

# LICENSING AND SAFETY COMMITTEE

11 JANUARY 2005

## LICENSING ACT 2003 - ESTABLISHMENT OF LICENSING HEARING PANELS AND APPOINTMENT OF MEMBERS

Report from: Mark Bowen, Assistant Director Legal and Contract Services

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### 1 Summary

- 1.1 This report recommends the approval of all licensing matters which require member approval being delegated to Licensing Hearing Panels of three members with the membership being drawn from the Licensing and Safety Committee. The report also seeks agreement to waive political balance for the proposed panels.
- 1.2 The proposed Licensing Hearing Panels would consider all Licensing Act 2003 matters. Sex establishment applications and health & safety issues would be retained for consideration by the Licensing and Safety Committee. Matters not falling within the Licensing Act 2003, such as hackney carriage and private hire matters will continue to be dealt with by the existing seven member Licensing Sub-committee.

### 2 Decision issues

- 2.1 The matters contained within the report are for the committee's consideration and approval, as each committee of the Council may appoint sub-committees and direct its order of business within the terms of reference set out in the Council's constitution. In addition, the Licensing Act 2003 provides that the committee established for the purposes of performing the functions of the 2003 Act has the power to establish its own sub-committees.
- 2.2 Changes to the Constitution are a matter for Council.

### 3 Background

- 3.1 The Licensing Act 2003 will come into force on 7 February 2005. The Act requires that a statement of Licensing Policy is produced, together with a scheme of delegation. These were both approved by Council on 9 December 2004.
- 3.2 The Licensing Act 2003 also requires the establishment of a committee of between 10-15 members. A 15 member committee (this committee) was

established in advance of the legislation and minor amendments to its terms of reference will be recommended to Council on 20 January 2005 to revise the committee's terms of reference in case regulations, which would have rendered this unnecessary, are delayed.

- 3.3 The Licensing Act 2003 provides that the Licensing Committee may appoint sub-committees, referred to in this report as Licensing Hearing Panels, of three members to discharge functions which fall within the parent committee's terms of reference. Exceptions may be made to the principles of political balance and this may be waived if no member of the committee votes against it.
- 3.4 The committee is requested to note that the Licensing Policy Advisory Group has met previously to discuss and agree the issues contained within the report.

#### **4 The future role of the Licensing & Safety Committee**

- 4.1 It is suggested that the Licensing and Safety Committee retains overall responsibility for consideration of sex establishment applications and health and safety matters as this was requested by members when the committee was originally established. The existing seven member sub-committee (the Licensing Sub-Committee) would continue to deal with hackney carriage, private hire and other licensing issues not covered by the Licensing Act 2003.
- 4.2 It is also suggested that the committee meets on a quarterly basis in order to receive reports on the progress of the new licensing regime and to be updated with the number and nature of applications being dealt with by the Licensing Hearing Panels together with enforcement activity.
- 4.3 The quarterly meetings could also be available for any feedback from officers of other departments to requests or queries that may have been raised by members during a licensing hearing.

#### **5 Advice and Analysis**

- 5.1 The Licensing Act 2003 states that a committee may form sub-committees and specifies that if a sub-committee is formed it must have a membership of three members, all of whom must be members of the Licensing and Safety Committee.
- 5.2 The establishment of sub-committees (referred to as Licensing Hearing Panels) is being recommended because of the unwieldy and unpractical nature of making arrangements of setting regular meetings for a 15 member committee. It would also be daunting for an applicant to sit in front of 15 councillors to discuss their licensing application.

- 5.3 It is anticipated that during the transition period (7 February 2005 – 7 November 2005) there will be a possibility for at least two days a week to be set aside for licensing hearings.
- 5.4 In the draft schedule of meetings for 2005-2006 it is proposed that hearings are convened on the following basis:

Tuesday morning 9am – 12.30pm  
Tuesday afternoon 1.30pm – 5.00pm  
Tuesday evening 6.00pm onwards,

and

Friday morning 9am – 12.30pm  
Friday afternoon 1.30pm – 5.00pm

It is also proposed that the Licensing Sub-Committee would meet on the last Friday afternoon of every month, unless there is no business to consider. In that case, the afternoon may be used for a Licensing Hearing Panel meeting instead.

