

AGENDA ITEM NO:
Originator: Gill Marshall
Tel: 78822

REPORT OF: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
COMMITTEE: LICENSING COMMITTEE
DATE: 25TH OCTOBER 2005

SUBJECT: IMPLEMENTATION OF LICENSING ACT 2003 - UPDATE

Electoral Wards Affected:	Specific Implications For:
ALL	Ethnic Minorities <input type="checkbox"/>
	Women <input type="checkbox"/>
	Disabled People <input type="checkbox"/>

1 Purpose of Report

1.1 This report offers members of the Licensing Committee an update on the implementation of the new Licensing Act in Leeds.

2 Situation at end of transitional period

2.1 As of the 6th August (eg. the end of the transitional period) the Leeds Licensing Authority had received the following applications:

Application	Type	Numbers
Premises	Conversion	1,202
	Conversion + Variation	723
	New	0
Club Premises Certificate	Conversion	48
	Conversion + Variation	115
Personal	Conversion	1,615
Personal	New	0
Total number of applications		3,703

2.2 Please note a substantial portion of the premises licence applications shown above came in at the absolute end of the six month transitional period. Eg. On or immediately before the 6th August 2005. Please see summary table overleaf.

Application Type	1 st Aug	6 th Aug	difference	% increase
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Premises conversion	885	1202	+317	+36%
Premises conversion and variation	486	723	+237	+49%
Total	1371	1925	+554	+40%

2.3 The table above shows that between the 1st of August and the 6th August the Entertainment Licensing Section received 554 premises licence applications or roughly 30% of the 1,925 applications received in total during the six months transitional period. Of this 554, 237 were applications to convert and vary. This last minute influx of applications meant that multiple committee hearings were required towards the end of September and the first few days of October in order to determine all applications within the prescribed timeframes. (see section 5)

3 **Situation at W/C Monday 10th October (November 24th –7 weeks)**

Application	Type	Numbers
Premises	Conversion	1,202
	Conversion + Variation	723
	New	272
Club Premises Certificate	Conversion	119
	Conversion + Variation	136
Personal	Conversion	1,725
	New	153
	Total number of applications	4,330

4 **Late night takeaways**

4.1 There is some concern over the lack of late night takeaway applications. To try and alert takeaway owners to the requirements under the Act the Council issued a press release on 21st September 2005. This proactive release attracted both local press and television coverage.

4.2 At the time of preparing this report the Licensing Authority has received approximately 250 takeaway applications. While applications are still being received on a daily basis it is unlikely that all takeaways in the district that trade after 23:00 are going to apply in time to have a licence by the 24th November start date. It is difficult to predict the total number of businesses that need to apply although our original predictions were around 800 businesses meaning at the current rate we are approximately 70% short of applications. It is likely that a decision will be made nearer the time about the enforcement approach to be taken with those businesses that have not applied or who have applied late.

5 Hearings

During the period 13th May to 17th October there were 82 Sub Committee meetings:

The total number of applications heard in each month was as follows:

May	7
June	15
July	51
August	115
September	198
TOTAL	386

6 Effects of the cumulative impact policy

- 6.1 The Licensing Authority adopted a cumulative impact policy (CIP) in its Statement of Licensing Policy in three areas of the district in January 2005. Officers of the Council and staff from other external Responsible Authorities have tried to ensure applicants are aware of how the policies operate. To alert potential developers a special leaflet is available at the Development Enquiry Centre which offers an overview of how the policy affects planning applications in each of the three areas.
- 6.2 As the Headingley area policy has an impact on licensing hours it is now possible to offer some initial commentary on how the policy operated during the transitional period. Some premises in Headingley did make applications to materially extend their hours when they applied for their new premises licences. In most cases the police did use the CIP to inform all or part of their representations. The Headingley Taps application was turned because of the CIP following police objections. On the other hand Arcadia Ale & Wine Bar was granted an extra 30 minutes on Sunday evenings. The new Inn Application which included an application for extra hours was withdrawn by the applicant before its hearing therefore becoming a straight conversion. If Members require a detailed breakdown of each application in the CIP area this can be provided at the next committee meeting.

7. Full Implementation of the Act

- 7.1 The main focus of the Licensing Sub Committees to date has been around dealing with conversion and variation applications where relevant representations have been received. As the Act nears full implementation several other types of applications will be heard more frequently at Licensing Sub Committee Hearings. These are:

1. Applications to vary existing premises licences

All premises licence holders are able to apply to vary their existing licences at any time. They can use this application to ask to extend hours, add activities not covered by the existing licence or ask to have conditions removed. An application to vary goes through a similar application process to that of a conversion and variation application during transition. Eg. A blue notice must be displayed on or at the premises for 28 days. A newspaper advert must appear detailing the

application within 10 days of the application being served on the Licensing Authority. All responsible authorities are served copies of the application and they or Interested parties are able to object on the grounds of the four licensing objectives.

2. Applications for provisional statements

Under the Act a person who has an interest in a property which is being or is about to be constructed, extended altered or modified to enable the premises to be used for licensable activities may apply for a provisional statement. The aim of a provisional statement is to give investors some level of assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed. There is a standard fee of £315 for provisional statements and applicants must serve a similar notice period to that listed at point 1 above. It is likely that committee hearings will be convened to determine applications for provisional statements in the coming months.

3. Applications for new personal licences where police objections are made

During the transitional period the majority of applications received were from existing justices licence holders. In future it will be brand new applicants applying for a personal licence from scratch. As well as having to attend a newly established course (the National Certificate of Personal Licence Holders NCPLH) the Act requires applicants to demonstrate whether they have committed any relevant offences by way of a Criminal Records Bureaux check and filling out a disclosure of criminal convictions form. The Licensing Authority must disregard any spent convictions but are required to notify the police about any unspent relevant convictions. The police can then object on the grounds of the crime and disorder licensing objective and a hearing will then be held.

8 Recommendations

8.1 Members are requested to:

8.1.1 note the contents of this report and provide any feedback necessary..

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LEEDS
CITY COUNCIL

AGENDA
ITEM NO.:

Originator: Gill Marshall
Tel: 78822

REPORT OF: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
REPORT TO: LICENSING COMMITTEE
DATE: 25 OCTOBER 2005

**SUBJECT : AMENDMENTS TO TERMS OF REFERENCE AND PROCEDURE
 RULES**

1. PURPOSE OF THIS REPORT

1.1 The purpose of this report is

- to request Member's views on additions to the Terms of Reference of the Licensing Committee,
- to seek approval for amendments to the Terms of Reference of the Licensing Sub Committees to ensure that large scale or outdoor events are considered by the full Licensing Committee rather than a Sub Committee and
- to seek approval to amendments to the Licensing Hearings Procedure Rules following the end of the transitional period and to reflect current practice as developed by the Sub Committees during hearings held to date.

