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LICENSING COMMITTEE

TUESDAY 20TH JULY 2010

LATE ITEM –

CHANGES TO LICENSING ARRANGEMENTS –
CONSEQUENTIAL GOVERNANCE ARRANGEMENTS

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Report of the Assistant Chief Executive Corporate Governance

Licensing Committee

Date: 20 July 2010

Subject: Changes to Licensing Arrangements – Consequential Governance Arrangements

Electoral wards affected:

Specific implications for:

Equality and Diversity

Disabled people

Narrowing the gap

Executive Summary

1. On 14 July 2010 full Council resolved that certain functions previously carried out by the Licensing and Regulatory Panel were 'related to' the licensing functions of the Council, and therefore those functions should be carried out by the Licensing Committee. Full Council approved amended Terms of Reference for the Licensing Committee on 14 July 2010 to take effect from 20 July 2010.
2. This report is therefore presented as a LATE ITEM of business under the provisions of Access to Information Procedure Rule 4:2 as the agenda for this Licensing Committee meeting was despatched prior to the resolution of Council. Full Council recommended the changes take effect from the date of this Licensing Committee meeting and Members are requested to consider this report as an urgent matter in order for the changes and necessary transition to be implemented smoothly.
3. This report informs Members of the amended Terms of Reference and deals with the delegation of those functions as appropriate to the Licensing sub-committee and/or officers.

1.0 Purpose of this report

1.1 This report is presented to members :-

- To inform member of the amended terms of reference for the Licensing Committee agreed at full Council on 14 July 2010, with effect from 20 July 2010.
- To approve terms of reference for the Licensing sub-committee.
- To approve the delegation of functions to officers as appropriate.

2.0 Background information

2.1 Full Council decided on 14 July 2010 to dissolve the Licensing and Regulatory Panel and transfer certain functions to the Licensing Committee under Section 7(3) of the Licensing Act 2003.

2.2 The Licensing Committee was created under the Licensing Act 2003 (“the 2003 Act”). Its initial terms of reference were to deal with all the different types of licence granted under that Act. Functions under the Gambling Act 2005 (“the 2005 Act”) were added to the terms of reference in January 2007.

2.3 As the Licensing Committee was created by the Licensing Act it operates outside the normal Council committee structure. With a few exceptions set out in the 2003 or 2005 Act (most notably the approval of a licensing policy for Leeds) all functions are automatically delegated to the committee by the legislation rather than being delegated by Council. The committee has the power to regulate its own procedure subject to regulations issued under the 2003 or 2005 Act as appropriate. It has the power to create its own sub-committees and to delegate to those sub-committees and to officers. It does not have to be politically balanced, does not need to have agendas with five clear days notice of meetings and operates to slightly different rules on matters such as access to information. However as far as possible officers have sought to operate the Licensing Committee as a normal Council committee and therefore the full committee is politically balanced, the committee and sub-committees do have agendas and the minutes are published in the normal way. Members of the Licensing Committee can substitute for other members of the committee on any sub-committee but no other members of Council are allowed to be substitutes for either the full Licensing Committee or a Licensing sub-committee.

2.4 Section 7(3) of the Licensing Act 2003 allows functions that “relate to” the statutory licensing functions of the Authority to be discharged by the Licensing Committee. When exercising those “related to” functions, the Licensing Committee will still operate as a committee created by the 2003 Act and to the procedures by which it generally operates. The committee does not need to operate under the processes set out in Section 101 of the Local Government Act 1972 when carrying out a function transferred to it under Section 7(3) of the Licensing Act 2003.

3.0 Main issues

3.1 Under the 2003 and 2005 Act the Licensing Committee has the power to create its own sub-committees and delegate to those sub-committees. The Licensing Committee also has the power to delegate its functions to officers.

