

Licensing Committee

on

24 May 2007Report Title: **Implementation of the Gambling Act 2005**Report of: **The Head of Legal Services and Monitoring Officer**Forward Plan ref. no. **N/A**Wards Affected: **All**Report: **for decision****1. Purpose**

1.1 To recommend that the Licensing Committee agrees and notes arrangements to implement the Gambling Act 2005 involving amendments to the terms of reference of the Licensing Committee and the Licensing Sub-Committees, the scheme of delegation to officers and the Local Licensing Procedure Rules.

2. Recommendations

- 2.1 That Members of the Committee note the changes to the terms of reference of the Committee agreed by Annual Council as set out in Appendix 3 to this report.
- 2.2 That Members of the Committee agree the amended terms of reference of the Licensing Sub-Committees as set out in Appendix 4 to this report.
- 2.3 That Members of the Committee agree to establish the Licensing Sub-Committees with the membership as set out in Appendix 7 to this report which will be tabled at the meeting.
- 2.4 That Members of the Committee agree the amendments to the Scheme of Delegation to Officers as set out in Appendix 5 to this report.
- 2.5 That Members of the Committee agree the amendments to the Local Licensing Procedure Rules as set out in Appendix 6 to this report.

Report Authorised by:

**John Suddaby, Acting Head of Legal Services and Monitoring Officer**

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3. Executive Summary and Reasons for Change

3.1 The Gambling Act 2005 comes fully into force by 1 September 2007. New statutory powers under the Act will be given to the Council and its Licensing bodies and so their terms of reference will need to be amended. Changes will also be needed to the scheme of delegation to officers and the Local Licensing Procedure Rules in order that hearings can be held into applications under the Act and related statutory functions can be discharged.

4. Local Government (Access to Information) Act 1985

4.1 The following background papers were used in the preparation of this report and can be inspected at the Alexandra House, 10 Station Road, Wood Green, London N22 7TR by contacting Terence Mitchison on 020 8489 5936:

(i) the Council's Constitution (ii) Gambling Commission Guidance on the Gambling Act 2005 (iii) Local Licensing Procedure Rules and (iv) Regulations on Conducting Hearings under the Gambling Act 2005.

5. Background

5.1 Members will find attached as Appendix 1 to this report the report that was considered by the Committee on these matters on 20 February this year. At the February meeting, Members of the Committee agreed all the recommendations set out in the report.

5.2 A similar report was considered by the General Purposes Committee on 8 March 2007 and by full Council on 19 March 2007. At these meetings Members approved all the recommendations in principle.

5.3 Most of the statutory provisions in the Gambling 2005 Act relating to applications for premises licences and other matters only came into force on 30 April 2007. Some of the statutory provisions, including those relating to fees, have just come into force on 21 May 2007. For this reason, the reports to the meetings in February and March could only be for approval "in principle" since neither the full Council nor the Committees could legally have taken valid decisions then.

Licensing Committee Terms of Reference

5.4 There is a report to the Annual Council on 21 May 2007 recommending additions to the terms of reference of the full Council and the Licensing Committee. At the time of writing this report the decision of Annual Council is not known but, on the assumption that the recommendations are agreed by Council, there will be changes to the terms of reference of the Licensing Committee in force before the Committee's meeting on 24 May. These changes are set out in Appendix 3 to this report.

5.5 Members are asked to note the new terms of reference of the Licensing Committee. In the main, the Committee will be exercising the same types of function in relation to the Gambling Act that it currently exercises in relation to the Licensing Act 2003. There is an important new power with respect to Gambling Act applications that does not arise under the 2003 Act. This is the power to determine fees for premises licences subject to limits imposed by Regulations which have now been made (S.I. 2007/479). There is a separate report on the fixing of fees being submitted to this meeting of the Committee by the Assistant Director, Enforcement.

Licensing Sub-Committees Terms of Reference

5.6 The report to Annual Council asked Members to amend the terms of reference of the Licensing Sub-Committees and the Scheme of Delegation to Officers in relation to the Gambling Act but this was expressly subject to the legal requirement that the Licensing Committee itself must confirm these amendments.

5.7 The changes to the terms of reference of the Licensing Sub-Committees (LSCs) are set out in Appendix 4 to this report. As explained in the report to the February meeting, the LSCs will conduct hearings in cases where there have been relevant representations made against the granting of a premises licence under the Gambling Act as they do currently where there are opposed applications under the Licensing Act 2003. Under both Acts the LSCs would hear and determine valid applications for a review of a premises licence. Some of the functions under the two Acts are different and, therefore, listed under separate headings in Appendix 4. The controls over club gaming permits, club machine permits and gaming machine permits in alcohol licensed premises arise only under the Gambling Act. However, the LSCs will be undertaking comparable roles under both Acts and hearing those cases where there is a statutory duty for Members to make the decision.

