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**Report of the City Solicitor**

**Report to the Licensing Committee**

**Date: 28 June 2011**

**Subject: Licensing Committee – Annual Governance Arrangements**

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**Electoral wards affected:**

All

**Specific implications for:**

Equality and Diversity

Disabled people

Narrowing the gap

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**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. This report deals with the annual governance arrangements for Licensing Committee.
2. The Licensing Act 2003 specifically dis-applies Section 101 of the Local Government Act 1972 in respect of the Licensing Committee. The 2003 Act specifically provides that the Licensing Committee may establish one or more sub-committees, and that the Licensing Committee may arrange for the discharge of any functions exercised by it by a sub-committee established by it, or by an officer of the Licensing Authority.
3. This report therefore deals with the appointment and terms of reference of Licensing sub-committees, and the delegation of functions to officers.

## **1.0 Purpose of this report**

1.1 This report is presented to members to establish the governance arrangements for the Licensing Committee for the 2011/2012 municipal year, namely:

- Noting the terms of reference of the Licensing Committee as agreed at the annual Council meeting on 26 May 2011.
- To appoint licensing sub-committees for the 2011/2012 municipal year.
- To approve terms of reference for the licensing sub-committees.
- To approve the delegation of functions to Officers as appropriate.

## **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, with the exception of specified functions (which largely relate to the Authority’s statement of licensing policy), all matters relating to the discharge by the Authority of its licensing functions are referred to its Licensing Committee. This discretion 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.

2.3 The Licensing Committee is also authorised to delegate functions of the Authority to Officers.

### Legislation

2.4 Section 101 of the Local Government Act 1972 sets out the standard 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.

2.5 Instead the 2003 Act specifically provides that a Licensing Committee may establish one or more sub-committees consisting of three members of the committee (Section 9). It also provides that regulations may make provisions about the proceedings of Licensing Committees, and their sub-committees (including the validity of proceedings and the quorum of the meeting).

2.6 Subject to any such regulations the Licensing Committee may regulate its own procedure and that of its sub-committees (Section 9(3) of the 2003 Act).

2.7 The 2003 Act also provides that the Licensing Committee may arrange for the discharge of any functions exercisable by it:

- (a) by a sub-committee established by it, or
- (b) by an officer of the Licensing Authority.

2.8 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.

- 2.9 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).
- 2.10 The arrangements may provide for more than one sub-committee or officer to discharge the same function concurrently (Section 10(3)).
- 2.11 There are limitations to the power to delegate in relation to a number of different functions. Generally where representations or objections have been made in respect of particular applications decisions cannot be delegated to an officer. These limitations are set out in Section 10(4) of the 2003 Act.

### **3.0 Main issues**

#### Licensing Committee Terms of Reference

- 3.1 The terms of reference for the Licensing Committee were agreed at the annual Council meeting held on 26 May 2011. the terms of reference are attached at **Appendix 1** of this report for members information.
- 3.2 Members should note that under Section 7(3) of the 2003 Act 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 which is not a licensing function.
- 3.3 Members should note that the power to make a Designated Public Places Order in respect of alcohol consumption under the Criminal Justice and Police Act 2001 was delegated under this power by full Council to the Licensing Committee on 11 January 2006.
- 3.4 Members should also note that under the same provision in the Licensing Act full Council has delegated the Licensing Committee the power to designate an area of an Alcohol Disorder Zone under Section 16 of the Violent Crime Reduction Act 2006.

#### Appointment of Sub-Committees

- 3.5 As referred to above, the Licensing Committee may establish one or more sub-committees consisting of three members of the committee. Previously five sub-committees were established each with three members. It is again proposed that five sub-committees are established. Due to changes in the membership of the Licensing Committee it is now necessary to re-appoint the sub-committees.

#### Membership

- 3.6 The proposed membership of each sub-committee is set out in **Appendix 2** to this report. The rules on political balance do not apply to sub-committees however officers have suggested sub committee membership which takes into account levels of experience as well as ensuring a mix of political parties and wards. .

#### Substitutes

- 3.7 The licensing procedure rules provide that the fifteen members of the licensing committee form a pool for the purposes of substitutions to the sub-committees. Therefore any member of the Licensing Committee may substitute for any other members of the Licensing Committee at any meeting of a sub-committee.

### Appointment of Chairs

- 3.8 Chairs are not appointed to each sub-committee, but instead, the members present at each meeting of a sub-committee appoint the chair from their numbers.

### Quorum

- 3.9 The quorum of meetings of the Licensing Committee is five, and for the sub-committee, three. However, on 5 June 2007 the Licensing Committee did approve that in exceptional circumstances on the day of the sub-committee hearing and after all other avenues to seek a third member have been exhausted, a quorum of two will be permissible.