- 3.2 Full Council considered that the following functions previously carried out by Licensing and Regulatory Panel could be said to “relate to” the statutory Licensing functions and has delegated those functions to the Licensing Committee.
- Sex establishment licensing (lap dancing, sex cinemas and sex shops).
 - Hackney carriage and private hire licensing.
 - The licensing of hypnotism.
 - The licensing of charitable collections.
- 3.3 The amended terms of reference for the Licensing Committee are shown at **Appendix 1** for Members information.
- 3.4 On 22 June 2010 the Committee approved terms of reference for the Licensing sub-committee. However these now require amendment to take account of the new functions delegated by full Council. It is proposed that, in relation to the function of ‘hackney carriage and private hire licensing’, that the committee delegate the function of contract driver permit appeals to the Licensing sub-committee.
- 3.5 It is further proposed that the function of licensing performances of hypnotism be delegated to the Licensing sub-committee where an officer has considered not to exercise their delegated authority and has referred the matter to a relevant committee for determination.
- 3.6 It is further proposed that the function of licensing charitable collections be delegated to the Licensing sub-committee where either objections have been received, or an officer has considered not to exercise their delegated authority and has referred the matter to a relevant committee for determination.
- 3.7 The amended terms of reference for the Licensing sub-committee including these delegations are shown at **Appendix 2** for your approval. If not proposed to delegate any other functions to the sub-committee at this stage.
- 3.8 A number of the functions that have been transferred from Licensing and Regulatory panel to Licensing Committee had also previously been delegated by full Council to the Assistant Chief Executive (Corporate Governance). Under the Licensing Act the Licensing Committee have the power to delegate functions to officers. It is proposed that the delegation to the Assistant Chief Executive (Corporate Governance) remains the same as previously delegated by full Council, however the functions will now be delegated via the Licensing Committee.
- 3.9 Members are asked to approve the revised delegation of the functions to the Assistant Chief Executive (Corporate Governance) as contained in the delegation scheme shown at **Appendix 3**.
- 4.0 Implications for council policy and governance**
- 4.1 Full Council have delegated additional functions to the Licensing Committee, the committee needs to be aware of its new functions and to delegate to the Licensing sub-committee and officers as appropriate to enable the Council to effectively carry out these functions.
- 5.0 Legal and resource implications**

- 5.1 There are no resource implications
- 5.2 To avoid legal challenges to licensing matters, the delegation of functions must be established correctly.
- 6.0 Recommendations**
- 6.1 That members note the amended terms of reference at **Appendix 1**.
- 6.2 That members approve the Licensing sub-committee terms of reference at **Appendix 2**.
- 6.3 That members approve the delegation of functions to the Assistant Chief Executive (Corporate Governance) as shown at **Appendix 3**.

The Licensing Committee

With the exception¹ of

- any licensing function under the Licensing Act 2003 (the 2003 Act) or the Gambling Act 2005 (the 2005 Act) reserved to full Council;² or
- any licensing function where full Council has referred a matter to another committee,³

the Licensing Committee is authorised to discharge⁴ the following functions⁵:

1. to discharge the licensing functions of the licensing authority;⁶
- 2.1 to discharge any other function of the authority referred to it by full Council;⁷
- 2.2 pursuant to the provision in section 2.1 above full Council has delegated to the Licensing Committee the following functions:
 - 2.2.1 the power to make a designated public places order in respect of alcohol consumption under the Criminal Justice and Police Act 2001⁸
 - 2.2.2 the power to designate an area as an Alcohol Disorder Zone⁹
 - 2.2.3 hackney carriages and private hire vehicles¹⁰
 - 2.2.4 sexual entertainment venues, sex shops and sex cinemas¹¹
 - 2.2.5 performances of hypnotism¹²
 - 2.2.6 charitable collections¹³

¹ In accordance with Section 7(2) of the 2003 Act or s154 (2) (a) and (c) of the 2005 Act.

² Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act and under the 2005 Act.

³ Under the provisions of Section 7(5)(a) of the 2003 Act.

⁴ 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 see also Section 154 of the 2005 Act.

⁵ "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.

⁶ This includes the power to set fees under Section 212 of the 2005 Act

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 both 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) of the 2003 Act). Before exercising this power, the Council must consult with the Committee.