2. DELEGATION OF ADDITIONAL FUNCTIONS TO THE LICENSING COMMITTEE

2.1 The Terms of Reference for the Licensing Committee were set by Council at it's AGM. The main delegation from Council to the Licensing Committee is for the Committee to carry out the licensing functions of the authority under the Licensing Act 2003. In addition paragraph 2 of the Terms of Reference provides authority for the Committee

'To discharge any other function of the authority referred to it by full Council'

This delegation derives from section 7 of the Act and allows a function, which is not a licensing function under the 2003 Act, to be delegated to the Licensing Committee.

2.2 Before Council delegates such a function it must consult the Licensing Committee. This report therefore seeks the views of Members of the Committee to the delegation of functions which are not licensing functions under the Act but which are closely related. These functions relate to the granting of permits for Amusements With Prizes (AWP permits) under the Gaming Act 1968 and the making of an Alcohol Designated Public Places Order under the Criminal Justice and Police Act 2001.

- 2.3 AWP permits are currently within the Terms of Reference of the Licensing and Regulatory Panel. However the Council currently only grants such permits where the permit is required for a premise that does not hold a full on-licence granted by the Magistrates (i.e. a pub or bar). In those premises, the Magistrates Court grants AWP permits. In all other cases the Council would grant permits. Under the Licensing Act 2003, from 24 November 2005 the Licensing Committee will take over the role of the Magistrates and grant permits for use in licensed premises where alcohol is served. This will leave the situation where the Licensing Committee will grant AWP permits for some premises whilst others would be granted by the Licensing and Regulatory Panel.
- 2.4 It is suggested by the Director that all these functions should be brought together in one Committee. It is also suggested that the Licensing Committee is the appropriate place since it will shortly become responsible for functions under the Gambling Act 2005. Therefore matters relating to both alcohol and entertainment and to gambling would all fall within the remit and expertise of the Licensing Committee.
- 2.5 Additionally, if Members are minded to support this proposal for a change in delegation, it should be noted that the Council has an existing policy not to grant AWP's in licensed premises. This policy was adopted in 1976. Clearly given the matters outlined above this policy should now be reconsidered. Members are therefore asked to consider requesting that the Licensing and Regulatory Panel consider this policy as a matter of urgency before 24 November 2005.
- 2.6 Alcohol Designated Public Places Orders (DPPOs) are also a matter currently within the Terms of Reference of the Licensing and Regulatory Panel. The power to make such an Order was delegated by full Council in August 2004. To date two such orders have been made although more are expected to be requested in the next 12 months. The DPPO has the effect of banning drinking in the street or public area covered by it although it does not affect licensed areas such as street cafes or beer gardens. DPPOs can only be made following an assessment of whether the area has a history of anti social drinking and following consultation with the public and licensees. Either the Licensing and Regulatory Panel or the Licensing Committee could discharge this function as both are Council committees. However it is suggested that the delegation should move to the Licensing Committee in view of it's remit and expertise on alcohol related issues.
- 2.7 Members' views are sought on these proposals. If Members consider these are appropriate matters for the Terms of Reference of the Licensing Committee the Director will draft the necessary constitutional amendments for consideration by the Corporate Governance and Audit Committee and by full Council.

3. PROPOSED AMENDMENTS TO THE TERMS OF REFERENCE OF THE LICENSING SUB COMMITTEES

- 3.1 The Terms of Reference of the Licensing Sub Committees is a matter for the full Committee to determine. They were last considered by the Licensing Committee on 17 June 2005. A delegation was approved which allowed Sub Committees to conduct the bulk of licensing hearings required under the 2003 Licensing Act. The main exception was in relation to requests for reviews of licences. Reviews were considered to be a serious matter and should therefore be reserved to the full Committee.

- 3.2 It is now felt that an amendment should be made to the Terms of Reference to deal specifically with the licensing of large scale or outdoor events. These are currently the subject of multi agency planning meetings and therefore the concerns of a wide range of organisations are taken into account in the planning of such events. Under the Licensing Act 2003 the application is likely to be for a time limited premises licence for the event. As such the current multi agency planning, whilst recommended in the Licensing Policy, will not be a requirement. These events raise serious issues of public safety, crowd control and public nuisance. As such it is felt they should be the subject of consideration by the full Licensing Committee and not by a Sub Committee.
- 3.3 Revised Terms of Reference for the Sub Committees are attached at Appendix 1. Members will note that a new foot note means that the granting of a premises licence or provisional statement, the variation or transfer of a premises licence or the determination of a police objection to the change of the designated premises supervisor are **not delegated to sub committees where the licence relates to an outdoor event, an event in a temporary structure or where the capacity of the event exceeds 30, 000 people.**
- 3.4 Members are asked to consider whether to approve the revised Terms of Reference.

4. PROPOSED AMENDMENTS TO THE LICENSING COMMITTEE HEARINGS PROCEDURE RULES

- 4.1 The Licensing Committee Hearings Procedure Rules were approved by the Licensing Committee on 17 June 2005. They govern the procedure of the Sub Committees and of the Committee when dealing with any hearing under Appendix 1 of the Rules.
- 4.2 During the transitional period Sub Committees undertook a heavy workload of licensing hearings. Experience during that process has led to refinements in practices which now need to be reflected in changes to the Hearings Procedure Rules. For example the format of the Officers' report has changed and Notices of Hearing and Intention as set out in Annex 2 are no longer used. In addition the end of the transitional period means that a number of the rules now require amendment to remove specific reference to transitional matters such as deemed refusals of licences.
- 4.3 Revised Hearings Procedure Rules are attached at Appendix 2. For ease of reference the following suggested changes are highlighted for consideration.
- Section 2 – Preamble to the Pre Hearing Process section.
Reference to a deemed grant or refusal has been removed as this relates only to the transitional period.
 - Section 2.2 dealing with the Notice of Hearing and Intention and Annex 2 have been reworded. Annex 2 has been deleted.
 - Section 2.3 has been reworded to reflect the revised contents of the Officers' report
- 4.4 Members are asked to consider whether to approve the revised Hearings Procedure Rules.

