex cinemas under the same legislation should also transfer, reducing the remit of the Panel still further.
- 2.5 The Licensing Committee was created by the Licensing Act and as such operates outside the normal council committee structure. With a few exceptions set out in the 2003 or 2005 Act (most notably the approval of a licensing policy for Leeds), all the functions are automatically delegated to the Committee by the legislation rather than being delegated by Council. The Committee has the power to regulate its own procedure subject to regulations issued under the 2003 or 2005 Acts as appropriate. It has the power to create its own sub committees and to delegate to those sub committees and to officers. It does not have to be politically balanced, does not need to have agendas with five clear days notice of meetings and operates to slightly different rules on matters such as access to information. However as far as possible officers have sought to operate the Licensing Committee as a normal council committee and therefore the full Committee is politically balanced, the Committee and Sub Committees do have agendas and the minutes are published in the normal way. Members of the Licensing Committee can substitute for other members of the Committee on any sub-committee but no other members of Council are allowed to be substitutes for either the full Licensing Committee or a Licensing Sub-Committee.

3.0 Main issues

- 3.1 It is proposed to change the arrangements set out in the Council's constitution for dealing with licensing matters and to bring (so far as is legally possible) all the related licensing functions together under one Committee. This will allow Members will be able to gather more information and take a more strategic approach to licensing and the evening economy by being appraised of and involved in issues relating to the granting of licences, the review of licences in premises giving rise for concern and the dispersal of customers at the end of the evening. It will also assist in the adoption of the new powers relating to lap dancing establishments, including the setting of a policy which might cover the numbers or locations of such establishments within the city. The merger would allow the smoother transaction of business as items could be scheduled into the monthly timetable without the need for additional meetings of a committee taking place instead of the scheduled meetings.

- 3.2 When the existing arrangements were set up to implement the 2003 Act, advice was obtained about whether it would be possible to transfer the existing licensing functions into the new arrangements. That advice indicated that there was no bar to delegating none licensing powers as s101 of the Local Government Act 1972 allows a council to delegate its functions to committees, sub committees and officers. However given the volume of business in transition to the new licensing regime and the untested nature of the legislation, the advice indicated that it would be safer to operate two separate committees. Now that matters have settled, the volumes of business are much clearer and the benefits of a merged approach can be identified. Members should note that because the 2003 Act created the Licensing Committee and automatically delegated powers to it, it is not possible to transfer the licensing functions to a standard council committee (e.g. the Licensing and Regulatory Panel). Instead it will be necessary to transfer Panel functions into the Licensing Committee terms of reference.
- 3.3 A potential difficulty which occurs in merging the licensing functions arises from the different rules which apply to the delegation of the functions and to the procedures which are followed. Although it is technically possible to delegate none 2003 or 2005 Act functions to the Licensing Committee using s101 of the Local Government Act 1972, that would mean the Licensing Committee would need to operate to different processes dependant upon the function being exercised.
- 3.4 It is proposed that this problem be avoided by transferring to the Licensing Committee only those functions which 'relate to' the licensing functions that are automatically delegated under the 2003 or 2005 Act. This is permissible under s7(3) of the 2003 Act. This power has already been used once to delegate the functions of making a designated public places order to the Committee. The functions of Licensing and Regulatory Panel which may be said to relate to the existing Licensing Committee functions are: sex establishment licensing (lap dancing, sex cinemas and sex shops), hackney carriage and private hire licensing, the licensing of hypnotism and charitable collections.
- 3.5 By designating those functions as being related to the existing licensing functions of the Licensing Committee, Council can arrange for their discharge by the Licensing Committee under s7(3) of the 2003 Act. When exercising those functions the licensing committee will still operate as a committee created by the 2003 Act and to the procedures by which it generally operates. This avoids the need for the Committee to operate to different rules and procedures dependant upon the functions it is exercising.
- 3.6 **Alcohol Disorder Zones.**
- 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.
- 3.7 It is proposed that the function of making an ADZ is delegated to the Licensing Committee again using the power in Section 7(3) Licensing Act 2003. This is because ADZs could be said to relate to an existing licensing functions, however they are not licensing functions under the 2003 Act. It is therefore proposed that the

function of making an ADZ be added to the Licensing Committee's terms of reference.

