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## Report of the Assistant Chief Executive (Corporate Governance)

### Licensing Committee

Date: 22 June 2010

Subject: Licensing Procedure Rules and Code of Practice for Determining Licensing Matters.

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#### Electoral Wards Affected:

All

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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## Executive Summary

This report sets out the proposed Rules of Procedure to be followed by the Licensing Committee and the Licensing Sub Committees under the provisions of both the Licensing Act 2003 and the Gambling Act 2005. It is necessary for the Licensing Committee to re-affirm the Rules of Procedure each time the Committee is appointed.

### 1.0 Purpose Of This Report

1.1 To put forward for Members' consideration, draft procedure rules relating to hearings and other meetings of the Licensing Committee and Sub Committees and to seek the approval of Members to the adoption of these to govern committee procedure under the Licensing Act 2003 ('The 2003 Act') and the Gambling Act 2005 ('The 2005 Act').

### 2.0 Background Information

2.1 Under the Licensing Act 2003 Leeds City Council was appointed as the licensing authority for the Leeds district. With the exception of certain functions (most notably the development of a licensing policy), the Act referred all matters relating to the discharge of licensing functions to a licensing committee, which had to be created and which must discharge those functions on behalf of the authority.

2.2 Section 9 (2) of the 2003 Act provides that the Secretary of State may issue regulations governing

- The proceedings of licensing committees and their subcommittees (including provision about the validity of proceedings and the quorum for meetings)
- Public access to the meetings of those committees and subcommittees
- The publicity to be given to those meetings

- The agendas and records to be produced in respect of those meetings
- Public access to such agendas and records and other information about those meetings

Subject to the regulations, each licensing committee may regulate its own procedure and that of its sub committees.

- 2.3 On 12 January 2005 the Secretary of State issued regulations under Section 9 (2) of the 2003 Act<sup>1</sup> in respect of licensing matters, although these only apply to the procedure to be followed in respect of hearings as defined in column 1 of schedule 1 to the Regulations. Effectively this relates to the normal business of Licensing Sub Committees such as determining applications for premises licences, variations and transfers of licences and reviews.
- 2.4 On 2 March 2005 the Licensing Committee approved two sets of procedure rules under the 2003 Act and the associated regulations. The first set of rules were referred to as the Licensing Committee General Procedure Rules and the second as the Licensing Committee Hearings Procedure Rules. The second set mirrored the Regulations issued by the Secretary of State referred to in paragraph 2.3 above.
- 2.5 Under the Gambling Act 2005 the functions of the council as licensing authority for gambling are also automatically referred to the Licensing Committee created under the 2003 Act. Section 154(5) of the 2005 Act ensures that the provisions of section 9 of the 2003 Act apply to the proceedings of Licensing Committee and Sub Committees when exercising functions under part 8 of the 2003 Act (premises licensing). The Secretary of State can therefore use this provision to make regulations that may apply to both licensing and gambling functions, or she may make separate regulations for each Act.
- 2.6 On 27 January 2007 the Secretary of State issued regulations in respect of premises licensing under the 2005 Act<sup>2</sup>. These regulations apply only to the exercise of functions in respect of premises licensing and provisional statements under the 2005 Act. Therefore there are two separate sets of regulations which apply to the conduct of Licensing Committee and Sub Committees dependant upon which functions are being exercised.
- 2.7 On 3<sup>rd</sup> April 2007 the Committee considered whether the provisions of the Gambling Regulations could be incorporated into the then existing Procedure Rules and concluded that they could not. The Committee then considered whether two full sets of rules should be drafted in relation to the gambling and licensing functions and agreed instead that a revised set of Rules be approved which cross refer to the two sets of regulations without setting out the full provisions of either.

## **Main Issues**

### **Licensing Committee Procedure Rules**

- 3.1 The Committee has previously approved one set of Licensing Committee Procedure Rules, which apply to proceedings under both the 2003 Act and the 2005 Act and which cross refer to the relevant regulations. The Rules proposed for adoption by the

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<sup>1</sup> Licensing Act 2003 (Hearings) Regulations 2005 SI 2005/44

<sup>2</sup> The Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

Licensing Committee at **Appendix 1** to this report are substantially the same as those approved previously.

- 3.4 However it will be necessary for Members, Officers and the public to be aware of the different rules and how they apply. A simple information sheet has been drafted and is available to members of the public at hearings and is attached at **Appendix 2**

### **Licensing Code of Practice**

- 3.6 The Code of Practice for the determination of licensing matters substantially follows the guidance produced by LACORs (Local Authority Coordinators of Regulatory Services). The Code applies to all licensing decisions made including decisions of the Licensing and Regulatory Panel, decisions of the Licensing Committee, decisions of the Licensing Sub committee and any delegated decisions within the terms of reference of the preceding bodies. The code also applies at all times when Members are involved in the licensing process, such as meetings with the public.
- 3.7 The aim of the code of practice is to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.
- 3.8 The Code of Practice for the determination of licensing matters is attached at **Appendix 3** for the information of Members.

### **4. Implications For Council Policy And Governance**

- 4.1 The Licensing Committee must operate within the relevant statutory provisions to ensure that it's decisions are valid and can withstand challenge. The adoption of the procedure rules each municipal year prevents challenge to the validity of the rules.

### **5 Legal And Resource Implications**

- 5.1 Failure to adopt and adhere to relevant procedure rules might render decisions susceptible to challenge.
- 5.2 There are no resource implications in adopting the rules.
- 5.3 Following the Code Of Practice for the determination of licensing matters will assist in preventing claims that decisions have been biased, partial or not well founded.

### **6 Recommendations**

- 6.1 That Members approve the Licensing Procedure Rules as set out as **Appendix 1** to this report and note the contents of the associated information sheets as attached at **Appendix 2**.
- 6.2 That members note the contents of the Code of Practice for the determination of licensing matters as attached at **Appendix 3**.