5. RECOMMENDATIONS

Members are asked to consider this report and

- 5.1 Provide views on possible additions to the Terms of Reference of the Licensing Committee
- 5.2 Determine whether to approve amendments to the Terms of Reference of the Sub Committees and
- 5.3 Determine whether to approve the amendments to the Licensing Committee Hearing Procedure Rules

The Licensing Committee

With the exception¹ of

- any licensing function² reserved to full Council;³ or
- any licensing function where full Council has referred a matter to another committee,⁴

the Licensing Committee is authorised to discharge⁵ the following functions⁶:

1. to discharge the licensing functions of the licensing authority;
2. to discharge any other function of the authority referred to it by full Council;⁷
3. to make recommendations to full Council in connection with the discharge of its functions as licensing authority;⁸
4. To receive reports from, and to make recommendations and representations to other committees or bodies as appropriate.⁹

¹ In accordance with Section 7(2) of the Licensing Act 2003 (the 2003 Act).

² “Licensing functions” mean functions under the Licensing Act 2003 (the 2003 Act).

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

⁴ Under the provisions of Section 7(5)(a) of the 2003 Act.

⁵ 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.

⁶ “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.

⁷ 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 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)). Before exercising this power, the Council must consult with the Committee.

⁸ Including recommendations arising from the monitoring of the operation and impact of the licensing policy by the Licensing Committee.

⁹ 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 discharge¹⁰ the following functions¹¹ concurrently¹²:

1. functions¹³ under:

- (a) section 18(3) (determination of application for premises licences where representations have been made);¹⁴
- (b) section 31(3) (determination of application for provisional statements where representations have been made);¹⁴
- (c) section 35(3)(determination of application for variation of premises licence where representations have been made);¹⁴
- (d) section 39(3)(determination of application to vary designated premises supervisors following police objection);¹⁴
- (e) section 44(5)(determination of application for transfer of premises licences following police objection);¹⁴
- (f) section 48(3)(consideration of police objection made to an interim authority notice);
- (g) section 72(3)(determination of application for club premises certificates where relevant representations have been made;
- (h) section 85(3) (determination of application to vary club premises certificates where representations have been made);
- (i) section 105(2)(decision to give counter notice following police objection to a temporary event notice);
- (j) section 120(7)(determination of application for grant of personal licence following police objection);
- (k) section 121(6)(determination of application for renewal of personal licences following police objection);
- (l) section 124(4)(revocation of licence where convictions come to light after grant or renewal of personal licences);

¹⁰ 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)).

¹¹ "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.

¹² Section 10(3) of the Act.

¹³ Including agreeing whether a hearing is necessary.

¹⁴ Save that the Sub Committee may not deal with this function where the proposed licence is for an event in the open air, in a temporary structure or where the proposed capacity of the event exceeds 30,000 people

2. functions¹⁵ under:
 - (a) Paragraph 4(3) of Schedule 8 (determination of application for conversion of an existing licence);
 - (b) Paragraph 16(3) of Schedule 8 (determination of application to convert an existing club registration certificate);
 - (c) Paragraph 26(3) of Schedule 8 (determination of an application by a holder of a justices' licence for grant of a personal licence);

3. 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.

¹⁵ Including agreeing whether a hearing is necessary. Functions set out in paragraph 2 are transitional provisions under the 2003 Act.

REGULATORY PANELS

Licensing and Regulatory Panel

The Licensing and Regulatory Panel is authorised to discharge¹⁶ the following functions:¹⁷

1. To discharge all Council (non-executive)¹⁸ functions relating to:

(a) licensing and registration functions¹⁹ in respect of:

- (i) caravan sites²⁰
- (ii) hackney carriages and private hire vehicles²¹
- (iii) pool promoters²²
- (iv) track betting licences²³
- (v) amusement machines²⁴
- (vi) lotteries²⁵
- (vii) amusements with prizes²⁶
- (viii) *cinemas and cinema clubs²⁷
- (ix) *theatres²⁸
- (x) *entertainment licences²⁹
- (xi) sex shops and sex cinemas³⁰
- (xii) performances of hypnotism³¹
- (xiii) acupuncture, ear-piercing and electrolysis³²
- (xiv) pleasure boats and vessels³³
- (xv) market and street trading³⁴
- (xvi) *night cafes³⁵

¹⁶ With the exception of any licensing function under the Licensing Act 2003, the Panel and the Council may arrange for any of these functions to be discharged by an officer – the functions for the time being so delegated are detailed in Section 2 of Part 3 of this Constitution

¹⁷ “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.

¹⁸ Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended (the 2000 Regulations).

¹⁹ Para. B of Schedule 1 to the 2000 Regulations

²⁰ Items 1 and 2 of Para. B of Schedule 1 to the 2000 Regulations

²¹ Item 3 – 5 of Para. B of Schedule 1 to the 2000 Regulations

²² Item 6 of Para. B of Schedule 1 to the 2000 Regulations

²³ Items 7 and 8 of Para. B of Schedule 1 to the 2000 Regulations

²⁴ Item 9 of Para. B of Schedule 1 to the 2000 Regulations

²⁵ Item 10 of Para. B of Schedule 1 to the 2000 Regulations

²⁶ Item 11 of Para. B of Schedule 1 to the 2000 Regulations

²⁷ Item 12 of Para. B of Schedule 1 to the 2000 Regulations

²⁸ Item 13 of Para. B of Schedule 1 to the 2000 Regulations

²⁹ Item 14 of Para. B of Schedule 1 to the 2000 Regulations

³⁰ Item 15 of Para. B of Schedule 1 to the 2000 Regulations

³¹ Item 16 of Para. B of Schedule 1 to the 2000 Regulations

³² Item 17 of Para. B of Schedule 1 to the 2000 Regulations

³³ Item 18 of Para. B of Schedule 1 to the 2000 Regulations

³⁴ Item 20 of Para. B of Schedule 1 to the 2000 Regulations

³⁵ Item 21 of Para. B of Schedule 1 to the 2000 Regulations

- (xvii) game³⁶
- (xviii) premises for the preparation of food³⁷
- (xix) scrap yards³⁸
- (xx) dog breeding, pet shops, animal breeding, animal trainers and exhibitors, zoos, wild animals³⁹
- (xxi) knackers' yards⁴⁰
- (xxii) the employment of children⁴¹
- (xxiii) premises for the solemnisation of marriage⁴²
- (xxiv) charitable collections⁴³
- (xxv) operation of loudspeakers⁴⁴
- (xxvi) movement and sale of pigs and cattle⁴⁵
- (xxvii) storage of celluloid⁴⁶
- (xxviii) meat product premises and dairy establishments⁴⁷
- (xxix) egg products, butchers and fish products⁴⁸
- (xxx) auction and wholesale markets⁴⁹
- (xxxi) food business premises⁵⁰
- (xxxii) motor salvage operators⁵¹

* Licensing functions under the Licensing Act 2003 in respect of these matters will be discharged by the Licensing Committee from a date to be appointed by the Secretary of State. Between 7 February 2005 and a date to be appointed by the Secretary of State, the Licensing Committee will deal with conversions and variations of premises licenses which will include entertainment licences. However Licensing and Regulatory Panel will continue to deal with new applications for entertainment licenses and requests for immediate variations of an existing licence.