5.8 The Licensing Committee must also determine the number and membership of its LSCs. The names of the proposed Members are not known at the time of writing this report. Therefore, the necessary details will be tabled at the meeting on 24 May as Appendix 7 to this report.

Amendments to Scheme of Delegation

5.9 The same principles of delegation are recommended to apply under the Gambling Act 2005 as apply now under the Licensing Act 2003. This was explained in more detail in the report to the February meeting. Members will make the decisions in all cases that require a hearing because relevant representations or objections have been received against the application. Other cases that are not contentious will be decided by officers on the basis of the policies set out in the adopted Statement of Gambling Policy. The recommended amendments to the Scheme of Delegation to Officers are set out in Appendix 5 to this report.

Amendments to Local Licensing Procedure Rules

5.10 Finally, Members are asked to note the comments in the report to the February meeting about the relatively few changes which are needed to adapt the existing Local Licensing Procedure Rules to cover hearings under the Gambling Act 2005. Since the

February report, the Government has actually made the Regulations that cover hearings under the Gambling Act 2005. These Regulations as now made (S.I. 2007/173) differ in some respects from the draft Regulations considered in the February report and there are two points where changes are proposed as compared to the February draft.

5.11 The first change is in relation to the admission of documentary evidence that has only been produced by a party at the hearing itself and not beforehand. Comparison of the Regulations under the Gambling Act 2005 and the Licensing Act 2003 suggests that the Rule 33 in the Local Procedure Rules should be amended to require the actual consent of the other party or parties to the admission of documents at the hearing. This would apply both to hearings under the 2005 Act and the 2003 Act. In the case of documents that are shown to the other parties before the hearing but later than a date 10 working days before the hearing (the limit prescribed in Rule 30) the Sub-Committee will still have a discretion where the parties could not agree about the admission of the documents. Members would have to balance the importance of the documentary evidence that is to be produced against any unfairness caused to the other party being taken by surprise. The relevant criteria are already set out in Rule 33.

5.12 The second change as compared to February is that the Regulations governing Gambling Act hearings do not, in the end, impose a special rule requiring each party to be allowed an equal maximum time for the presentation of the whole case. It would appear simpler and more appropriate to make no amendments here and to leave in place the existing Rule 63 which provides for each party to have the same maximum time for its closing address. This would now apply to hearings under both the 2005 Act and the 2003 Act.

5.13 The changes to these Rules are set out in Appendix 6 to this report and Members are recommended to adopt them with immediate effect. Since Annual Council has been recommended to exclude the Local Licensing Procedure Rules from the Council's Constitution, they should in future be a matter entirely within the Licensing Committee's remit.

Briefing

5.14 Attached as Appendix 2 to this report is a Briefing on the main points of the 2005 Act as it will affect this Council. Members may find this helpful as background to the proposals in this report.

6. Recommendations

- 6.1 That Members of the Committee note the changes to the terms of reference of the Committee agreed by Annual Council as set out in Appendix 3 to this report.
- 6.2 That Members of the Committee agree the amended terms of reference of the Licensing Sub-Committees as set out in Appendix 4 to this report.
- 6.3 That Members of the Committee agree to establish the Licensing Sub-Committees with the membership as set out in Appendix 7 to this report which will be tabled at the meeting.

- 6.4 That Members of the Committee agree the amendments to the Scheme of Delegation to Officers as set out in Appendix 5 to this report.
- 6.5 That Members of the Committee agree the amendments to the Local Licensing Procedure Rules as set out in Appendix 6 to this report.

7. Comments of the Head of Legal Services

- 7.1 The legal and constitutional implications are set out in the main report.

8. Comments of the Director of Corporate Resources

- 8.1 There are no specific financial implications.

9. Use of Appendices / Tables / Photographs.

9.1 Appendix 1 to this report is the report on these matters considered by the Licensing Committee on 20 February 2007.

9.2 Appendix 2 to this report is the Briefing on the Gambling Act 2005

9.3 Appendix 3 to this report sets out the proposed amendments to the terms of reference of the Licensing Committee in Part 3, Section C of the revised Constitution.

9.4 Appendix 4 to this report sets out the proposed amendments to the terms of reference of the Licensing Sub-Committees in Part 3, Section C of the revised Constitution.

