

LICENSING ACT 2003 AND GAMBLING ACT 2005 DELEGATIONS & ADMINISTRATIVE MATTERS

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Summary

This Report is made to seek the Committee's confirmation of the delegation of functions under the Licensing Act 2003 and Gambling Act 2005. Under the provisions of the Licensing Act 2003 and the Gambling Act 2005, the functions of the Licensing Authority, with minimal exceptions, are referred to the Strategic Licensing Committee, who must discharge those functions on behalf of the Authority.

For the purposes of the Licensing Act 2003 this Committee is the Licensing Committee.

In the interests of speed, efficiency and cost effectiveness, the Licensing Committee may delegate these functions to sub committees or in appropriate cases to Officers. In dealing with any matters, the Licensing Committee may regulate, subject to any specific regulations, its own procedure and that of its sub committees.

This Report will seek confirmation of the delegations to sub-committee and officers and also the adoption of the rules of procedure concerning the sub committee.

Recommendations

That the Strategic Licensing Committee resolve:

- A. That sub committees be established in accordance with Section 9 of the Licensing Act 2003. That each sub-committee is to comprise three members of the Strategic Licensing Committee. That the composition, appointment, quorum and procedure rules as appear in Schedule 1 to this report be confirmed and adopted. That the sub committees have authority to discharge all those functions exercisable by The Strategic

Licensing Committee under the Licensing Act 2003 and the Gambling Act 2005 though each sub committee will only be expected to deal with those matters set out in the relevant column of the tables contained in Schedule 2 to this report (unless a matter is referred to it by an officer).

- B. That the Group Manager Public Protection and Enforcement, the Environmental Health Service Manager, the Public Health and Safety Manager and the Licensing Team Leader discharge those functions as set out in the relevant column (under the heading “Officers”) of the tables contained in Schedule 2 to this report.
- C. That authority be delegated to the Group Manager Public Protection and Enforcement and the Environmental Health Service Manager to designate Officers as “authorised persons” and “authorised officers” for the purposes of the Licensing Act 2003 and that in any event the licensing team leader be designated as such authorised person and authorised officer. That power be given to the Group Manager Public Protection and Enforcement and the Environmental Health Service Manager to authorise Officers to exercise powers of entry, investigation and enforcement under the Gambling Act 2005 and that in any event the Licensing Team Leader be granted such powers.
- D. That the Group Manager Public Protection and Enforcement and the Environmental Health Service Manager have delegated authority to make representations on behalf of the Licensing Authority for the purposes of the Gambling Act 2005.
- E. That the Strategic Licensing Committee receives quarterly reports detailing the exercise of delegated functions by Officers and the work of its sub committees.

REPORT

1. THE LICENSING ACT 2003

The Act of 2003 sets out in a series of sections the procedure which is to be followed by the Council when acting as the Licensing Authority so as to enable the licensing functions to be efficiently and effectively discharged:

2. Section 6 – Licensing Committee:

This Section requires the Licensing Authority to establish a Licensing Committee consisting of at least 10, but not more than 15, members of

the authority. This Strategic Licensing Committee is the Licensing Committee for the purposes of this Section.

3. Section 7 – Exercise and Delegations of Functions:

All matters, with limited exceptions (eg Statement of Licensing Policy), relating to the discharge by the Licensing Authority of its licensing functions are, by virtue of section 7, referred to the Licensing Committee and accordingly, the Committee must discharge those functions on behalf of the authority. In practical terms this would require the “full” Committee to consider and deal with all licensing functions.

4. Section 9 – Proceedings of Licensing Committee:

The Licensing Committee may establish one or more sub committees consisting of three members of the Committee. Subject to regulations, the Licensing Committee may regulate its own procedure and that of its sub committees. The Secretary of State has by regulation produced rules to be followed in relation to the hearing of applications.

5. Section 10 – Delegation of Functions by Licensing Committee etc:

The Licensing Committee may arrange for the discharge of any function that is exercisable by it –

- a) By a sub committee, or
- b) Subject to sub section (4) of this section, by an Officer of the Licensing Authority.

In delegating responsibility to a sub committee(s) the sub committee(s) may in turn subject to sub section (4) and (5), which restricts the ability of matters to be delegated to an Officer, arrange for the discharge of a function to be undertaken by an Officer of the Authority.

6. Authorised Persons and Officers

Within the Licensing Act 2003 there are references to an “authorised person” and “authorised officer of the Licensing Authority”. For example, part 3 of the Act, which deals with premises licenses, defines an “authorised person” under Section 13(2)(a) as “an Officer of the Licensing Authority in whose area the premises are situated who is authorised by that authority for the purposes of this Act”. For example, where an application for the grant or variation of a premises license has been made, an authorised person may enter to inspect to assess the likely effect of the grant of the application on the promotion of the licensing objectives.