(b) health and safety at work⁵² to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.

2. 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;

³⁶ Item 23 of Para. B of Schedule 1 to the 2000 Regulations

³⁷ Item 24 of Para. B of Schedule 1 to the 2000 Regulations

³⁸ Item 25 of Para. B of Schedule 1 to the 2000 Regulations

³⁹ Items 29 - 33 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁰ Item 34 of Para. B of Schedule 1 to the 2000 Regulations

⁴¹ Item 35 of Para. B of Schedule 1 to the 2000 Regulations

⁴² Item 36 of Para. B of Schedule 1 to the 2000 Regulations

⁴³ Item 39 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁴ Item 40 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁵ Items 43 – 46 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁶ Item 56 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁷ Items 57 – 59 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁸ Items 60 - 63 of Para. B of Schedule 1 to the 2000 Regulations

⁴⁹ Item 66 of Para. B of Schedule 1 to the 2000 Regulations

⁵⁰ Items 67-68 of Para. B of Schedule 1 to the 2000 Regulations

⁵¹ Item 71 of Para. B of Schedule 1 to the 2000 Regulations

⁵² Para. C of Schedule 1 to the 2000 Regulations

- (d) To amend, modify, vary or revoke;
- (e) To determine whether a charge should be made or the amount of such a charge.

3. To make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption.⁵³
4. To discharge any licensing function⁵⁴, where full Council has referred a matter to the Panel.⁵⁵

⁵³ Item 49 of Para.I of Schedule 1 of the 2000 Regulations.

⁵⁴ Under the Licensing Act 2003

⁵⁵ (Section 7(5)(a) of the Licensing Act 2003). The matter must relate to

- a licensing function of the licensing authority and
- a function which is not a licensing function.

Unless the matter is urgent, the Panel must consider a report of the Licensing Committee in respect of the matter before discharging the function concerned (Section 7(6)).

LICENSING COMMITTEE GENERAL PROCEDURE RULES

1. INTERPRETATION

'The Chair' means the Chair of the Licensing Committee.

'The Committee' means the Licensing Committee or Licensing Sub Committee.

2. SCOPE

These General Procedure Rules will apply in respect all matters which are not Hearings as defined in the Licensing Committee Hearings Procedure Rules.

The Licensing Committee Hearings Procedure Rules will apply to all meetings which are hearings as set out in Annex 1 to those rules

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

Except where these rules 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 where the Licensing Hearing Procedure Rules do not apply.

In the event of any conflict between these rules and the Council Procedure Rules and Access to Information Procedure Rules, these rules shall prevail.

4. 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.

5. QUORUM

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

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

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

6. SUBSTITUTE MEMBERS

Allocation

No substitute Members are appointed for the Licensing Committee.

Licensing Procedure Rules

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

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.

7. 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.

LICENSING COMMITTEE HEARING PROCEDURE RULES

INTERPRETATION

‘The Act’ means the Licensing Act 2003;

‘The Authority’ means Leeds City Council as Licensing Authority;

‘The Chair’ means the Chair of the Committee;

‘The Committee’ means the Licensing Committee or Licensing Sub- Committee;

‘The Decision’ means the Committee’s consideration of matters listed in Schedule 4 of the Regulations;

‘The Hearing’ means a hearing listed in **Annex 1** of the Procedure;

‘The Legal Advisor’ means the officer giving legal advice to the Committee;

‘The Licensing Committee’ means the licensing committee established by the Authority;¹

‘The Licensing Officer’ means the officer authorised by the Director of Legal and Democratic Services in respect of licensing functions;

‘The Licensing Sub-Committee’ means any sub-committee established by the Licensing Committee;²

‘The Notice of Hearing’ means the notice given under Regulation 6(1);

‘The Notice of Intention’ means the notice given by a Party under Regulation 8;

‘The Party’ means a person to whom the Notice of Hearing is given and ‘Parties’ is to be construed accordingly. Where appropriate it also includes a representative of a Party;

‘The Preliminary Hearing’ means a preliminary hearing held under paragraph 4.0 of the Procedure;

‘The Procedure’ means the Licensing Hearing Procedure Rules;

‘The Regulations’ means the Licensing Act 2003 (Hearings) Regulations 2005 as amended;

‘The Review’ means the determination of an application for review of:

- a premises licence; or
- club premises certificate; or
- following closure order.

¹ Under Section 6(1) of the Act

² Under section 10(1) of the Act

1.0 GENERAL PROVISIONS

1.1 SCOPE

The Procedure will apply in respect all matters which are Hearings as set out in **Annex 1**.

The Licensing Committee General Procedure Rules will apply to all meetings which are not Hearings.

1.2 APPLICATION OF COUNCIL PROCEDURE RULES/ACCESS TO INFORMATION PROCEDURE RULES

Council Procedure Rules and Access to Information Procedure Rules do not apply to meetings of the Committee which are Hearings.

1.3 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.

1.4 QUORUM

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

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

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

1.5 SUBSTITUTE MEMBERS

Allocation

No substitute Members are appointed for the Licensing Committee.

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

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 meeting 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.

1.6 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.

1.7 TIME LIMITS

The Licensing Officer or the Committee may³ extend a time limit under the Procedure for a specified period where s/he considers this to be necessary in the public interest.

Where a time limit has been extended, the Licensing Officer or Committee Clerk must immediately give a notice to the Parties stating the period of the extension and the reasons for it.

1.8 IRREGULARITIES

Failure to comply with these Rules shall not, of itself, render any decision made at a Hearing invalid.

If the Committee considers that any person may have been prejudiced as a result of any irregularity resulting from a failure to comply with any provision of the Regulations, the Committee shall take such steps as it thinks fit to cure the irregularity before reaching its Decision.

The Authority shall be entitled to correct clerical mistakes or accidental slips or omissions in any document recording the decision of the Authority.

1.9 WITHDRAWAL OF REPRESENTATIONS

A Party who wishes to withdraw any representations they have made may do so –

- (a) by giving a notice of this to the Authority no later than 24 hours before the day or the first day on which the Hearing is to be held; or
- (b) orally at the Hearing.

