



Committee and date
Strategic Licensing
Committee.

8th June 2011

Item No

10

Public

LICENSING AND SAFETY SUB-COMMITTEE

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Summary

This report proposes the creation of a new sub-committee to discharge the Council's duties in respect of certain licensing and safety matters.

Recommendations

That Strategic Licensing Committee resolve:

- A. To establish a standing Licensing and Safety Sub-Committee. The sub committee will consist of 5 members of the Strategic Licensing Committee and will have full delegated power to discharge the Council's licensing and safety functions as set out in Annex A.
- B. That the rules of the Licensing and Safety Sub-Committee shall be those that are set out in Annex B, and that the procedure guidance notes set out in Annex C are those that should be used in the running of the Sub-Committee.

Report

1. The Implementation Executive at its meeting on the 15th January 2009 established the structure and operation of the various committees of Shropshire Council for the purpose of discharging the Council's duties in respect of the Licensing Act the licensing of Taxi and Private Hire Vehicles other licensing matters and matters relating to health and safety.
2. This was subsequently revised by the Strategic Licensing Committee at the meeting on the 29th September 2009.
3. On 12 May 2011, Council resolved to dissolve the three Area Licensing Committees and provided Strategic Licensing Committee with the powers to which they were previously delegated.

4. To take account of the extra responsibilities, Strategic Licensing Committee was increased to 15 Members of the Authority reflecting the political balance of Shropshire Council.

Licensing and Safety Sub-Committee.

5. Strategic Licensing Committee are now responsible for the functions set out in part B of Schedule 1 of The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 relating to licensing and registrations (excluding Commons Registration) part C including functions in relation to Health and Safety at Work (parts of which are set out in Annex A) and functions in relation to the power to make a closing order with respect to take away food shops under s4 (Local Government Miscellaneous Provisions) Act 1982.
6. It is proposed that the functions to be determined by the Sub-Committee would be those set out in Annex A and functions in relation to the power to make a closing order with respect to take away food shops under s4 (Local Government Miscellaneous Provisions) Act 1982. Such functions will not include the determination of policy, and most of the sub-committee's business will involve the determination of taxi licence applications.
7. On 15 December 2010 Strategic Licensing Committee agreed a proposal that 5 Members of the Strategic Licensing Committee should be appointed by the Committee as a standing sub-committee. Substitutes would be permitted at this sub-committee. Given the quasi judicial nature of the work of the Sub-Committee, a relatively small forum is suitable, but the actual number of Members on the Sub-Committee is a decision for Strategic Licensing Committee.
8. There would be a significant number of cases falling within the scope of the sub committee for it to determine. In 2010/11 there were 162 cases, although it is expected that this number may increase for 2011/12. In order to meet the reasonable expectations of the trade for expedient determinations, and to ensure that cases at sub committee meetings are kept to a practical level it is proposed that the Licensing and Safety Sub-Committee would meet on a four weekly cycle or as and when necessary.
9. Annex B sets out rules which Strategic Licensing Committee may decide are appropriate for the Sub-Committee. These rules draw on the practice that has been used for the Licensing Sub-Committees, and would ensure broad consistency of approach. Annex C are the procedure guidance notes for the previous Area Licensing Committees, amended as appropriate.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Council Constitution.

Local Government (Miscellaneous Provisions) Act 1976

The Local Authorities (Functions and Responsibilities)(England) Regulations 2000

Human Rights Act Appraisal

The recommendations contained in this report are compatible with the provisions of the Human Rights act 1998.

Environmental Appraisal. Replacing Area Committees with a single sub committee meeting throughout Shropshire may increase the mileage travelled by some members attending meetings. It is anticipated that membership will be drawn from across Shropshire thus reducing the impact.

Risk Management Appraisal

Passing responsibility for all Licensing matters to a single committee simplifies the management of training and reduces the risk of untrained members considering a case.

Community / Consultations Appraisal

No community consultation has been undertaken.

Cabinet Member: Steve Charmley

Local Member None

Appendix

Annex A. Part of Schedule 1 - Local Authorities (Functions and Responsibilities) (England) Regulations 2000

Annex B. Licensing committee and sub-committee procedure rules

Annex C. Procedure guidance notes for members

ANNEX A.

