

Report of the City Solicitor

Report to Licensing Committee

Date: 21 May 2021

Subject: Licensing Committee – Annual Governance Arrangements

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

- Under the Licensing Act 2003 (“the 2003 Act”) and the Gambling Act 2005 (“the 2005 Act”) the Licensing Committee is authorised to discharge the licensing functions of the Licensing Authority. This report deals with the annual governance arrangements for the Licensing Committee.
- The 2003 Act specifically dis-applies Section 101 of the Local Government Act 1972 in respect of the Licensing Committee. Section 9 of 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 (with a number of exceptions) 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

- Members of the Licensing Committee are requested to note the terms of reference of the Licensing Committee as shown at **Appendix 1**.

4. Members of the Licensing Committee are asked to establish five licensing sub-committees.
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 Communities, Housing and Environment as shown in **Appendix 4** 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 2021/2022 municipal year, namely:
 - Noting the terms of reference of the Licensing Committee.
 - To appoint licensing sub-committees for the 2021/2022 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 the 2005 Act, with the exception of specified functions (which largely relate to the Authority’s statement of licensing policy), all matters relating to the discharge by the Authority of its licensing functions are automatically referred to the 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 create sub-committees and to delegate functions of the Licensing Authority to sub-committees and to Officers (section 10 of the 2003 Act and section 154 of the 2005 Act).

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 Licensing Committee (Section 9 of the 2003 Act). 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 Section 10 of 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, subject to section 10(4) of the 2003 Act.
- 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, subject to section 10(4) of the 2003 Act.
- 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) and to section 10(4) 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) of the 2003 Act).
- 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 approved at the annual Council meeting held on 22 May 2019 by full Council and no amendments have been made since that date. 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 also note that the following functions were delegated by full Council to the Licensing Committee on 14 July 2010

- Hackney carriages and private hire vehicles
- Sexual entertainment venues, sex shops and sex cinemas
- Performances of hypnotism
- Charitable collections

Appointment of Sub-Committees

- 3.4 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 hearings under the 2003 Act, the 2005 Act and a number of other more occasional matters. Due to changes in the membership of the Licensing Committee it is now necessary to re-appoint the sub-committees.

Membership

- 3.5 The proposed membership of each sub-committee is set out in **Appendix 2** to this report. 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

- 3.6 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 at any meeting of a sub-committee.

Appointment of Chairs

- 3.7 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

- 3.8 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 (such as illness or unanticipated non-availability of a member 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, subject to a number of provisos. It is proposed that the same principles be applied. These rules (and provisos) are set out in more detail in the proposed procedure rules and which are the subject of a separate report to the Committee¹.

Sub-Committee Terms of Reference

- 3.9 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 potentially complex 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.

¹ Licensing Procedure Rules, the Code of Practice for Determining Licensing Matters and Prescribed Licensing Training

Sub-committees will still deal with smaller outdoor events. These applications do not raise the same issues as large scale outdoor events.

- 3.10 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-committee's terms of reference each time. It is intended that the licensing sub-committee's terms of reference will be updated as necessary with the introduction of new legislation; this proposal is a measure designed to prevent possible difficulties with the timely disposal of licensing hearings.
- 3.11 The terms of reference also include some matters that were previously delegated to the Licensing and Regulatory Panel which was dissolved 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. It is proposed that those matters be re-delegated to the sub-committee in the municipal year 2021/2022.
- 3.12 Members should also note that under the proposed terms of reference all applications for the grant, renewal, variation or transfer of sexual entertainment venues licences (irrespective of whether objections have been received), the grant or variation of sex shop or sex cinema licences (irrespective of whether objections have been received), and the renewal or transfer of sex shop or sex cinema licences where objections have been received will be heard by a sub-committee. Officers will have delegated authority to deal with the renewal or transfer of sex shop or sex cinema licences where no objections have been received. For any case where an Officer has decided not to exercise their delegated authority the Officer will refer the matter to the sub-committee for determination.
- 3.13 The Committee is asked to approve the licensing sub-committee terms of reference as shown at **Appendix 3**.

Officer Delegation Scheme

- 3.14 Members will note, as set out in paragraph 2.7 above, that the Licensing Committee may arrange for the discharge of certain 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 Communities, Housing and Environment as set out in the Officer Delegation Scheme shown at **Appendix 4**. The Licensing Committee is requested to delegate those functions to the Director of Communities, Housing and Environment.
- 3.15 Members will 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 Communities Housing and Environment. However it is proposed that the Director of Communities, Housing and Environment will sub-delegate this responsibility to the appropriate Officers of Entertainment Licensing.

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 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 should 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 shown at **Appendix 1**.
 - 6.2 Members of the Licensing Committee are asked to establish five licensing sub-committees.
 - 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 Communities, Housing and Environment as shown in **Appendix 4** to this report.
- 7 Background documents²**
- 7.1 None

²The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.