³ subject to Regulation 13

1.10 ADJOURNMENT OF HEARING

At any time the Committee or the Committee Clerk, in consultation with the Licensing Officer may⁴ -

- adjourn the Hearing to a specified date, or
- arrange for the Hearing to be heard on specified additional dates,

where this is necessary for the consideration of any representations or notice made by a Party⁵.

Where a Hearing has been adjourned to a specified date, the Committee Clerk must immediately notify the Parties of the date, time, and place to which the Hearing has been adjourned.

Where the Hearing is to be held on specified additional dates, the Committee Clerk must immediately notify the Parties of the additional dates, time and place of the Hearing.

2.0 PRE-HEARING PROCESS

At the end of any period allowed for the making of objections or representations the Licensing Officer will consider:

- whether such representations or objections have been made
- whether they are relevant
- In the case of interested parties whether they are frivolous, vexatious or repetitious.

If the Licensing Officer forms the view that relevant representations have been made and that they are not frivolous, vexatious or repetitious, then s/he will notify the Committee Clerk that a Hearing is required.

The Licensing Officer will inform the Committee Clerk of the last date on which the Hearing should take place in accordance with the Regulations.

The Licensing Officer will also notify the Committee Clerk of any decision to extend a relevant time limit.

2.1 DATE OF HEARING

The Committee Clerk shall:

- allocate a Committee for the Hearing; and
- set the date, time and place for the Hearing⁶.

⁴ Subject to Regulation 13

⁵ Except in exceptional circumstances, adjournments will not be granted simply on the grounds of convenience for the Parties.

⁶ in accordance with Regulation 5

The Committee Clerk shall inform the Committee and Licensing Officer of the allocation, date, time and place for the Hearing.

2.2 NOTICE OF HEARING TO THE PARTIES

The Licensing Officer shall give the Parties a Notice of Hearing.⁷

The Notice of Hearing shall contain information about:

- the rights of a Party;
- the consequences if a Party does not attend or is not represented at the Hearing;
- the procedure to be followed at the Hearing;
- a request for clarification on any particular point which the Licensing Officer considers that the Committee will want at the Hearing from the Party;
- any additional documents required by the Regulations;⁸ and

The Party will be requested to inform the Committee in writing of his/her intentions with regard to attendance, representation and witnesses by a date specified by the Licensing Officer.⁹

2.3 DOCUMENTS

The Licensing Officer will forward a report to be considered by the Committee at the Hearing, to the Committee Clerk.

The report provided by the Licensing Officer will include:

- copies of applications/representations and notices (as applicable) provided by the Parties; and
- copies of letters regarding a party's intentions received by the Authority;
- a summary of the relevant provisions of the Licensing Policy;
- a summary of relevant guidance of the Secretary of State;

Before the Hearing, where reasonably practicable, the Committee Clerk will circulate to all Parties copies of:

- letters of intention received by the Authority; and
- the report provided by the Licensing Officer (excluding appendices¹⁰)

2.4 AGENDA

The Committee Clerk will compile an agenda for each meeting, which will list each of the Hearings and each Preliminary Hearing to be held by the Committee.

⁷ in accordance with Regulations 6 and 7

⁸ in accordance with Regulation 7(2)

⁹ Regulation 8

¹⁰ These should already have been received by the Parties

The Committee Clerk will make copies of the agenda and subject to 3.1 below will make reports for each meeting open to the public in accordance with the Access to Information Procedure Rules, so far as this is reasonably practicable¹¹.

3.0 GENERAL PROVISIONS-PRELIMINARY HEARINGS AND HEARINGS

3.1 PUBLIC ACCESS

Subject to the paragraph below the Preliminary Hearing and Hearing shall take place in public.

The Committee may exclude the public from all or part of a Preliminary Hearing or Hearing where it considers that the public interest in so doing outweighs the public interest in the Preliminary Hearing or Hearing, or that part of it, taking place in public. In this respect, a Party and any person assisting or representing a Party may be treated as a member of the public.

Guidance on making decisions to exclude the public from Hearings is set out in **Annex 2**

3.2 DISRUPTION BY PERSON ATTENDING

If in the opinion of the Committee any person attending a Preliminary Hearing or Hearing behaves in a disruptive manner, the Committee may require that person to leave and may

- refuse to permit that person to return, or
- permit that person to return only on such conditions as the Committee may specify.

Such a person may, before the end of the Hearing, submit to the Committee in writing any information which they would have been entitled to give orally had s/he not been required to leave.

3.3 RECORD OF PROCEEDINGS

The Committee Clerk shall ensure a record is taken of the Preliminary Hearing and Hearing in a permanent and intelligible form, and kept for six years from the date of the Decision, or where an appeal is brought against the Decision of the Committee, the disposal of the appeal.

4.0 PRELIMINARY HEARINGS

Where all of the Parties have indicated on their Notices of Intention that they consider a Hearing to be unnecessary, the Licensing Officer will ask the Committee Clerk to convene a Preliminary Hearing of the Committee.

¹¹ Subject to para 3.1.
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Where reasonably practicable, this Preliminary Hearing shall take place before the day of the Hearing.

At the Preliminary Hearing, the Committee will decide whether the Hearing should be dispensed with.

If the Committee agrees that the Hearing is unnecessary, the Committee Clerk will immediately give notice to the Parties that the Hearing has been dispensed with.

Where the Hearing has been dispensed with, the Committee may:

- if time allows, proceed to make a Decision on the basis of the written submissions or,
- adjourn the Hearing to another Committee or another date¹²

The Committee will make the Decision in accordance with paragraph 7.0 (stage 3) of the Procedure.

5.0 THE HEARING (GENERAL PROVISIONS)

5.1 REPRESENTATION

Subject to paragraph 3.1 above, a Party may attend the Hearing and may be assisted or represented by any person whether or not that person is legally qualified.

5.2 FAILURE TO ATTEND¹³

If a Party has informed the Committee Clerk that s/he does not intend to attend or be represented at the Hearing, the Committee may hold the Hearing in his/her absence.

If the Party who has not so indicated fails to attend or to be represented at the Hearing the Committee may –

- where it considers it to be necessary in the public interest, adjourn the Hearing to a specified date, or
- hold the Hearing in the Party's absence.

Where the Committee holds the Hearing in the absence of a Party, at the Hearing the Committee shall consider the application, representations or notice made by that Party.

When the Committee adjourns the Hearing to a specified date it must immediately notify the Parties of the date, time and place to which the Hearing has been adjourned.

