

Meeting of: AUDIT COMMITTEE

Date: 26TH JANUARY 2005

Report of: HEAD OF LEGAL SERVICES

Reference: HLS

Title: LICENSING OF HIGHWAY AMENITIES – AMENDMENT OF TERMS OF REFERENCE OF LICENSING REGULATORY COMMITTEE

PUBLIC/EXEMPT ITEM

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

PURPOSE OF THE REPORT

To enable the Committee to recommend Council to amend the terms of reference of the Licensing Regulatory Committee following the making of Regulations which provide that the licensing of highway amenities is not to be a function of the Executive.

RECOMMENDATIONS

That the Committee recommends full Council to amend the terms of reference of the Licensing Regulatory Committee in the Constitution to include the granting of permissions under Section 115E and the publication of Notices under Section 115G of the Highways Act 1980.

REPORT

Under Section 115E of the Highways Act 1980, a Council may grant permission for the provision of services, amenities, recreation and refreshment facilities on pedestrianised areas of highway.

The powers have been used for the licensing of street cafes, to enable premises fronting on pedestrianised areas to have tables and chairs outside the premises for their customers.

The licences have been issued by Engineering Services, following guidelines issued by the Lancashire County Council as highway authority. The legislation contains various requirements for applications to be advertised and for any representations to be considered.

As Members will be aware, under the Local Government Act 2000, the functions of the Council are deemed to be functions of the executive or Cabinet, unless legislation or Regulations provide otherwise. As there were no Regulations to the contrary, the granting of permissions or licences under Section 115E of the Highways Act 1980 was an executive function. This appeared to be an anomaly, because, as Members will be aware, most licensing functions are specifically stated not to be executive functions, and are therefore within the terms of reference of the Licensing Regulatory Committee.

The government has now made Regulations to rectify the anomaly. The Local Authorities (Functions and Responsibilities) (Amendment No. 3) (England) Regulations 2004 amend the previous Functions and Responsibilities Regulations, and provide that, with effect from the 23rd November 2004, the power to grant permissions under Section 115E and ancillary provisions with regard to the publication of notices are not to be functions of the executive.

Accordingly, so that the Council's Constitution is consistent with these Regulations, the Committee is requested to recommend that the terms of reference of the Licensing Regulatory Committee be amended to include the grant of permissions under Section 115E of the Highways Act 1980, and the publication of notices under Section 115G of the Act.

FINANCIAL IMPLICATIONS

This change to the terms of reference of the Licensing Regulatory Committee would have no financial implications for the Council.

LEGAL IMPLICATIONS

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

COMMUNITY SAFETY IMPLICATIONS

None

HUMAN RIGHTS ACT IMPLICATIONS

None

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