- 3.8 Revised Terms of Reference for the Licensing Committee incorporating these additional related functions are attached as **Appendix 3**.
- 3.9 However there are a number of functions such as the licensing of marriage premises, caravan sites, pleasure boats and scrap yards that cannot be said to be 'related to' 2003 or 2005 Act licensing functions. These functions would need to be delegated elsewhere and the references to the licensing and regulatory panel could then be deleted from the constitution. In reality these functions are always exercised by officers and have not come to Members for a decision since at least 2004. However should there be a need for Members to exercise these powers then this could be done through General Purposes Committee which already has delegated power to deal with any council function where a director has decided not to exercise his/her delegated power. As stated it is considered highly unlikely that these kinds of issues will be complex enough to require GPC to take the decisions.
- 3.10 If these changes are agreed then it will also be necessary to amend article 8 and 8A of the constitutions. Article 8 currently deals with regulatory panels. If Licensing and Regulatory Panel is no longer part of the committee structure then Article 8 will need to be amended to delete reference to regulatory panels and instead will only refer to plans panels. Article 8A currently deals with Licensing Arrangements. It is considered that it is still important to keep a separate article relating to licensing arrangements. It provides a useful reference to the statutory origin of the Committee and its general licensing duties as well as its powers to create sub committees and to delegate its powers. Two amendments are proposed to article 8A and those are to reflect the functions to be delegated under s7(3) of the 2003 Act and to require licensing Members to undergo compulsory training as requested by Member Management Committee. A revised Article 8A is attached at **appendix 4** for consideration.
- 3.11 The revised arrangements will also require an amendment to Council Procedure Rule 26 in that 26.1 (a) relating to the substitution of members between plans panels and the regulatory panels will need to be deleted as there can be no substitution between plans panels and the licensing committee.

4.0 Implications for council policy and governance

- 4.1 In the long term merging the two committees will reduce the administration currently involving scheduling two separate meetings. It will also allow the Members of the combined committee to take a more strategic approach in relation to the night time economy by having the ability to consider the links between venue licensing and taxi and private hire vehicles and dispersal issues from licensed premises.

5.0 Legal and resource implications

- 5.1 Section 7(3) of the 2003 Act allows the Council to delegate functions to the Licensing Committee which are not themselves licensing functions (under the Act) but which are related to those functions. The functions identified in paragraph 3.4 above are considered by officers to be functions relating to the Council's licensing functions. If Members agree with this approach then these functions could be delegated to the Licensing Committee under Section 7(3) of the Act. Delegating the functions in this way means that the Licensing Committee will always operate as a committee outside the normal Local Government structure and will always operate to the Licensing Procedure Rules rather than to any other rules. This approach

reduces the possibility of confusion about which powers are being exercised under which set of rules and therefore minimises the risk of error in decision making.

- 5.2 The merger would allow the smoother transaction of business as items could be scheduled into the monthly timetable without the need for additional meetings of one committee taking place immediately before or instead of the scheduled meetings thus reducing the call on officer time.
- 5.3 Subject to the recommendations of the Independent Remuneration Panel, the proposals produce a saving of approximately £7190 in special responsibility allowances as currently the chair of Licensing Committee and Licensing and Regulatory Panel each receive an allowance of £7190. Under the revised proposals there will be one chair who will receive one special responsibility allowance.

6.0 Conclusions

- 6.1 That Council may use the powers set out in s7 (3) of the 2003 Act to arrange for Licensing and Regulatory Panel functions which are related to the licensing functions of the existing Licensing Committee to be discharged by the Licensing Committee under its normal arrangements and procedures.
- 6.2 The remaining functions of the Licensing and Regulatory Panel may continue to be exercised by officers, with provision for the matters to be referred to Members should that be required using the existing Terms of Reference of General Purposes Committee.
- 6.3 That would enable the existing Licensing and Regulatory Panel to be deleted and may allow Members to take a more strategic approach to licensing the evening economy. It will also result in a saving in special responsibility allowances.

7.0 Recommendations

- 7.1 That Members consider this report and determine whether to recommend :
 - 7.1.1 That the functions listed in paragraph 3.4 of this report namely sex establishment licensing (lap dancing, sex cinemas and sex shops), hackney carriage and private hire licensing, the licensing of hypnotism and charitable collections and alcohol disorder zones should be agreed as functions which relate to the licensing functions of the Licensing Committee.
 - 7.1.2 That Council should arrange for those matters to be referred to the Licensing Committee and for the licensing committee to discharge those functions on behalf of the authority.
 - 7.1.3 That Council approve the revised Terms of Reference for the Licensing Committee to implement the decisions in 7.1.1 and 7.1.2 above and to add in the new powers relating to alcohol disorder zones and sexual entertainment venues.
 - 7.1.4 That references to the Licensing and Regulatory Panel be removed from the constitution.
 - 7.1.5 That a revised article 8 should be considered and that the revised article 8A as set out in the appendices to this report be approved to reflect the new arrangements.

- 7.1.6 That amendments be made to Council Procedure Rules to reflect the fact that there will be no substitution permitted between the plans panels and the licensing committee.
- 7.2 That Members note that the Licensing Committee may then delegate these powers to sub committees or to officers as permitted by the 2003 Act and may regulate its own procedure through the Licensing Procedure Rules.