5.3 RIGHTS OF PARTIES AT THE HEARING

¹² Subject to regulation 13

¹³ Regulation 20

Licensing Procedure Rules

At the Hearing a Party shall be entitled to –

- address the Committee;
- give further information about any point upon which the Licensing Officer has given notice that the Committee will want clarification;
- if given permission to do so by the Committee, question any other person; and
- call a witness in respect of whom the Committee has given permission.

The Committee will allow the Parties an equal maximum period of time in which to exercise these rights.

Any response to questions from the Committee shall not be included within the period of time allowed for each party.

5.4 SPOKESPEOPLE

Where a number of Parties have made representations on the same or substantially similar grounds the Chair of the Committee may invite those Parties to nominate a spokesperson to exercise their rights on behalf of all those Parties¹⁴.

5.5 CROSS-EXAMINATION

The Committee shall not permit cross-examination of a witness or Party unless the Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

5.6 SITE VISITS

The Committee may only carry out a site visit in the exceptional circumstances set out in the Licensing Code of Practice, and in accordance with the Code of Practice.

5.7 COSTS

The Committee cannot make any order as to the costs incurred by any Party in connection with any Hearing¹⁵.

6.0 PROCEDURAL ISSUES PRE-MEETING

On the day of the Hearing, the Committee shall hold a meeting prior to the Hearing to consider procedural issues only¹⁶. This meeting will be in private.

At the pre-meeting the Committee will do some or all of the following as the Committee considers appropriate:

¹⁴ Where this occurs the spokesperson shall be entitled to the same maximum period as the applicant to make all the representations

¹⁵ Section 183(2)

¹⁶ At the pre-meeting, the Committee shall not:

- discuss the merits of an application or representations; nor
- determine any application.

- Review the documents in respect of the Hearing
- Familiarise themselves with the main issues raised by the Parties
- Identify whether the Parties dispute any facts
- Identify whether those facts are significant to the Decision
- Consider any possible lines of questioning by the Committee;
- Consider whether or not there is any part of the Hearing that should be held in private;
- Consider whether or not any part of the report or other documents should be withheld from the public
- Consider the maximum period of time for each Party under paragraph 5.3, subject to any decisions made in respect of witnesses under 7.2.2 below

7.0 THE HEARING

The Members of the Committee will elect a Chair for the meeting.¹⁷

7.1 VARIATION OF STAGE 1 AND STAGE 2

Subject to the provisions of the Regulations, the Committee may vary Stage 1 and 2 of the Procedure as it considers appropriate in the circumstances.

7.2 STAGE 1 – PRELIMINARY PROCEDURAL ISSUES

The Parties will be brought into the room where the Hearing is to be held, by the Committee Clerk.

The Members of the Committee will make any declarations of interest in respect of the Hearing.

The Chair will introduce him/herself, other Members of the Committee, and relevant Officers¹⁸.

The Chair will ask the Parties to introduce themselves.

The Legal Adviser will outline the procedure which the Committee proposes to follow for the Hearing. If the Committee proposes to vary the Procedure from that set out below, it will invite and consider representations on this from the Parties about this, before proceeding.

Where a Party has failed to attend the Hearing, then the Committee will consider whether to adjourn the Hearing in accordance with 5.2 above.

The Committee will consider whether to exclude the public from any part or parts of the Hearing, in accordance with 3.1 above.

¹⁷ Where it is a meeting of a Licensing Sub-Committee

¹⁸ At no time before, during or after the Hearing, should the Licensing Officer or any Party be present or represented before the Committee without all other Parties also being present or represented, unless a Party has failed to attend and the Committee is discussing whether to proceed in his/her absence or has decided to proceed in his/her absence.

Licensing Procedure Rules

The Committee will also decide which reports are not to be made available for public inspection, in accordance with 2.4 above.

The Chair will ask the Parties if any of them wish to appoint a spokesperson under 5.4 of the Procedure.

The Chair will inform the Parties of the Committee's views about:

- the main issues raised by the Parties;
- whether any facts are disputed by the Parties;
- whether those disputes are significant to the Hearing.

The Committee will then invite the Parties to make any requests as follows:

7.2.1 Additional Information

The Chair will ask whether any Party wishes to produce any documentary or other information in support of their application, representation or notice (as applicable).

The Chair will then ask the other Parties¹⁹ whether they consent to the other information being produced.

Where all Parties consent, the Committee Clerk will circulate the additional information to the Parties.

The Chair will then ask the Parties and the Licensing Officer whether they wish to adjourn the Hearing in order to allow the Parties to properly consider the information.

The Committee will then decide whether to grant an adjournment.

7.2.2 Witnesses

The Committee will then consider any request by a Party in a Notice of Intention for another person to appear before the Committee.

The Committee will determine the request having considered whether allowing the request will assist their ability to make a full and reasoned Determination.

Such permission will not be unreasonably withheld.²⁰

7.2.3 Time limits for Parties

The Committee will then decide the maximum period of time for each Party to exercise their entitlement under 5.3 above. The Committee must allow each Party an equal maximum period of time.

¹⁹ In the absence of one of the parties at the Hearing no documents may be admitted without the consent of the absent party

²⁰ Reg 22

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7.3 STAGE 2 : CONSIDERATION OF SUBSTANTIVE ISSUES

The Hearing shall take the form of a discussion led by the Committee.

Members of the Committee may ask any question of the Licensing Officer, any Party or witness at any time.

The Licensing Officer shall open the discussion, by presenting the information contained in his/her report.

Each Party shall then exercise his/her rights under 5.3 above, in the following order:

Reviews:

- The Party or Parties who requested the Review
- Parties who are responsible authorities
- Parties who are interested persons
- The Party who is the licence holder

All other Hearings:

- Parties who are responsible authorities
- Parties who are interested persons
- Party who is the applicant

7.4 STAGE 3 – DECISION

The Committee will then consider whether to resolve to exclude the public while it makes its Decision.

Where the Committee resolves that the public should be excluded, the Parties will be informed when they will be notified of the Decision.

In considering any application, representations or notice made by a Party, the Committee may take into account documentary or other evidence produced by a

Party in support of their application, representations or notice (as applicable) either before the Hearing or, with the consent of all the other Parties, at the Hearing.

The Committee shall disregard any information given or evidence produced by a Party or a witness which is not relevant to –

- the application, representations or notice (as applicable) and
- the promotion of the licensing objectives or, in relation to a Hearing to consider a notice given by a Chief Officer of Police, the Crime Prevention Objective.