Similarly, in sub section (6) of Section 135 (Production of License) an “authorised officer” is defined as “an officer of the Licensing Authority authorised by the authority for the purposes of this Act”. In this instance, an authorised officer may require the holder of a personal licence to produce that licence for examination.

7. Where an authorised person or officer exercises a power conferred on them by the Act they must produce evidence of their authority to exercise that power. Although it would be possible to specify the Officers who are the authorised persons or authorised officers, they are likely to change from time to time and the most convenient method of dealing with this issue is to delegate to the Group Manager Public Protection and Enforcement and the Environmental Health Service Manager the power of the Licensing Authority to designate Officers as authorised persons and authorised officers for the purposes of the Licensing Act 2003.

8. Government Guidance – Overview by the Strategic Licensing Committee

In accordance with Section 182 of the 2003 Act, the Department of Culture, Media and Sport (“DCMS”) issued guidance in relation to the discharge of functions under the 2003 Act by the Council. The guidance states that the Licensing Committee should receive regular reports on decisions made by Officers so that they maintain an overview of the general situation. It is recommended that such reports are received by the Strategic Licensing Committee on a quarterly basis. At the same time, so that the Licensing Committee has a proper overview of licensing generally, members may also find it beneficial to receive a composite report outlining the work of its various sub-committees. The relevant table relating to the delegation of functions, as appears in Schedule 2 of this Report, is consistent with that recommended by the Secretary of State in the guidance issued by the DCMS.

9. THE GAMBLING ACT 2005

The Gambling Act 2005 at Section 154 provides that all decisions relating to premises licences are delegated to the Licensing Committee of the authority that has been established under the Licensing Act 2003 (that is this Strategic Licensing Committee), with the exception of the following:

- A resolution not to issue Casino Licences
- Functions in relation to the 3 year licensing policy
- Setting fees (which may be delegated by the licensing authority)

- 10.** Decisions that are delegated to a Licensing Committee may be further delegated to a sub committee of the Licensing Committee and may also be delegated to an Officer of the authority. However, the following decisions may not be made by an Officer:
- Determination of an application or variation of a premises license where representations have been received and not withdrawn;
 - Determination of a review of a premises licence;
 - Determination of an application for transfer, following representations by the Gambling Commission;
 - Determination of an application for a provisional statement where representations have been received and not withdrawn.
- 11.** The table of delegation concerning the Gambling Act 2005 as appears in Schedule 2 to this Report is in accordance with the Guidance to Licensing Authorities issued by the Gambling Commission. This Committee will receive regular reports on decisions made by Officers in relation to the Gambling Act 2005 so that it might maintain an overview of the general situation. It is proposed that these reports are submitted to this Committee quarterly to coincide with the reports produced in relation to the Licensing Act 2003.
- 12.** Delegating the function of authorising individual Officers to exercise powers of entry, investigation and enforcement under the Gambling Act 2005 will improve internal efficiency by allowing newly appointed Officers to work with proper authorisation from the day they commence their appointment instead of waiting for the following Licensing Committee date and ensure that appropriate Officers have the relevant powers.
- 13.** The Gambling Act 2005 provides for representations to be made by the Licensing Authority. It is therefore proposed that the Group Manager Public Protection and Enforcement and the Environmental Health Service Manager be delegated for this purpose.

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

The Licensing Act 2003

The Gambling Act 2005

Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003

Guidance to Licensing Authorities issued by the Gambling Commission

Human Rights Act Appraisal

Human Rights considerations are relevant as the withholding of a Licence or the granting of a Licence with conditions will affect an applicants business. Similarly the granting of a Licence might affect a resident's peaceful enjoyment of his home. Various rights have to be balanced and weighed against one another. For instance Article 6 of the Human Rights Convention states that in relation to civil rights everyone is entitled to a fair and public hearing before and independent and impartial Tribunal.

Article 8 states that everyone has the right to respect his private and family life, his home and his correspondence.

Article 1 of the first protocol states that everyone shall be entitled to the peaceful enjoyment of his possessions.

It is submitted that the adoption of the Licensing Act 2003 and the Gambling Act 2005 and the procedures laid down in that legislation will ensure, so far as possible, that matters set out in the Human Rights Legislation are complied with and that relevant parties (applicant and objector) will be given a fair opportunity to have their views heard before any decision is made regarding the grant or otherwise of a licence. It is believed that the Licensing Act 2003 and the Gambling Act 2005 are both compatible with the Human Rights Act and all convention rights and individual rights are adequately protected. That any person's rights would only be affected proportionately in all the circumstances.

Environmental Appraisal**Risk Management Appraisal****Community / Consultations Appraisal****Cabinet Member:**

Cllr Stephen Charmley

Local Member:**Appendix**

See Schedule 1 and Schedule 2