- 5.5 Members are recommended to waive political balance because otherwise it would be virtually impossible to set up the number of Licensing Hearing Panels required, at least during the transitional period. In order to satisfy the legal requirements for establishing sub-committees, it is proposed that a number of Licensing Hearing Panels are established as set out in Appendix A. Each of the proposed Licensing Hearing Panels has a different political make-up, thereby allowing the flexibility of using (including by way of substitution) members from all groups represented on the parent committee.
- 5.6 A panel can not lawfully sit with less than three members, therefore it is proposed that a fourth member is allocated to each Licensing Hearing Panel to act as an emergency substitute should the need arise. Each substitute (either a normal substitute or an emergency substitute) must also be drawn from the Licensing and Safety Committee. To give effect to this, there will need to be amendments to the substitution provisions in the council rules of the Constitution.

Currently, rule 17 of the Council's Constitution includes the following:

“all members of the Council except for the Cabinet may serve as substitute members of a committee or sub-committee, in the absence of the appointed member”,

”The political parties shall substitute no more than one-half of their members at any committee or sub-committee (all figures to be rounded up to the nearest whole)”, and

”The substitute member shall be from the same political group as the member who is unable to attend the meeting”.

In order to ensure that Licensing Panel Hearings are always able to be held when publicised and to accord with the provisions of the Licensing Act 2003, it is proposed to request that Council waive these rules for the formation of a Licensing Hearing Panel.

- 5.7 It is a requirement of the Licensing Act 2003 that every member due to sit on a Licensing Sub-Committee must have attended a suitable training session. A full training day has already been held on 7 December 2004 and work is underway for some evening sessions to be held in January/February 2005.

## **6 Financial and legal implications**

- 6.1 There may be financial and legal implications if the council fails to determine applications within the statutory timescales. This may result in a “deemed refusal”. Should an applicant appeal against this the council would probably be liable for costs if unsuccessful in the appeal.
- 6.2 The formation of sub-committees of the main committee established under the Licensing Act 2003 is dealt with in the Licensing Act 2003.

## **7 Recommendations**

- 7.1 That the committee approves the appointment of Licensing Hearing Panels comprising three members which will, from 7 February 2005, consider all licensing matters under the Licensing Act 2003.
- 7.2 That political balance is waived for the formation of each Licensing Hearing Panel and the suggested panels shown at Appendix A are approved.
- 7.3 That a fourth member is allocated for each hearing to act as an emergency substitute, once provision has been made for this in the Council rules.
- 7.4 That the committee recommends to Council that it approves the amendments to the council rules in respect of substitution arrangements for Licensing Hearing Panels;
- 7.5 That the committee notes the requirement for suitable licensing training to be attended by each member before being able to sit on the Licensing Sub-Committee and or a Licensing Hearing Panel.

## **8 Background papers**

- 8.1 Licensing Act 2003  
Licensing Act guidelines dated 7 July 2004

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**SUGGESTED LICENSING HEARING PANELS**

<b><u>3 Conservative</u></b>			
Andrews	(C)	Buckwell	(C)   Mrs Chambers (C)
<b><u>2 Conservative, 1 Labour</u></b>			
Baker	(C)	Ken Bamber	(C)   Harriott (L)
<b><u>2 Labour, 1 Conservative</u></b>			
Bowler	(C)	Davis	(L)   Mrs Etheridge (L)
<b><u>3 Labour</u></b>			
Esterson	(L)	Tony Goulden	(L)   Harriott (L)
<b><u>2 Conservative, 1 Liberal Democrat</u></b>			
Mrs Chambers	(C)	Haydock	(C)   Luckhurst (LD)
<b><u>2 Labour, 1 Liberal Democrat</u></b>			
Davis	(L)	Harriott	(L)   Luckhurst (LD)
<b><u>2 Conservative, 1 Independent</u></b>			
Andrews	(C)	Hicks	(C)   Kieran Magee (I)
<b><u>2 Labour, 1 Independent</u></b>			
Davis	(L)	Tony Goulden	(L)   Kieran Magee (I)
<b><u>1 Conservative, 1 Labour, 1 Independent</u></b>			
Mrs Etheridge	(C)	Davis	(L)   Kieran Magee (I)
<b><u>1 Conservative, 1 Liberal Democrat, 1 Independent</u></b>			
Mrs Chambers	(C)	Luckhurst	(LD)   Kieran Magee (I)
<b><u>1 Labour, 1 Conservative, 1 Liberal Democrat</u></b>			
Harriott	(L)	Buckwell	(C)   Luckhurst (LD)
<b><u>1 Labour, 1 Liberal Democrat, 1 Independent</u></b>			
Bowler	(L)	Luckhurst	(LD)   Kieran Magee (I)