7.5 NOTIFICATION OF THE DECISION

Licensing Procedure Rules

The Committee will make the Decision in accordance with the time limits set out in the Regulations²¹.

The Committee Clerk will notify each Party of the Decision of the Committee in accordance with the Regulations²²

The Committee Clerk will send information regarding the right of the Party to appeal against the Decision, with the notification.²³

²¹ Regulation 26 and 27

²² Regulation 28. The Committee Clerk will also immediately notify a chief officer of police, where the Act provides for a chief officer of police to be notified of the Determination, and that chief officer of police has not been a Party.

²³ Regulation 29

LIST OF HEARINGS

1.	Determination of an application for a premises licence
2.	Determination of an application for a provisional statement
3.	Determination of an application to vary a premises licence
4.	Determination of an application to vary a premises licence to specify the individual as premises supervisor.
5.	Determination of an application for transfer of a premises licence
6.	Cancellation of an interim authority notice following a police objection
7.	Determination of an application for review of premises licence.
8.	Determination of an application for club premises certificate
9.	Determination of an application to vary a club premises certificate.
10.	Determination of an application for a review of a club premises certificate.
11.	Counter notice following a police objection to a temporary event notice.
12.	Determination of an application for the grant of a personal licence.
13.	Determination of an application for the renewal of a personal licence.
14.	Determination of a police notice of convictions coming to light after the grant or renewal of the personal licence.
15.	The review of a premises licence following a closure order.
16.	Determination of an application to convert an existing licence.
17.	Determination of an application convert an existing club certificate.
18.	Determination of an application by the holder of a justices licence for the grant of a personal licence.

LICENSING COMMITTEE HEARING PROCEDURE RULES

GUIDANCE ON EXCLUDING THE PUBLIC FROM HEARINGS

1.1 Introduction

This annex is written to provide the Licensing Committee with guidance on making a decision to exclude the Public from all, or part of, a Preliminary Hearing or Hearing. This document should be read in conjunction with the Hearing Procedure Rules. In the event of any conflict the Hearing Procedure Rules take precedence over this document.

1.2 General Presumption in favour of Public Access

The Licensing Act 2003 (Hearings) Regulations 2005 provide that the hearing shall take place in public but that the Committee may exclude the public where the public interest in doing so outweighs the public interest in holding the Hearing in public.

Holding meetings in public ensures that the hearing process is open and fair. However, there may be some circumstances that require parts of a hearing to be held in private.

1.3 Relationship with Access to Information Procedure Rules

1.3.1 Confidential information.

Section 101 of the Local Government Act 1972 provides that, if a committee considers that “confidential information” is likely to be revealed during a hearing, the committee must exclude the public.

This provision is dis-applied in respect of any function of the Licensing Committee. Members will therefore not be able to exclude the public on the basis the committee is discussing confidential information.

1.3.2 Exempt Information

Schedule 12A of the Local Government Act 1972 sets out when the public can be excluded where “exempt information” is likely to be revealed during the Hearing.

As with confidential information these provisions are dis-applied in respect of any function of the Licensing Committee. Members will therefore not be able to exclude the public on the basis the committee is discussing exempt information.

1.4 Human Rights considerations

The Committee must act in accordance with the Human Rights Act when excluding the Public from Hearings. In particular, Members should be aware of Articles 6, 8 and 10 of the Act when deciding to exclude the Public.

1.4.1 Article 6

Article 6 says that the Public may be excluded from all or part of a Hearing as long as it is in the interests of:

- (a) Morals
- (b) Public Order
- (c) Justice
- (d) National security in a democratic society
- (e) Protecting young people under the 18 and the private lives of anyone involved.

There should be a public hearing unless the Committee decides that there is good reason, which falls within one of the five categories above, for the public be excluded.

1.4.2 Article 8

Article 8 provides that everyone has the right to respect for their private and family life, home and correspondence. The Committee may not interfere with this right unless it is

- (a) In line with the law; and
- (b) Necessary in a democratic society in the interests of:
 - National security;
 - Public safety;
 - Preventing crime and disorder
 - Protecting peoples health and morals; or
 - Protecting peoples rights and freedoms.

It is in the public interest to promote probity of public authorities and public confidence in them. For these reasons the Hearing should be in public unless the committee decides protecting the privacy of anyone involved is more important than the need for a public hearing.

1.4.3 Article 10

Article 10 allows the public to “receive and impart information and ideas without interference by a public authority.”. This right can only be restricted where it is

“Prescribed by law and...necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintain the authority and impartiality of the judiciary.”

Any interference with both articles 8 and 10 must be necessary and proportionate. The Human Rights Act provides that a an action is necessary if it meets a “pressing social need”.

In deciding on whether to exclude the Public, Members are performing a balancing act between conflicting rights. It is acknowledged this is not a simple task.

1.5 Where holding the hearing in public would be prejudicial the effective conduct of the hearing.

Where the Committee reasonably believes discussing certain information in public, would prevent the committee from carrying out its business smoothly and effectively, then the committee may exclude the Public from such discussions, if it is in the public interest to do so.

1.6 Deliberations

The public may also be excluded when the Committee are considering their decisions, if it is in the public interest to do so.

The Committee may exclude the public where it is felt the Committee could not freely debate the issues before them, with the public present. Again this course of action should only be taken where it is in the public interest to do so.

1.7 The Public Interest Test for excluding the Public.

The public may be excluded where the public interest in doing so outweighs the public interest in not doing so.

Members should bear in mind the following factors in deciding what is in the public interest.

- Decisions made in the open lead to increase trust on behalf of the public
- The public should be confident decisions are being made on the basis of the best available information.
- Disclosure of information often improves the quality of debate
- Knowledge of the way in which Local Government works increases the public's participation
- The matters discussed or the information held would expose wrongdoing and or that the wrongdoing had been effectively dealt with

These considerations favour holding meetings in public. The following considerations would weigh against holding meetings in public.

- Where Members need space in which to develop their ideas and explore the options available to them
- Where Members need to think through the implications of making a decision including any associated risks.
- Where the premature disclosure of preliminary thinking leads to better options being closed off due to a negative reaction from the public

1.8 Reasons

Advice may be sought from officers before a decision is made.

Full and clear reasons for a decision whether or not to exclude the public should always be given.

REPORT OF: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES
REPORT TO: LICENSING COMMITTEE
DATE: 25 OCTOBER 2005

SUBJECT : MANAGING AND ENFORCING THE NIGHTTIME ECONOMY

1. PURPOSE OF THE REPORT

1.1 This report considers the situation post 24 November 2005 when the Licensing Act 2003 and the new licences granted under it take effect. It outlines the new powers available to review licences and the various enforcement powers arising under the Act and related legislation. It also highlights related work already undertaken by Development Department, the Safer Leeds Partnership and key Council Partners such as West Yorkshire Police and the Leeds PCTs.

