



Leeds
CITY COUNCIL

Originator: Gill Marshall

Tel: 24 78822

Report of the Director of Legal and Democratic Services

Corporate Governance and Audit Committee

Date: 29th November 2006

Subject: GAMBLING ACT 2005 – AMENDMENTS TO CONSTITUTION

Electoral wards affected:

All

Specific implications for:

Equality and Diversity

Community Cohesion

Narrowing the gap

Executive Summary

This report proposes changes to the Council's constitution to reflect the provisions of the Gambling Act 2005. It sets out revised documents relating to Article 8A and the terms of reference of the Licensing Committee and Licensing and Regulatory Panel as well as the relevant Officer Delegation Scheme. It also seeks delegated authority for subsequent amendments after the transitional period provided for by the Act.

1.0 Purpose of this report

1.1 The purpose of this report is to seek members view on proposed amendments to the Council's constitution in order to reflect the provision of the Gambling Act 2005.

2.0 Background information

2.1 The Corporate Governance and Audit Committee is authorised under its terms of reference to consider proposals to amend the constitution, and to make recommendations to full Council on such proposals.

2.2 In this report the Director of Legal and Democratic Services recommends amendments to the constitution in relation to:-

- Article 8a (Licensing Functions).
- Amendments to Part 3 – responsibility for functions – Terms of Reference of the Licensing Committee, the Licensing and Regulatory Panel and Delegations to Officers

3.0 Main Issues

3.1 The Gambling Act 2005 contains a new regulatory system to cover the provision of all commercial gambling in Great Britain, other than the National Lottery and spread betting. Leeds City Council is appointed as the Licensing Authority for Leeds and will issue licenses to premises for gambling within the Leeds District, together with various permits and notices to regulate smaller scale or ad hoc gambling.

3.2 Under the Gambling Act 2005 almost all the functions of the Council as Licensing Authority are automatically delegated to the Council's Licensing Committee created under the Licensing Act 2003 e.g. premises licenses for Casinos, Bingo Halls, Adult Gaming Centres, Family Entertainment Centres and Betting Premises.

3.3 The Act provides that some of the functions of the Council as Licensing Authority may not be delegated to the Licensing Committee and must be exercised by the whole Authority. These functions are the approval of a licensing policy under the Gambling Act 2005 and the ability to pass a resolution that no casino premises licenses will be granted by the Authority.

3.4 The Gambling Act provides that the Licensing Authority can but need not delegate the power to set licensing fees. The setting of fees will be the subject of regulations to be issued by the Department for Culture Media and Sport. It is likely that the fee levels will be set in bands with Councils achieving an excellent rating under the comprehensive performance assessment being given more flexibility to set their own fees compared to Councils not so rated. However the overriding principle will be of full costs recovery of the administration of the licensing system.

3.6 In order to reflect these statutory provisions the following changes are proposed to the constitution

3.6.1 **Article 8A of the Constitution**

Article 8A of the Constitution sets out the current licensing arrangements. As a result of the Gambling Act a number of additional functions will now be referred to the Licensing Committee. It is therefore recommended that Article 8A is amended as set out in **Appendix 1** to this report. The revised Article 8A sets out the general duties to be followed by the Licensing Authority under both the Licensing Act 2003 and the Gambling Act 2005. It also revises the functions of the Licensing Committee to include gambling functions under Section 8.2.1

3.6.2 **Licensing Committee – Terms of Reference**

The proposed revised terms of reference are set out in **Appendix 2** to this report. Members will note that all of the matters specific to the Licensing Act 2003 have been retained and the revision is the addition of functions under the Gambling Act 2005. Members will also note that under paragraph 3 the revised terms of reference continue to make provision for the Licensing Committee to make recommendations to full Council on all licensing functions under both the Gambling Act 2005 and the Licensing Act 2003 where those functions are reserved to full Council and not referred by virtue of the statutes to the Licensing Committee. This allows the Licensing Committee to comment on the policies issued under the relevant statutes.

Since the Gambling Act functions are largely delegated automatically to the Licensing Committee it follows that other than the addition of gambling functions very little is required by way of amendment to the Licensing Committee terms of reference. In accordance with the Act the committee will continue to consist of at least 10 but not more than 15 members of the Authority and there should be no substitution arrangements in respect of attendance at the Licensing Committee. Members are asked to note however that it is envisaged that most of the licensing functions will be discharged through sub-committees and officers rather than through the full licensing committee itself.

Members will note from 3.5 above that the power to set fees for gambling licences and permits is a matter that can be delegated but is not automatically delegated. The Director of Legal and Democratic Services proposes that this function is delegated to the Licensing Committee. This is made clear in footnote 7 to the revised Terms of Reference at Appendix 2.