Local Authorities (Functions and Responsibilities) (England) Regulations 2000

SCHEDULE 1 - Functions Not to be the Responsibility of an Authority's Executive

Part B

1 Power to issue licences authorising the use of land as a caravan site ("site licences").	Section 3(3) of the Caravan Sites and Control of Development Act 1960 (c 62).
2 Power to license the use of moveable dwellings and camping sites.	Section 269(1) of the Public Health Act 1936 (c 49).
3 Power to license hackney carriages and private hire vehicles.	(a) as to hackney carriages, the Town Police Clauses Act 1847 (10 & 11 Vict c 89), as extended by section 171 of the Public Health Act 1875 (38 & 39 Vict c 55), and section 15 of the Transport Act 1985 (c 67); and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (c 57); (b) as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
4 Power to license drivers of hackney carriages and private hire vehicles.	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.
5 Power 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.
6 Power to register pool promoters.	Schedule 2 to the Betting, Gaming and Lotteries Act 1963 (c 2) [as saved for certain purposes by article 3(3)(c) of the Gambling Act Order].
7 Power to grant track betting licences.	Schedule 3 to the Betting, Gaming and Lotteries Act 1963 [as saved for certain purposes by article 3(3)(d) and (4) of the Gambling Act Order].
8 Power to license inter-track betting schemes.	Schedules 5ZA to the Betting, Gaming and Lotteries Act 1963 [as saved for certain purposes by article 3(3)(e) of the Gambling Act Order].
9 Power to grant permits in respect of premises with amusement machines.	Schedule 9 to the Gaming Act 1968 (c 65) [as saved for certain purposes by article 4(2)(l) and (m) of the Gambling Act Order].

10 Power to register societies wishing to promote lotteries.	Schedule 1 to the Lotteries and Amusements Act 1976 (c 32) [as saved for certain purposes by article 5(2)(a) and (3) of the Gambling Act Order].
11 Power to grant permits in respect of premises where amusements with prizes are provided.	Schedule 3 to the Lotteries and Amusements Act 1976 [as saved for certain purposes by article 5(2)(d) and (5) of the Gambling Act Order].
12 Power to issue cinema and cinema club licences.	Section 1 of the Cinema Act 1985 (c 13).
13 Power to issue theatre licences.	Sections 12 to 14 of the Theatres Act 1968 (c 54).
14 Power to issue entertainments licences.	Section 12 of the Children and Young Persons Act 1933 (c 12), section 79 of the Licensing Act 1964 (c 26), sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 (c 19) and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions) Act 1982 (c 30).
[14A Functions relating to licensing.	Sections 5 to 8 of the Licensing Act 2003 (c 17).]
[14B Power to resolve not to issue a casino premises licence.	Section 166 of the 2005 Act.]
[14C Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises.	Section 304 of the 2005 Act.]
[14CA Power to make order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises.	Section 284 of the 2005 Act.]
[14G Functions relating to the registration and regulation of small society lotteries.	Part 5 of Schedule 11 to the 2005 Act.]
15 Power to license sex shops and sex cinemas.	The Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3. The Hypnotism Act 1952 (c 46).
16 Power to license performances of hypnotism.	
17 Power to license premises for acupuncture, tattooing, ear-piercing and electrolysis.	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982.
18 Power to license pleasure boats and pleasure vessels.	Section 94 of the Public Health Acts Amendment Act 1907 (c 53).
20 Power to license market and street trading.	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982.
21 Power to license night cafes and	Section 2 of the Late Night

take-away food shops.	Refreshment Houses Act 1969 (c 53).
25 Power to license scrap yards.	Section 1 of the Scrap Metal Dealers Act 1964 (c 69).
26 Power to issue, amend or replace safety certificates (whether general or special) for sports grounds.	The Safety of Sports Grounds Act 1975 (c 52).
27 Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds.	Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c 27).
28 Power to issue fire certificates.	Section 5 of the Fire Precautions Act 1971 (c 40).
29 Power to license premises for the breeding of dogs.	Section 1 of the Breeding of Dogs Act 1973 (c 60) and section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999 (c 11).
30 Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.	Section 1 of the Pet Animals Act 1951 (c 35); section 1 of the Animal Boarding Establishments Act 1963 (c 43); the Riding Establishments Acts 1964 and 1970 (1964 c 70 and 1970 c 70); section 1 of the Breeding of Dogs Act 1973 (c 60), and sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999.
31 Power to register animal trainers and exhibitors.	Section 1 of the Performing Animals (Regulation) Act 1925 (c 38).
32 Power to license zoos.	Section 1 of the Zoo Licensing Act 1981 (c 37).
33 Power to license dangerous wild animals.	Section 1 of the Dangerous Wild Animals Act 1976 (c 38).
39 Power to license persons to collect for charitable and other causes.	Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 (c 31) and section 2 of the House to House Collections Act 1939 (c 44).
40 Power to grant consent for the operation of a loudspeaker.	Schedule 2 to the Noise and Statutory Nuisance Act 1993 (c 40).
[71 Power to register motor salvage operators.	Part I of the Vehicles (Crime) Act 2001 (c 3).]
C Functions relating to health and safety at work	
Functions under any of the "relevant statutory provisions" within the meaning of Part I (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.	Part I of the Health and Safety at Work etc Act 1974 (c 37).

Annex B

LICENSING AND SAFETY SUB-COMMITTEE RULES

1. Composition

The Licensing and Safety Sub-Committee shall comprise of 5 Members, decided by the Strategic Licensing Committee. Substitutes, as decided by the Committee, are permitted

2. Number of Meetings

The Licensing and Safety Sub-Committee shall meet every 4 weeks, or as and when necessary.