⁸ Item 49 of Para I of Schedule 1 to the 2000 Regulations

⁹ Item 50 Para I of Schedule 1 to the 2000 Regulations

¹⁰ Item 3 – 5 of Para. B of Schedule 1 to the 2000 Regulations

¹¹ Item 15 of Para. B of Schedule 1 to the 2000 Regulations and Section 27 Policing and Crime Act 2009 and Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

¹² Item 16 of Para. B of Schedule 1 to the 2000 Regulations

- 3 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;
 - (d) To amend, modify, vary or revoke;
 - (e) To determine whether a charge should be made or the amount of such a charge.
4. to make recommendations to full Council in connection with the discharge of its functions as licensing authority;¹⁴ and
5. to receive reports from, and to make recommendations and representations to other committees or bodies as appropriate.¹⁵

¹³ Item 39 of Para. B of Schedule 1 to the 2000 Regulations

¹⁴ Including recommendations arising from the monitoring of the operation and impact of the licensing or Gambling policy by the Licensing Committee.

¹⁵ 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 discharge¹ the following functions² concurrently³:

1. functions⁴ under:

- (a) section 18(3) of the 2003 Act (determination of application for premises licences where representations have been made);
- (b) section 31(3) of the 2003 Act (determination of application for provisional statements where representations have been made);
- (c) section 35(3) of the 2003 Act (determination of application for variation of premises licence where representations have been made);
- (d) section 39(3) of the 2003 Act (determination of application to vary designated premises supervisors following police objection);
- (e) section 44(5) of the 2003 Act (determination of application for transfer of premises licences following police objection);
- (f) section 48(3) of the 2003 Act (consideration of police objection made to an interim authority notice);
- (g) section 52(3) of the 2003 Act (determination of an application for review of a premises licence);
- (h) section 53A-C of the 2003 Act (summary expedited review hearings);
- (i) section 72(3) of the 2003 Act (determination of application for club premises certificates where relevant representations have been made);
- (j) section 85(3) of the 2003 Act (determination of application to vary club premises certificates where representations have been made);
- (k) section 88(3) of the 2003 Act (determination of application for review of a club premises certificate);
- (l) section 105(2)(decision to give counter notice following police objection to a temporary event notice);
- (m) section 120(7) of the 2003 Act (determination of application for grant of personal licence following police objection);
- (n) section 121(6) of the 2003 Act (determination of application for renewal of personal licences following police objection);
- (o) section 124(4) of the 2003 Act (revocation of licence where convictions come to light after grant or renewal of personal licences);
- (p) section 20(3) of the 2003 Act (making recommendations for restricting the admission of children to the exhibition of any film)
- (q) section 159 of the 2005 Act (determination of application for premises licences where representations have been made)⁵

¹ 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)).

² "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.

³ Section 10(3) of the 2003 Act.

⁴ Including agreeing whether a hearing is necessary.

- (r) section 187 of the 2005 Act (determination of application for variation of premises licence where representations have been made);⁵
 - (s) section 188 of the 2005 Act (determination of application for transfer of premises licences following objection);⁶
 - (t) section 195 of the 2005 Act (consideration of objection made to an application for reinstatement);⁶
 - (u) section 203 of the 2005 Act (determination of review of a premises licence);
 - (v) section 204 of the 2005 Act (determination of application for provisional statements where representations have been made);⁶
 - (w) section 224 of the 2005 Act (decision to give counter notice following an objection to a temporary use notice);
 - (x) schedule 10 of the 2005 Act (consideration of representations in relation to the proposed rejection of a family entertainment centre permit);
 - (y) schedule 14 of the 2005 Act (consideration of representations in relation to the proposed rejection of a prize gaming permit);
 - (z) schedule 13 of the 2005 Act (consideration of representations in relation to the proposed rejection of an alcohol licensed premises gaming machine permit);
 - (aa) schedule 12 of the 2005 Act (consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit);
2. Functions relating to any other hearings required under the 2003 Act or the 2005 Act that have not been reserved to the Licensing Committee.
3. The function of hearing appeals against the refusal to grant a contract driver permit.
4. The function of licensing performances of hypnotism⁷ where an officer has considered not to exercise their delegated authority and has referred the matter to the sub-committee for determination.
5. The function of licensing persons to collect for charitable and other causes⁸ where either objections have been received, or an officer has considered not to exercise their delegated authority and has referred the matter to the sub-committee for determination.

⁵ Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

⁶ Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

⁷ The Hypnotism Act 1952

⁸ Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

Council Committees' Terms of Reference

5. 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.

