

Meeting of: AUDIT COMMITTEE

Date: 26TH OCTOBER 2004

Report of: HEAD OF LEGAL SERVICES

Reference: HLS

Title: CONSTITUTIONAL ARRANGEMENTS FOR THE EXERCISE OF THE COUNCIL'S LICENSING FUNCTIONS

PUBLIC/EXEMPT ITEM

This item is for consideration in the public part of the meeting.

PURPOSE OF THE REPORT

To enable the Committee to consider the appropriate constitutional arrangements for the exercise of the Council's Licensing functions.

RECOMMENDATIONS

That the Committee makes recommendations to full Council on its preferred option, and that Council be requested to instruct the Monitoring Officer to make the appropriate amendments to the Constitution.

REPORT

Background Information

This report is being considered by the Licensing Regulatory Committee at its meeting on the 7th October 2004, and its views will be reported to this Committee at the meeting.

The Council currently has a Licensing Regulatory Committee, comprising thirteen members on PR, which deals with all the Council's licensing functions which are expressed by the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 not to be functions of the executive.

Most of the items referred to the Regulatory Committee relate to hackney carriage and private hire vehicle licensing and, to a lesser extent, public entertainment licensing. Occasionally, the Committee considers items relating to such matters as animal boarding establishments, caravan site licences, and street collections. The terms of reference of the Committee also encompass a wide variety of other areas of licensing, for example second hand goods dealers, motor salvage operators, and miscellaneous public health registrations relating to dairy, meat and fish products. Such matters are routinely administrative, and generally do not need to be referred to the Committee.

The Regulatory Committee also has a sub-committee which deals with appeals against the award of penalty points on hackney carriage and private hire licences.

Under the Licensing Act 2003, a new licensing regime is being implemented. Responsibility for liquor licensing passes from the Licensing Justices to the Council, and under the Act, premises will have a single licence which will cover the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment. This means that the public entertainment and late night refreshment house licences currently issued by the Council will be subsumed in the new premises licence.

Transitional licences will need to be issued by the Council from the 7th February 2005, and the Act is likely to be fully in force by November 2005. It is necessary therefore for the Council to have the appropriate constitutional arrangements in place before February 2005. In practice, because it will be necessary to address Members' training needs before then, it would be preferable to establish the necessary Committee or Committees as soon as possible.

Requirements of the Licensing Act 2003

Under the Act, the Council is the licensing authority, and the "licensing functions" are the Council's functions under the Act.

Under Section 6 of the Act, the licensing authority is required to establish a licensing committee consisting of at least ten, but not more than fifteen, members of the authority. All matters relating to the discharge of the Council's licensing functions, that is, its functions under the Licensing Act 2003, with the exception of the determination and development of the licensing policy, are to be referred to this Committee.

Further, the authority may decide that its licensing committee will discharge additional functions of the authority that are "related to" its licensing (that is, Licensing Act 2003) functions. If a licensing authority chooses to discharge such related functions itself rather than to arrange for the licensing committee to discharge them, it must consider any relevant report prepared by the licensing committee before acting in any such matter (unless urgent). This ensures that the licensing committee will have an input into any matter relating to the authority's Licensing Act 2003 functions. It is also clearly stated in the guidance to the Act that relevant reports from other committees must be considered by the licensing committee and vice versa.

Section 9 of the Act permits a licensing committee to form one or more sub-committees, each comprising three members of the committee. Regulations made by the Secretary of State may deal with such matters as the proceedings of the licensing committee or its sub-committees and public access, publicity, agendas and records. The licensing committee can sub-delegate the exercise of its functions to a sub-committee or officer.

Functions in respect of which representations or objections have been made may not be delegated to an officer and must be dealt with by either the licensing committee or sub-committee. Appendix A details a proposed delegation of functions based upon the guidance produced by the Secretary of State for Culture, Media and Sport, issued under Section 182 of the Licensing Act 2003.

Some draft Regulations under the Licensing Act 2003 have been published and are presently subject to consultation. However, they do not deal specifically with the composition of the committee and sub-committees. At this stage, it is thought that neither a committee nor sub-committee established under the Licensing Act 2003 is required to have

its membership based on PR. Indeed PR on a membership of three would be extremely difficult.

Further consideration will also need to be given in due course as to whether or not it is appropriate for a sub-committee to include a member for the ward in which the applicant premises is situated. It is not clear whether or not this will be dealt with in Regulations.

Proposals and Options

Some local authorities have decided to have a single Committee to deal with both the Licensing Act 2003 functions and also the residual licensing work. Others are having two separate committees. Legally, there appears to be no right or wrong approach, although there may be difficulties on the applicability of PR, given that the Licensing Act 2003 committee is a special statutory committee and PR seems not to apply to it or to its sub-committees. The residual licensing functions, however, are ordinary Council functions, and any Committee would be an ordinary Committee under Section 102 of the Local Government Act 1972, to which PR would apply.