3. Quorum

The Quorum for the Licensing and Safety Sub-Committee shall be three.

4. Role and Function

The Licensing and Safety Sub-Committee will be responsible for considering those functions conferred on the Council, in part B of Schedule 1 of The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 relating to licensing and registrations (excluding Commons Registration) part C including functions in relation to Health and Safety at Work, but limited to those set out in Annex A, and functions in relation to the power to make a closing order with respect to take away food shops under s4 (Local Government Miscellaneous Provisions) Act 1982.

5. Bias and Predetermination

Bias is an attitude of mind that prevents the decision maker from making an objective determination of the issues that he/she has to resolve. There is no need for proof of actual potential bias for there to be a “procedural impropriety”. It is sufficient that there is an appearance of bias. The test for bias is “whether a fair-minded informed observer, having considered the facts would conclude that there was a real possibility of bias”.

Where the decision to be made is quasi-judicial, as at the Licensing and Safety Sub-Committee, the key issue to ensure the legality of the decision is the “public perception of a probability of unconscious bias”. Members should therefore avoid participating as a member of the Licensing and Safety Sub-Committee where previous voting or statements of belief may alter that objective impression conveyed.

A member should not reach a final conclusion before he/she comes to take a decision on an issue. A member’s statements and activities should not create the impression that his/her views on a matter are fixed, and that he/she will not

fairly consider the evidence or arguments presented to him/her, when he/she is making a decision.

'Bias' also includes the situation where it is felt that the decision maker has predetermined the case based on his/her own prejudices. An obvious example is where the impression is clearly given to e.g. members of the public or a lobbyist, beyond conveying a mere disposition, that "the member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues".

A member must make a disclosure of his/her position regarding the possibility of political or structural bias, in advance, to the Licensing and Safety Sub-Committee which will consult with its Legal Advisor to decide if the member can participate in the decision-making.

6. Pre-Application/Pre-Decision Discussions

Whilst discussions between the licence applicant and the Licensing Officer prior to the submission of an application, or prior to a decision being made are often helpful to both parties, the Licensing Authority must ensure it is not open to accusations or appearance of bias. It must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of "predetermination".

Licensing and Safety Sub-Committee members should ensure that they DO NOT take part in any pre-application/pre-decision discussions and that applicants are referred to the Licensing Officer.

7. Role of the Licensing Officer

The Licensing Officer will generally make recommendations to the Licensing and Safety Sub-Committee. A summary report of the application, the representations and the Officer's comments as to how these relate to relevant legislation, licensing policy and conditions may be useful.

8. Decision Making

Reasons for decisions made must be clearly documented so that any subsequent accusations of bias etc. can be defended. Decisions must be made according to the relevant legislation, policy and conditions.

9. Site Inspection

Site inspections by Licensing and Safety Sub-Committee members are generally unnecessary and can put the members and the Licensing Authority at risk of accusations of bias. If a site inspection is required then the reasons will need to be set out to justify the visit.

10. Application of Council Procedure Rules

Council Procedure Rule 33.2 (Application to Cabinet, Committees and Sub-Committees) shall take effect subject to these Procedure Rules.

- 11.** The guidance notes for the holding of hearings in respect of licensing matters are attached at Annex C.

ANNEX C

PROCEDURE GUIDANCE NOTES FOR MEMBERS

1. Apologies for absence.
2. Minutes to be confirmed and signed.
3. Public Question Time.
4. Declaration of any interests by members.
5. Consideration of non-exempt agenda items (if any).
6. The Sub-Committee to resolve that in accordance with the provisions of Schedule 12A, Local Government Act 1072 and Paragraph 10.4(1) of the Council's Access to Information Procedure Rules, the public and press be excluded during consideration of the following items.

STEPS FOR EACH CASE

7. Chairman to confirm that the applicant is happy to represent him/herself, if they have no representative present, prior to the case being heard.
8. Chairman to request Licensing Team Leader to present the case and call witnesses (if any).
9. Questions may be asked of the Licensing Team Leader and any witness called in the following order:
 - (i) Applicant
 - (ii) Members of the Committee
 - (iii) Legal Advisor
8. Chairman to request the Applicant to present their case to the Committee and call witnesses (if any).
9. Questions may be asked of the Applicant and any witness called in the following order:
 - (i) Licensing Team Leader
 - (ii) Members of the Committee
 - (iii) Legal Advisor
10. Chairman to request the Licensing Team Leader to sum up.
11. Chairman to request the Applicant to sum up.
12. The Committee will determine the application in private. The Legal Advisor will remain in the room to provide advice as required.

13. The meeting will be reconvened for the decision to be announced.
14. Chairman to advise the applicant of the appeals procedure if their application is refused.