

Report of the City Solicitor

Report to Licensing Committee

Date: 25 May 2012

Subject: Licensing Committee – Annual Governance Arrangements

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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. 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.

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7 Background documents¹

- 7.1 None

¹ 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.