9.5 Appendix 5 to this report shows the proposed amendments to section 4 of Part F.7, the Scheme of Delegation to Officers, now at Appendix E of the revised Constitution.

9.6 Appendix 6 to this report shows the proposed changes to the Local Licensing Procedure Rules.

9.7 Appendix 7 to this report will show the membership of the Licensing Sub-Committees and will be tabled at the meeting.

Agenda item:

Licensing Committee on 20 February 2007

Report Title: Implementation of the Gambling Act 2005		
Report of: The Head of Legal Services and Monitoring Officer		
Forward Plan ref. no. N/A	Wards Affected: All	Report: Recommendation to Full Council
<p>1. Purpose</p> <p>1.1 To consult the Licensing Committee on proposed arrangements to implement the Gambling Act 2005 involving amendments to the terms of reference of full Council, the Licensing Committee and the Licensing Sub-Committees, the scheme of delegation to officers and the Local Licensing Procedure Rules</p>		
<p>2. Recommendations</p> <p>2.1 To note the Briefing on the Gambling Act attached as Appendix 1 to this report.</p> <p>2.2 That Members approve in principle the amended terms of reference of the full Council, the Licensing Committee and the Licensing Sub-Committees as set out in Appendices 2, 3, and 4 to this report</p> <p>2.3 That Members approve in principle the amendments to the Scheme of Delegation to Officers as set out in Appendix 5 to this report.</p> <p>2.4 That Members approve in principle the amendments to the Local Licensing Procedure Rules as set out in Appendix 6 to this report.</p> <p>2.5 To note that full Council, at the Annual Council meeting on 21 May, will determine its own terms of reference and those of the Licensing Committee while the terms of reference of the Licensing Sub-Committees, the amendments to the Scheme of Delegation to Officers and the amendments to the Local Licensing Procedure Rules under the Gambling Act 2005 must be formally confirmed by the Licensing Committee at its meeting in late May or early June 2007.</p> <p>2.6 That Members refer and recommend that proposals set out in Appendices 2, 3, 4, 5 and 6 to the General Purposes Committee for consideration and recommendation to full Council.</p>		
Report Authorised by:		
Davina Fiore, Head of Legal Services and Monitoring Officer		
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3. Executive Summary and Reasons for Change

3.1 The Gambling Act 2005 comes fully into force by 1 September 2007. New statutory powers under the Act will be given to the Council and its Licensing bodies and so their terms of reference will need to be amended. Changes will also be needed to the scheme of delegation to officers and the Local Licensing Procedure Rules in order that hearings can be held into applications under the Act and related statutory functions can be discharged.

4. Local Government (Access to Information) Act 1985

4.1 The following background papers were used in the preparation of this report and can be inspected at the Alexandra House, 10 Station Road, Wood Green, London N22 7TR by contacting Terence Mitchison on 020 8489 5936:

(i) the Council's Constitution (ii) Gambling Commission Guidance on the Gambling Act 2005 (iii) Local Licensing Procedure Rules and (iv) draft Regulations on Conducting Hearings under the Gambling Act 2005.

5. Introduction

5.1 The Gambling Act 2005 ("the 2005 Act") will come into force at various dates this year and fully into force by 1 September 2007. The new statutory powers will require amendments to the terms of reference of the Full Council, the Licensing Committee and its Licensing Sub-Committees. The Licensing Committee and its Sub-Committees are already empowered to make the important decisions under the Licensing Act 2003 ("the 2003 Act"). The functions under the 2005 Act will be allocated to the Council, Committee, Sub-Committees and officers in a manner similar to the arrangements under the 2003 Act. This will enable Members to carry out one of the most important new functions under the 2005 Act which will be hearing contested applications for premises licences where various forms of gambling will be permitted.

5.2 In order to comply with proposed new Government Regulations and to ensure the smooth running of hearings, the Local Licensing Procedure Rules will need some relatively minor amendments. Other functions under the 2005 Act are recommended for delegation to officers in the Licensing Service so that the Service can operate effectively.

5.3 Members will be aware that full Council at its meeting on 13 November 2006 adopted the Council's Statement of Gambling Policy ("SGP") which took effect from 15 January 2007. The SGP reflects the Guidance to all Councils from the Gambling Commission and now contains the Council's own policies to be applied in dealing with applications under the 2005 Act subject to the requirement that the facts of each individual case must be taken into account.