Exceptions

A Sub Committee is not authorised to discharge functions under paragraph 1 (a) to (e) above where the application relates to an event in the open air, in a temporary structure and where the proposed capacity of the event exceeds 30,000 people.

A Sub Committee is not authorised to discharge functions under paragraph 1 (p) to (u) above where the application relates to a licence for a large casino pursuant to s174 of the 2005 Act.

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Assistant Chief Executive (Corporate Governance)

1. The Assistant Chief Executive (Corporate Governance) is the Monitoring Officer for the Council.
2. The Assistant Chief Executive (Corporate Governance) is deputy Electoral Registration Officer¹.
3. The Assistant Chief Executive (Corporate Governance) is authorised to discharge the following Local Choice Functions which have been assigned to full Council (see Part 3 Section 1 of the Constitution)

(a)	To appoint review boards under the Social Security Act 1998 ²
(b)	To make arrangements for appeals against exclusion of pupils from maintained schools
(c)	To make arrangements for appeals regarding school admissions ³
(d)	To make arrangements for appeals by governing bodies ⁴
(e)	To make arrangements to enable questions to be put at Council meetings on the discharge of the functions of a police authority ⁵

4. Subject to the exceptions listed below, the Assistant Chief Executive (Corporate Governance)⁶ is authorised to discharge the following Council (non-executive) functions:

Regulatory⁷:

(a)	*To license scrap yards	Section 1 of the Scrap Metal Dealers Act 1964
(b)	*To approve premises for the solemnisation of marriages	Section 46A of the Marriage Act 1949 and the Marriages (Approved Premises) Regulations

¹ The Chief Officer (Legal Licensing and Registration) and the Electoral Services Manager are also appointed as deputy Electoral Services Managers.

² s34 (4) Social Security Act 1998

³ s94 (1), (1A) and (4) School Standards and Framework Act 1998

⁴ s95 (2) School Standards and Framework Act 1998

⁵ s20 Police Act 1996

⁶ The fact that a function has been delegated to the Assistant Chief Executive (Corporate Governance) does not require the Assistant Chief Executive (Corporate Governance) to give the matter his/her personal attention and the Assistant Chief Executive (Corporate Governance) may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Assistant Chief Executive (Corporate Governance) remains responsible for any decision taken pursuant to such arrangements.

⁷ The function of licensing dealers in game and the killing and selling of game, listed at paragraph 23 of part B of Schedule 1 to the Functions and Responsibilities Regulations 2000, has been removed from the delegation scheme as the local authority's responsibility in this regard was repealed under the Regulatory Reform (Game) Order 2007.

Officer Delegation Scheme (Council (non-executive) functions)

		1995(SI 1995/510)
(c)	To register motor salvage operators	Part I of the Vehicles (Crime) Act 2001

Functions relating to elections⁸:

(a)	Functions relating to community governance	
i	Duties relating to community governance reviews	Section 79 of the Local Government and Public Involvement in Health Act 2007
ii	Functions relating to community governance petitions.	Sections 80, 83 to 85 of the Local Government and Public Involvement in Health Act 2007
iii	Functions relating to terms of reference of review	Sections 81(4) to (6) of the Local Government and Public Involvement in Health Act 2007
iv	Power to undertake a community governance review.	Section 82 of the Local Government and Public Involvement in Health Act 2007
v	Duties when undertaking review.	Section 93 to 95 of the Local Government and Public Involvement in Health Act 2007
vi	Duty to publicise outcome of review.	Section 96 of the Local Government and Public Involvement in Health Act 2007
vii	Duty to send two copies of order to Secretary of State and Electoral Commission.	Section 98(1) of the Local Government and Public Involvement in Health Act 2007
(b)	To dissolve small parish councils	Section 10 of the Local Government Act 1972
(c)	To make orders for grouping parishes, dissolving groups and separating parishes from groups	Section 11 of the Local Government Act 1972
(d)	To make temporary appointments to parish councils	Section 91 of the Local Government Act 1972

Functions relating to changing governance arrangements:

(a)	To consult prior to drawing up proposals ⁹	S33E Local Government Act 2000
(b)	To make arrangements to hold a referendum ¹⁰	S33K(2) Local Government Act 2000
(c)	To publish a notice if proposals are not approved in referendum	S33K(6) Local Government Act 2000
(d)	To implement new governance arrangements	S33G and S33H Local Government Act 2000
(e)	To comply with any direction from the Secretary of State	S33I Local Government Act 2000

⁸ Functions relating to making of recommendations under section 87 – 92 of the Local Government and Public Involvement in Health Act 2007 (Item 5 Paragraph EB of Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853) are reserved to the relevant committee that is responsible for making recommendations to full council.

