



Report of the Assistant Chief Executive (Corporate Governance)

Licensing Committee

Date: 28 June 2011

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

Electoral Wards Affected:

All

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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.

It also highlights the Code of Practice for the Determination of Licensing Matters for Members' information. This Code was approved by Standards Committee.

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.

2.0 Background Information

- 2.1 Under the Licensing Act 2003 Leeds City Council is 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 refers 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, a 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 Act¹ 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 Committee such as determining applications for premises licences and certificates, variations and transfers of licences and certificates 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 sets 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 Act². 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 3rd 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 but 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.

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

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

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 Licensing Committee at **Appendix 1** to this report are identical to those approved previously.
- 3.2 In relation to hearings by a licensing sub committee, these must follow the relevant regulations. **Appendix 2** is attached for Members' information as an aide memoir to the provisions. A legal advisor is present at all hearings of the sub committee and will provide advice on the regulations as required.
- 3.3 Under the relevant regulations those attending a hearing before a sub committee as a party to the hearing must receive information on the process to be followed
- 3.4 It is proposed to make one change from the previous process of a sub committee hearing and that is in relation to the order of speeches. The process as originally written assumed that Members and the public would be aware of the application and the views of other parties through the written report and appendices. It provided that those making representations against the grant or variation should address the sub committee first followed by the applicant who could address the points made. However in practice residents and Ward Members attending a hearing often do not have full details of the application at that stage.
- 3.5 Following feedback from parties it is proposed to allow the applicant to address the sub committee first to outline the application and how the premises will operate and then to allow those making representations to address the sub committee in the light of that information. The applicant would then be allowed to address the sub committee again in response to any representations made. This procedure will be followed for 'standard' hearings for variation or grant. Although it may extend the hearing time slightly it is considered that it will result in better information for Members to make a decision upon as well as making the process easier to follow for the parties.
- 3.6 On a review the proposed procedure is for the party seeking the review to address the sub committee first followed by those making representations and ending with the licence holder. On a review the licence may be revoked and as such it is suggested the licence holder should be allowed to address the committee last as he/she has most at stake in the process.
- 3.7 A copy of the information to be made available to parties at hearings is attached as **Appendix 3**. If approved, these changes could be monitored with a report being brought back to Licenisng Committee to amend the procedure again if required.

Licensing Code of Practice

- 3.8 The Code of Practice for the determination of licensing matters was approved by the Standards Committee of the council following consultation with the Licensing Committee. It substantially follows the guidance previously produced by LACORs (Local Authority Coordinators of Regulatory Services).

- 3.9 The Code applies to all licensing decisions made including 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.
- 3.10 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.
- 3.11 The Code of Practice for the determination of licensing matters is attached at **Appendix 4** 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 sheet attached at **Appendix 2**.
- 6.2 That Members approve the proposed change to the processes adopted at Licenisng Sub Committees in the order of speeches as set out in the information sheets at **Appendix 3**.
- 6.2 That members note and follow the contents of the Code of Practice for the determination of licensing matters as attached at **Appendix 4**.