5.4 Attached as Appendix 1 to this report is a Briefing of the main points of the 2005 Act as it will affect this Council. Members may find this helpful as background to the proposals in this report.

6. The terms of reference of full Council

6.1 The 2005 Act requires two functions to be performed by the full Council and not to be delegated. The first is the adoption of the SGP. This should be added to the Council's Policy Framework in Part F.6 when that Part of the Constitution is updated in the course of the on-going Review of the Constitution.

6.2 The other function for full Council is the power to pass a resolution not to issue any casino premises licences in the Borough. Such a resolution, if passed, would prevent any casino from being licensed for the next three years. After the end of three years the resolution would lapse unless passed again. No such resolution has been passed and there are no casinos in the Borough. The power should be added to the terms of reference of the full Council in Part E.1 and Part E.7 of the Constitution as shown in Appendix 2 to this report.

7. Fixing Fees for Applications

7.1 The power to fix fees for applications under the 2005 Act may be exercised either by full Council or by the Licensing Committee. It is suggested that this is an appropriate function for the Committee. The discretion to set fees is likely to be limited by Regulations yet to be made. In any event, Members will be under a statutory duty when fixing fees to aim to ensure as far as possible that fee income equates to the cost of providing the relevant service.

8. The terms of reference of the Licensing Committee

8.1 As is the case with the Licensing Act 2003 ("the 2003 Act"), most of the functions under the 2005 Act are referred to the Licensing Committee. The Guidance issued by the Gambling Commission recommends that decisions on individual contested applications should be delegated to the three-Member Licensing Sub-Committees.

8.2 Under the 2003 Act, the main Committee has retained jurisdiction to hear the few cases where 500 persons or more would be present at an event. Members may wish to keep this threshold for contested applications under the 2005 Act to be heard by the main Committee even though such cases are likely to be rare. The Chair also has power to refer any specially significant or difficult cases to the Committee and it is recommended that this power should apply to the 2005 Act.

8.3 The proposed terms of reference of the Committee would include the monitoring of gambling activities in the Borough and the right to receive reports on gambling matters. So far as is legally possible, the main Committee will co-ordinate the work of the Sub-Committees through reviewing the lessons of past decisions and by determining the Local Procedure Rules for hearings.

8.4 The terms of reference of the Licensing Committee being recommended to Members are shown in Appendix 3 to this report which would amend Part E.7 of the Constitution.

9. The terms of reference of the Licensing Sub-Committees

9.1 If Members agree, then the Licensing Sub-Committees (“LSCs”) would be given powers under the 2005 Act in relation to gambling equivalent to those already exercised under the 2003 Act in relation to alcohol sales and entertainment licensing. The proposed terms of reference are shown in Appendix 4 to this report which would amend Part E.7 of the Constitution. The main function would be hearing applications for a premises licence where relevant representations (i.e. objections) had been made. LSCs would also have the power to “review” premises licences for gambling where valid complaints had been made.

9.2 There are important differences between a premises licence under the 2003 Act and the 2005, as explained in the Briefing at Appendix 1. Under the 2005 Act the Gambling Commission will have the responsibility for granting personal licences and operating licences which must be obtained before the Council grants a premises licence to an applicant. In consequence, the LSCs would not be legitimately concerned with the suitability of an applicant or the operational details of the proposed gambling activities. The main role of the LSCs would be to consider whether any particular factors affecting the nature and location of the premises would justify refusal of the application or the imposition of special conditions in addition to the statutory conditions.

9.3 The differences in procedures between the 2003 Act and the 2005 Act are reflected in the proposed terms of reference in Appendix 4. For example, under the 2003 Act objections to the transfer of a premises licence would be made by the Police whereas under the 2005 Act objections to transfer would be made by the Gambling Commission (see sub-paragraphs 3.01 (j) and (s) in Appendix 4).

9.4 There are different procedures for Temporary Event Notices (“TENs”) under the 2003 Act as compared to Temporary Use Notices (“TUNs”) under the 2005 Act. Objections to a TEN can only be made by the Police whereas objections to a TUN would generally, but not always, be made by the Gambling Commission (see sub-paragraphs 3.01 (o) and (u) in Appendix 4).

9.5 Under the 2005 Act, unlike the 2003 Act, there is a procedure whereby a premises licence which has lapsed can be re-instated upon application. A licence will lapse if the holder dies, becomes bankrupt or goes into liquidation (companies). Either the original holder or a new applicant may apply within 6 months to take over the lapsed premises licence and this application for re-instatement would be heard by a LSC in the event of an objection.

