



**SPECIAL MEETING OF THE
LICENSING COMMITTEE**

**MEETING TO BE HELD IN CIVIC HALL, LEEDS ON
MONDAY, 28TH MARCH, 2011 AT 9.30 AM**

MEMBERSHIP

Councillors

S Armitage - Cross Gates and Whinmoor;
M Dobson - Garforth and Swillington;
R Downes - Otley and Yeadon;
J Dunn - Ardsley and Robin Hood;
Mrs R Feldman - Alwoodley;
R D Feldman - Alwoodley;
T Grayshon - Morley South;
T Hanley - Bramley and Stanningley;
G Hussain - Roundhay;
G Hyde - Killingbeck and Seacroft;
V Morgan - Killingbeck and Seacroft;
B Selby - Killingbeck and Seacroft;
C Townsley - Horsforth;
D Wilson - Rothwell;
G Wilkinson - Wetherby;

**Agenda compiled by:
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Civic Hall
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**Helen Gray
247 4355**

A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 25, written notice of an appeal must be received by the Chief Democratic Services Officer at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATIONS OF INTEREST</p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members Code of Conduct</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6	All Wards;		<p>LICENSING COMMITTEE - DELEGATION OF FUNCTIONS TO OFFICERS</p> <p>To consider the report of the Head of Licensing and Registration seeking urgent consideration of proposed changes to the delegations to officers required to address staffing changes. This meeting has been called at short notice in order to maintain good corporate governance arrangements and aid the efficient administration of the business of the Licensing Authority</p> <p>(Report attached)</p>	1 - 8

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Report of the Head of Licensing and Registration

Report to the Licensing Committee

Date: 28 March 2011

Subject: Licensing Committee – delegation of functions to officers

Electoral wards affected:

Specific implications for:

Equality and Diversity

Disabled people

Narrowing the gap

Executive Summary

1. Under the Licensing Act 2003 and the Gambling Act 2005 the Licensing Committee is authorised to discharge the licensing functions of the Licensing Authority. The Licensing Act 2003 specifically provides that the Licensing Committee may arrange for the discharge of any of its functions by a sub-committee established by it, or by an officer of the Licensing Authority. On 22 June 2010 the Licensing Committee approved an officer delegation scheme covering the licensing and related functions within its Terms of Reference.
2. This report deals with changes required to the delegation of functions to officers as a result of staff changes within the council..

1.0 Purpose of this report

This report seeks approval for changes to the delegation of functions to officers as a result of staff changes within the council.

2.0 Background information

2.1 The Council is the Licensing Authority under the Licensing Act 2003 (“the 2003 Act”) and the Gambling Act 2005 (“the 2005 Act”).

2.2 In accordance with both the 2003 Act and 2005 Act but with the exception of certain specified functions (which largely relate to the Authority’s statement on licensing policy), all matters relating to the discharge by the Authority of its licensing functions are referred to its Licensing Committee. This does not extend to any licensing function referred to full Council or a licensing function where full Council has referred the matter to another committee. Members will be aware that under Section 7(3) of the 2003 Act, full council may also arrange for the Licensing Committee to discharge any function of the Authority which “relates to” a matter referred to the committee but which is not a licensing function. A number of functions have been delegated under this provision including taxi and private hire licensing, sex establishment licensing and charity collections. These are set out in the Terms of Reference for the Committee which are attached at **Appendix 1**.

2.3 Section 101 of the Local Government Act 1972 sets out the arrangements for the discharge of functions by Local Authorities. Section 101 is, however, amended by the 2003 Act to dis-apply these provisions in respect of any functions of the Licensing Authority. Instead the 2003 Act specifically provides that the Licensing Committee may arrange for the discharge of any of it’s functions by an officer of the Licensing Authority subject to certain statutory exceptions. These limitations are set out in Section 10(4) of the 2003 Act. Generally these relate to applications where representations or objections have been made in respect of particular applications and so these decisions cannot be delegated to an officer.

2.4 Where arrangements are made for a sub-committee to discharge functions, that sub-committee may in turn arrange for the discharge of the function by an officer of the Licensing Authority. The powers of the sub-committee to delegate to officers are subject to any direction given by the Licensing Committee to the sub-committee (Section 10(5) of the 2003 Act).

2.5 The arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently (Section 10(3)).

3.0 Main issues

3.1 Members will recall that on 22 June 2010 they approved a report recommending the delegation of functions to the Assistant Chief Executive (Corporate Governance).

3.2 Due to staffing changes within the council, that post will be vacant from 31 March 2011. To preserve continuity of delegations the committee is asked to approve the delegation of the licensing functions to the Director of Resources with effect from 1 April 2011 in the same terms as the previous delegation to the Assistant Chief Executive (Corporate Governance) as set out in **Appendix 2**.

4.0 Implications for council policy and governance

4.1 The maintenance of the delegations of licensing functions to officers is consistent with good corporate governance arrangements and the efficient administration of business.

5.0 Legal and resource implications

5.1 This delegation ensures that officers of the Licensing Authority can carry out functions as required by the legislation.

5.2 There are no resource implications.

6.0 Recommendations

6.1 Members of the Licensing Committee are asked to approve the delegation of licensing functions to the Director of Resources with effect from 1 April 2011 as set out in **Appendix 2** to this report.

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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

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

Part 3 Section 2B

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2.2.6 charitable collections¹³

- 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

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

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 Functions delegated by Licensing Committee:

<p>Subject to the exceptions listed below, the Director of Resources¹ is authorised to discharge the licensing functions² of the licensing authority.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> • any licensing function³ reserved to full Council⁴; and • any licensing function where full Council has referred a matter to a committee other than the Licensing Committee⁵; and • any licensing function within the terms of reference of the Licensing Sub-committees⁶; and • to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act 	<p>Licensing Act 2003 and the Gambling Act 2005.</p>
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Functions related to the Licensing Functions delegated by Licensing Committee⁷

Subject to the exceptions listed below, the Director of Resources⁸ is authorised to discharge the functions set out in the following table that are delegated to the Director of Resources by Licensing Committee

(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

¹ The fact that a function has been delegated to the Director of Resources does not require the Director of Resources to give the matter his/her personal attention and the Director of Resources may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Director of Resources remains responsible for any decision taken pursuant to such arrangements.

² "Licensing functions" means functions under the 2003 Act and the 2005 Act.

³ "Licensing functions" means functions under the 2003 Act and the 2005 Act.

⁴ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

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

⁶ Except where a Licensing sub-committee has arranged for the discharge of any of their functions to an Officer

⁷ These functions were delegated to the Licensing Committee by full Council on 14 July 2010

⁸ The fact that a function has been delegated to the Director of Resources does not require the Director of Resources to give the matter his/her personal attention and the Director of Resources may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Director of Resources remains responsible for any decision taken pursuant to such arrangements.

Appendix 2

(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 Director of Resources is not authorised to discharge those functions marked *above where objections have been received.