### Sub-Committee Terms of Reference

- 3.10 The proposed terms of reference for the licensing sub-committees are set out at **Appendix 3** to this report. Members will recall that sub-committees do not deal with large scale or outdoor events like the Leeds Festival. Such events raise serious issues of public safety, crowd control and public nuisance. As such it was felt they should be the subject of consideration by the full Licensing Committee. Sub-committees will still deal with smaller outdoor events and with all outdoor events applications such as those made by Parks and Countryside to licensed Council parks. These applications do not raise the same issues as large scale outdoor events. Sub-committees are also empowered to deal with reviews of premises licences.
- 3.11 Members will note a paragraph in the terms of reference which states that the sub-committee can also deal with any other hearing required under the 2003 or 2005 Acts, but which may not be specified in the terms of reference. This is to ensure that as legislation comes into force the sub-committee is able to continue to deal with all hearings relating to the Council's licensing functions without having to necessarily amend the licensing sub-committees terms of reference each time. It is proposed that the licensing sub-committees terms of reference will be regularly updated with any new legislation, this proposal is a measure designed to prevent potential difficulties with the timely disposal of licensing hearings.
- 3.12 Paragraphs 3,4 and 5 of the Terms of Reference relate to functions previously within the Terms of Reference of the Licensing and Regulatory Panel which was disbanded during the last municipal year. These relate to contract driver permit appeals and the licensing of hypnotism and charitable collections. When these powers were delegated to the Licensing Committee it was determined by the Committee that these elements of the new powers were suitable to be exercised by sub committees. It is proposed to continue these arrangement for those rare occasions when a hearing before Members is required.
- 3.13 The Committee is asked to approve the licensing sub-committees terms of reference as shown at **Appendix 3**.

### Officer Delegation Scheme

- 3.14 Members will recall as set out in paragraph 2.7 above that the Licensing Committee may arrange for the discharge of any functions exercisable by it to be carried out by an officer of the Licensing Authority. The Licensing Committee has previously delegated functions to the Director of Resources as set out in the Officer Delegation

Scheme shown at **Appendix 4**. It is proposed to make one change to that delegation scheme.

- 3.15 Members may be aware that the changes to the composition of the Committee and the time which has elapsed between the appointment of the new Committee and the creation of the sub-committees have caused difficulties in ensuring that quorate sub-committees can be convened. The Director of Resources already has delegated authority to appoint members to vacancies on committees, boards and panels 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.
- 3.16 It is proposed that the Licensing Committee delegate the same power to the Director of Resources to appoint members to vacancies on the sub committees. The effect of this is that new members can be appointed onto the Licensing Committee and sub committee at the same time without the need for an additional meeting of the Committee to approve the sub committee appointments as would currently be required.
- 3.17 The committee is asked to approve the delegation of the licensing functions to the Director of Resources as contained in the amended Delegation Scheme at **Appendix 4**.

#### Alcohol Disorder Zones

- 3.18 The Violent Crime Reduction Act 2006 introduced Alcohol Disorder Zones (ADZs). These came into force in 2009 when regulations were made. An area can be designated an ADZ where there is a problem with alcohol related nuisance, crime and disorder, but there is no clear link between the problem and an individual licensed premises. A problem with an individual licensed premise can be tackled under current licensing legislation. The process for designating an ADZ is set out in the regulations and involves consulting on the proposals, obtaining the consent of the police, developing an action plan and operating and administering the ADZ.
- 3.19 This function has been delegated by full Council to the Licensing Committee under Section 7(3) of the Licensing Act 2003 as full Council considered it to be “related to” an existing licensing function, however it is not a licensing function under the 2003 Act. It is proposed that the function of making an ADZ is again delegated to the Director of Environment and Neighbourhoods however Members may wish to note that officers expect this power to be repealed when the Police Reform and Social Responsibility Bill passes onto the statute book.
- 3.20 Members are asked to approve the delegation of the function of Alcohol Disorder Zones to the Director of Environment and Neighbourhoods as contained in the delegation scheme shown at **Appendix 5**.

## **4.0 Implications for council policy and governance**

- 4.1 The appointment of sub-committees to carry out the licensing functions and delegations to officers as appropriate, is consistent with good corporate governance arrangements.

## **5.0 Legal and resource implications**

5.1 This report ensures that the Licensing Authority can carry out its functions as required by the legislation.

5.2 There are no resource implications.

## **6.0 Recommendations**

6.1 Members of the Licensing Committee are requested to note the terms of reference of the Licensing Committee as approved by full Council on 26 May 2011 as shown at **Appendix 1**.

6.2 Members of the Licensing Committee are asked to establish five licensing sub-committees, noting the arrangements for the membership as set out in paragraph 3.6 above.

6.3 Members of the Licensing Committee are asked to approve the membership of each sub-committee as set out in **Appendix 2** of this report.

6.4 Members of the Licensing Committee are asked to approve the terms of reference for the licensing sub-committees as set out in **Appendix 3** of this report.

6.5 Members of the Licensing Committee are asked to approve the delegation of licensing functions to the Director of Resources as shown in **Appendix 4** to this report.

6.6 Members of the Licensing Committee are asked to approve the delegation of the function of making an Alcohol Disorder Zone to the Director of Environment and Neighbourhoods as shown in **Appendix 5** to this report.