2. THE POWER TO REVIEW LICENCES

2.1 The Act provides a power to review licences granted by the Council. That power would be exercised by the Council's Licensing Committee. A review can be requested by any of the responsible authorities (Fire, Police, Environmental Health, Planning, Social Services or Trading Standards) or by the public or businesses in the vicinity if the premises in question. The request for the review must relate to one of the licensing objectives. The Council has extensive powers available on the review of a licence and these include

- Modifying the conditions of the licence
- Excluding a licensable activity (such as live music)
- Removing the designated premises supervisor (in which case the venue cannot sell or supply alcohol)
- Suspending the licence for a period not exceeding three months
- Revoking the licence

2.2 The first two options of modifying the conditions or excluding a licensable activity can be done on an indefinite basis or for a period not exceeding three months. Before exercising its powers on review the Council must seek the views of all the responsible authorities. It must also display a notice at on or near the site of the premises so that the public become aware of the review.

2.3 The power of review is seen by the Government as one of the key measures in the Act. Under the old regimes an application could be made to revoke a licence however this

was a very draconian step and one that was rarely used. The breadth of options available to the Council under the review power is designed to allow a more flexible approach to problems associated with licensed premises and to enable the Council to take such steps as are necessary to promote the licensing objectives without the either/or situation where the licence is revoked or allowed to continue as it currently exists. However as with all the powers there is a resource implication for many of the Council's departments who act as responsible authorities under the Act. There is also a need for the Council to work in partnership with a number of external bodies such the police and West Yorkshire Fire and Rescue Service.

2.4 Under the Licensing Policy adopted by the Council the following are matters which the Council has resolved would be viewed as particularly serious on review

- Use of the premises for the use or supply of drugs
- Use of the premises for laundering the proceeds of drugs crimes
- Use of the premises for the sale or distribution of illegal firearms
- Use of the premises for the sale or supply of stolen or counterfeit goods
- Underage purchase and consumption of alcohol
- Use of the premises for prostitution or sale/distribution of unlawful pornography
- Use of the premises for unlawful gaming
- Use of the premises for the organisation of racist, homophobic or sexual abuse or attacks
- Nuisance from noise or smell caused by a failure to install any or inadequate equipment and/or failure to maintain such equipment
- Failure to implement an effective policy to prevent fly posting and to contain or collect litter from flyers or other advertising materials discarded in the vicinity of the premises
- Failure to implement an effective policy to contain or collect litter discarded in the vicinity of the premises.
- Failure to promptly respond to a warning properly given by the Fire Authority or other competent authority on a matter of public safety at premises.
- Failure to avoid easily avoidable but critical risks, including any obstruction of an escape route to, and if necessary beyond a fire exit, and the locking or fastening of fire exit doors during times that premises are open for trade, will be considered an extremely serious failure.
- Previous convictions for licensing offences
- Previous failure to comply with licence conditions

2.5 Members will recall that reviews are matters which will come before the full Licensing Committee rather than before a Sub Committee.

3. ENFORCEMENT POWERS

3.1 In addition to the power of review the Act creates a number of new offences or amends existing offences in an attempt to form a comprehensive set of measures aimed at ensuring that the new freedoms under the Licensing Act do not adversely affect communities. For example the Act creates a series of new offences of selling or supplying alcohol to children, operating without a licence and operating in breach of conditions which have been placed upon the licence. For the majority of these offences the penalties have been increased. Acting without a licence or in breach of a licence condition now carries a maximum fine of £20,000 and/or 6 months imprisonment. This latter point is particularly important since the responsible authorities in Leeds have

been proactive in seeking conditions to be placed upon licences to promote the licensing objectives and to protect the community.

3.2 However the enforcement of conditions on licences and related enforcement under the Licensing Act 2003 will require the various services to work together to ensure consistent enforcement across the city and across the various services. An example of this would be in relation to problems caused by noise. There are a number of options for dealing with these issues which include:-

- Prosecution for breach of conditions where noise conditions were placed on the licence
- The power of Environmental Health Services to close down a noisy licensed premise
- The power of the police to close down premises which cause disorder or noise nuisance
- Existing enforcement powers under the Environmental Protection Act 1990

3.3 It will therefore be necessary for the responsible authorities to agree a protocol for enforcement so that all parties are clear about what service is to enforce which element of the new powers. Such agreement must take into account the principles of the Enforcement Concordat which has been adopted by the Council.

3.4 Members are also asked to note that the Violent Crime Reduction Bill contains additional measures that will contribute to managing and enforcing the night time economy. These include

- Alcohol disorder zones
- Drinking banning orders
- Directions to leave

All these measures will also require input from the Safer Leeds partnership which is not directly involved under the Licensing Act 2003.

4. THE NEED FOR AN ENFORCEMENT POLICY FOR LICENSING

4.1 Members will note that the powers described can be used in a variety of ways. The chart at Appendix 1 illustrates the various powers, how they may be applied to the problems encountered and who may use them. The Director of Legal and Democratic Services has requested that a report be presented to CMT on the subject given the cross cutting nature and resource implications of licensing enforcement. In addition, reports have been requested by the Environment and Community Safety Corporate Priority Board and it's Community Safety Sub Group.

4.2 It is the intention of the agencies and services involved in licensing to agree an enforcement protocol to ensure clear and consistent enforcement is applied to the nighttime economy.

5. EXISTING POLICIES AND STRATEGIES

5.1 Licensing Enforcement impacts on a number of other strategies and initiatives currently being undertaken by the Council and it's partners. These include:

- The Leeds Evening and Night time Economy action plan
- The Divisional Community Safety Partnership City Centre Action Plan

- The draft alcohol strategy for Leeds

Copies of these documents will be circulated for member's information in advance of the meeting.

- 5.2 Clare McCall, Community Safety Coordinator (Leeds City Centre) will be in attendance to answer Member's questions. It is also hoped that a representative of West Yorkshire Police will be in attendance. Unfortunately Tony Goodall from the PCT, author of the Alcohol Strategy, is unable to attend the meeting although he is willing to attend a future meeting if Members wish to discuss the Alcohol Strategy in more detail.

6. RECOMMENDATIONS

- 6.1 Members are requested to note the content of this report and the various strategies and action plans outlined and to consider whether further reports are required

LICENSING ENFORCEMENT FLOWCHART