Under the Licensing Act 2003 the requirements relating to political balance on committees under the Local Government and Housing Act 1989 do not extend to the licensing committee. In practice however the licensing committee has been politically balanced. It is unclear whether the same provisions apply under the Gambling Act 2005. For the avoidance of doubt therefore the Director of Legal and Democratic Services recommends that appointment to the Licensing Committee should continue to be subject to the usual provisions on political balance. Licensing Sub Committees are not politically balanced. However since the position in respect of the Gambling Act is unclear the Director of Legal and Democratic Services will recommend to the Licensing Committee that when it creates Sub Committees these should not consist of 3 Members from the same political party.

3.6.3 Amendments to Terms of Reference – Licensing and Regulatory Panel

The current terms of reference for the Licensing and Regulatory Panel include licensing and registration functions in respect of pool promoters, track betting licenses, amusement machines, lotteries and amusement with prizes. These functions will transfer to the Licensing Committee under the Gambling Act 2005 however the Act will not fully be implemented until September 2007. There will therefore be a transitional period between January and September 2007 during which time it is possible that Licensing and Regulatory Panel may need to continue to exercise some of the functions. It is therefore recommended that the terms of reference of the Licensing and Regulatory Panel be amended as set out in **Appendix 3** to indicate those functions which will cease to be functions of the Panel after September 2007.

In addition the Director requests delegated authority to delete the references to the transitional functions in the terms of reference of the Licensing and Regulatory Panel after September 2007.

3.6.4 Delegation to Officers

Since the Licensing Act 2003 and the Gambling Act 2005 provide for the Licensing Committee to delegate to officers (other than in a number of specific circumstances prescribed by the legislation where the functions must remain with the Committee) there are no recommendations contained within this report in respect of amendments to the Council's delegations scheme for officers other than those set out in **Appendix 4**. This is a revision of the officer delegations in relation to the terms of reference of the Licensing and Regulatory Panel functions. The Director of Legal and Democratic Services has the same delegated authority as the Licensing and Regulatory Panel. The same amendments are proposed to reflect the transitional period. In addition the Director requests delegated authority to delete the references to the transitional functions in the Officer Delegation Scheme after September 2007.

3.6.5 Part 3 Section 2A Responsibilities - Summary

Finally the Director of Legal and Democratic Services proposes that the Summary of responsibilities at Part 3 Section 2A of the constitution be revised as set out in **Appendix 5** to reflect these changes.

4.0 Implications for Council Policy and Governance

- 4.1 The Council policy in relation to the licensing of gambling premises will be set out in a Licensing Policy. The policy forms part of the Budgetary and Policy framework of the Council. A draft policy was considered by the Executive Board in September 2006, referred to the Overview and Scrutiny Committee who considered the matter in October 2006 and referred back to the Executive Board on 15 November 2006. The Executive Board resolved to recommend to full Council that the draft policy be adopted as the statement of Gambling Policy for the Leeds District.
- 4.2 The amendments proposed in this report are necessary to fully implement the Gambling Act 2005 and allow the Licensing Committee to operate from the commencement of the transitional period. It will then be necessary to call a meeting of the Licensing Committee to deal with the necessary delegation of functions under the Act to sub-committees and to officers.

4.3 It is intended that a special meeting of full Council on 13 December 2006 consider the recommendations of Executive Board in relation to the policy together with the recommendations of this committee in relation to constitutional amendments.

5.0 Legal and Resource Implications

5.1 New responsibilities will require additional temporary legal support to the both the Licensing Committee and the Entertainment Licensing Section of the Legal and Democratic Services. The resource implications for members of the Licensing Committee will be discussed through the Member Management Committee.

5.2 A failure to amend the constitution to reflect the additional responsibilities delegated by the Gambling Act 2005 would lead to a loss of transparency in the decision making process.

6.0 Conclusions

6.1 That members should consider the proposals of the Director of Legal and Democratic Services and decide whether to recommend to full Council that the following aspects of the Constitution be amended as set out in the appendices 1 to 5 to this report.

7.0 Recommendations

7.1 Members are requested to

- Note the contents of this report
- Make the following recommendations to Council
 1. to adopt a revised Article 8A as set out in Appendix 1 to this report
 2. to adopt a revised Part 3 Section 2B in relation to the Terms of Reference of the Licensing Committee and the Licensing and Regulatory Panel as set out in Appendices 2 and 3 to this report
 3. to adopt a revised Part 3 Section 2C in relation to Council (non-executive) functions delegated to the Director of Legal and Democratic Services as set out in Appendix 4 to this report
 4. to adopt a revised Part 3 Section 2A so that the summary of responsibilities reflects these changes as set out in Appendix 5 to this report
 5. to give the Director of Legal and Democratic Services delegated authority to make consequential amendments to these documents after the end of the transitional period.