There will clearly be a considerable workload under the Licensing Act 2003 from February 2005, and in particular for the sub-committees that will consider individual applications.

The current work of the Licensing Regulatory Committee will also continue. The Regulatory Committee's workload with regard to taxi licensing will be ongoing. Its workload with regard to public entertainment licences will continue until November 2005. This means that the main substance of the Regulatory Committee's work will be taxi licensing, and in particular driver applications. Officers have for some time thought that the current Regulatory Committee of thirteen is somewhat large and unwieldy for dealing with such applications, and is a somewhat daunting forum for an individual applicant who will generally be unrepresented. A preferable number for dealing with such applications would perhaps be a maximum of seven.

Accordingly, the following options are set out for Members' consideration:

Option 1

A Committee to be known as the Licensing Act 2003 Committee, to comprise fifteen members on PR, and to discharge the Council's functions under the Licensing Act 2003.

Sub-committees of three would need to be established as set out in the Licensing Act 2003 to deal with contested applications.

A separate Committee to be known as the Licensing Regulatory Committee, to comprise seven Members on PR, to deal with the Council's residual licensing functions, as at present.

In conjunction with this option, it is recommended that the Penalty Points Appeal Sub-Committee should be disbanded, and that appeals against the award of penalty points should be dealt with by the Council's Appeals Committee. Officers have been concerned for some time that, on the current arrangements, if points are upheld by the Sub-Committee, and the licence holder subsequently appears before the full Committee having exceeded twenty points on the licence, the same Members who upheld the points may be considering whether to revoke or suspend the licence because of those points. This could be perceived as contrary to the principles of human rights and natural justice, and it would be preferable for a separate body to be considering the appeals.

The advantage of this option is that it is clearer constitutionally. Also, Members would be able to develop an expertise in either the Licensing Act 2003 or residual Licensing Act functions. However, there would be nothing to preclude Members from sitting on both Committees should they have sufficient time to devote to both.

Option 2

One Licensing Committee with 15 members on PR, with terms of reference to deal with all the Council's licensing functions, both under the Licensing Act 2003 and residual licensing.

Sub-committees of three would need to be established as set out in the Licensing Act 2003 to deal with contested applications.

The full Committee would deal with the residual licensing work. There could be a Sub-Committee to deal with penalty points appeals or this work could be transferred to the Appeals Committee as suggested in Option 1 above.

The disadvantages of this option are that a Committee of fifteen is somewhat unwieldy to deal with individual taxi matters. Also, as both a statutory Committee and a Committee of the Council, the Committee would be a hybrid.

Option 3

As Option 2 above, but with a PR sub-committee of seven to deal with the residual licensing work.

The advantage of this would be that a group of seven is perhaps the optimum number to deal with individual applications. A larger number is too unwieldy.

The disadvantage of this option is that the full Committee would be a hybrid of ordinary and statutory committee. Its Licensing Act sub-committees would not need to be PR, but the residual licensing sub-committee would need to be PR.

Officers' Preferred Option

The preferred option of the Head of Legal Services is Option 1, as it is constitutionally more clear, and separates the Licensing Act 2003 to be dealt with by a statutory committee, and the residual functions to be dealt with by an ordinary committee.

Whichever option is approved, it is recommended that the number of Members on the Licensing Act 2003 committee should be the statutory maximum of fifteen, to provide the largest possible pool of Members to form the Sub-Committees of three. Further consideration will need to be given in due course to how the membership of the sub-committees is to be determined, and the arrangements to be made to ensure that each sub-committee is quorate.

Also, whichever option is approved, it is recommended that because of the specialist nature of the work under the Licensing Act 2003, the Council's normal rules on allowing substitute members should not apply to the committee carrying out the Licensing Act 2003 functions. It should also be a requirement that Members should not participate in Licensing Act 2003 or residual licensing work until they have received appropriate training.

FINANCIAL IMPLICATIONS

The Independent Remuneration Panel would need to consider any Special Responsibility Allowances arising from the chosen option, and this could lead to a recurring increase in the City Council's Revenue Budget.

LEGAL IMPLICATIONS

The report has been prepared by the Head of Legal Services.

COMMUNITY SAFETY IMPLICATIONS

None

HUMAN RIGHTS ACT IMPLICATIONS

All individual applicants must be given a fair hearing in accordance with the Human Rights Act 1998, and the Convention rights of third parties must also be respected.

RACIAL EQUALITY AND EQUAL OPPORTUNITIES IMPLICATIONS

None

SUSTAINABILITY IMPLICATIONS

None

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments to add.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments to add.

BACKGROUND PAPERS

None

APPENDIX A

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal Licence		If an objection made	If no objection made
Application for personal Licence with relevant unspent Convictions		All cases	
Application for premises Licence/club premises Certificate		If a representation made	If no representation made
Application for Provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc.			All cases
Decision to object when Local Authority is a Consultee and not the relevant authority considering the application.		All cases	
Determination of a Police objection to a temporary event notice.		All cases	