⁹ Subject to consultation with party Leaders about the consultation plan

¹⁰ Where the Council has decided to hold a referendum

Officer Delegation Scheme (Council (non-executive) functions)

Functions relating to standing orders:

(a)	To make standing orders	Section 106 of, and paragraph 42 of Schedule 12 to the Local Government Act 1972
(b)	To make standing orders as to contracts	Section 135 of the Local Government Act 1972

Exceptions¹¹:

The Assistant Chief Executive (Corporate Governance) is not authorised to discharge those functions marked *above where objections have been received.

Licensing Functions delegated by Licensing Committee:

<p>Subject to the exceptions listed below, the Assistant Chief Executive (Corporate Governance)¹² is authorised to discharge the licensing functions¹³ of the licensing authority.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> • any licensing function¹⁴ reserved to full Council¹⁵; and • any licensing function where full Council has referred a matter to a committee other than the Licensing Committee¹⁶; and • any licensing function within the terms of reference of the Licensing Sub-committees¹⁷; and • to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act 	Licensing Act 2003 and the Gambling Act 2005.
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Functions related to the Licensing Functions delegated by Licensing Committee¹⁸

Subject to the exceptions listed below, the Assistant Chief Executive (Corporate Governance)¹⁹ is authorised to discharge the functions set out in the following table that are delegated to the Assistant Chief Executive (Corporate Governance) by Licensing Committee

¹¹ Under this delegation scheme (council functions). The General Purposes Committee may however arrange for the discharge of any of its functions by the Assistant Chief Executive (Corporate Governance) - (Section 101(2) Local Government Act 1972.

¹² The fact that a function has been delegated to the Assistant Chief Executive (Corporate Governance) does not require the Assistant Chief Executive (Corporate Governance) to give the matter his/her personal attention and the Assistant Chief Executive (Corporate Governance) may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Assistant Chief Executive (Corporate Governance) remains responsible for any decision taken pursuant to such arrangements.

¹³ "Licensing functions" means functions under the 2003 Act and the 2005 Act.

¹⁴ "Licensing functions" means functions under the 2003 Act and the 2005 Act.

¹⁵ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

¹⁶ Under the provisions of Section 7(5)(a) of the 2003 Act

¹⁷ Except where a Licensing sub-committee has arranged for the discharge of any of their functions to an Officer

¹⁸ These functions were delegated to the Licensing Committee by full Council on 14 July 2010

Officer Delegation Scheme (Council (non-executive) functions)

(a)	To license hackney carriages and private hire vehicles	(a) As to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (b) As to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(b)	To license drivers of hackney carriages and private hire vehicles	Section 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(c)	To license operators of hackney carriages and private hire vehicles	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(d)	*To licence sex shops and sex cinemas and sexual entertainment venues.	The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3, the Policing and Crime Act 2009, Section 27.
(e)	To license performances of hypnotism.	The Hypnotism Act 1952
(f)	*To license persons to collect for charitable and other causes	Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

Exceptions

The Assistant Chief Executive (Corporate Governance) is not authorised to discharge those functions marked *above where objections have been received.

Appointments to Committees Boards and Panels

To appoint members to vacancies during the period between the local elections and the Annual Council meeting, in consultation with appropriate whips, in order to secure that meetings necessary to be held during that period can proceed with adequate and appropriate membership levels.

¹⁹ The fact that a function has been delegated to the Assistant Chief Executive (Corporate Governance) does not require the Assistant Chief Executive (Corporate Governance) to give the matter his/her personal attention and the Assistant Chief Executive (Corporate Governance) may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Assistant Chief Executive (Corporate Governance) remains responsible for any decision taken pursuant to such arrangements.