9.6 There will be a new power for LSCs to hear applications for club gaming permits if there were objections from the Gambling Commission or the Police. Members would also hear officers’ proposals to cancel a club gaming permit (for example, where a category B4 or C gaming machine had been used by children) if the holder had requested a hearing before Members.

9.7 A club gaming permit can be granted to a club having at least 25 members which has been established wholly or mainly for purposes other than gaming, for example, a bridge or whist club or a branch of the Royal British Legion. A permit would enable the club to provide certain games of chance and up to 3 gaming machines in categories B4, C or D. Where only the gaming machines were applied for, then a club machine permit could be issued.

10. Amendment of the Scheme of Delegation to Officers

10.1 Under the 2005 Act, as under the 2003 Act, there are a large number of routine management and operational functions that need to be delegated to officers to officers to ensure the effective working of the Licensing Service. This will be necessary to enable officers to complete the large volume of work anticipated in converting existing licences under the “old” legislation into new premises licences under the 2005 Act which will come into effect on 1 September.

10.2 The same principles of delegation are recommended to apply under the 2005 Act as apply now under the 2003 Act. Members will make the decisions in all cases that require a hearing because relevant representations or objections have been received against the application. Other cases that are not contentious will be decided by officers on the basis of the policies set out in the adopted SGP.

10.3 In relation to “reviews”, officers would act to rule out complaints that were clearly frivolous, vexatious or repetitious. Valid applications for review of a premises licence under the 2005 Act would be decided by Members of a LSC after hearing the evidence from the parties.

10.4 There will be several new statutory procedures for the grant of various types of permit under the 2005 Act. Most of these applications for permits must be notified to the Police and the Gambling Commission which may object but there is no provision for objections by local residents or others. Most of these permits would be routine matters which could be dealt with by officers within the policies in the SGP. However, the club gaming and club machine permits might be more significant and are therefore proposed for Members’ decision.

10.5 Officers would also be given delegated powers to enforce the 2005 Act, carry out registration and other routine operational duties and exercise procedural functions under the Regulations made under the Act. The recommended additional delegated powers are shown in Appendix 5 as amendments to Part F.7, section 4 of the Constitution. They would be granted to the Director, Urban Environment, the Assistant Director Enforcement and the Licensing Manager.

11. Amendments to the Local Licensing Procedure Rules

11.1 Hearings under the 2005 Act relating to gambling activities will be substantially similar to the hearings that have been regularly held into contested applications under the 2003 Act relating to alcohol sales and public entertainments. In both cases there will be a broad framework established by central Government through Regulations that set out the “ground rules” for hearings and preliminary matters such as the notification requirements and time

limits for hearings. The details of procedure are left to local discretion subject to the relevant Regulations and the legal rules of "Natural Justice" i.e. fairness to all parties.

11.2 The Council already has Local Licensing Procedure Rules that have operated successfully to regulate the numerous hearings of contested applications under the 2003 Act. The draft Regulations issued by central Government for hearings under the 2005 Act contain very similar ground rules. The simplest course would be for the existing Local Licensing Procedure Rules to be extended so that they apply to hearings under the 2005 Act.

11.3 If the Local Licensing Procedure Rules were extended as recommended, there would have to be some minor adaptations to ensure compliance with the Government's Regulations for hearings under the 2005 Act. Some of these are very minor changes that expand the definitions given under the Local Rules. The others are as follows.

11.4 In the case of gambling hearings under the 2005 Act, the parties have an absolute right to call witnesses provided the appropriate prior notice has been given. If such notice has not been given as required, or at all, and in the case of all 2003 Act licensing hearings, the LSC will have an element of discretion about allowing witnesses to be called although this has generally been permitted in cases under the 2003 Act.

11.5 In the case of gambling hearings, no documentary evidence that is produced at the hearing (but not beforehand) can be admitted except with the consent of the other party or parties. This is more rigid than the existing provisions in the Local Licensing Procedure Rules for 2003 Act cases.

11.6 In the case of gambling hearings, each party must each be allowed an equal maximum period of time for the presentation of its case, including the opening and closing address, any other submissions and the evidence in chief of the party's witnesses. This contrasts with the rule for licensing hearings where an equal maximum period of time must be allowed to each party for the closing address only.

11.7 In the case of gambling hearings, any disruptive person excluded from the hearing must be offered the chance to put his/her evidence in writing for the LSC to take into account before the end of the hearing. This is a more rigid rule than in the case of 2003 Act licensing hearings where the LSC has more discretion about admitting the evidence of excluded persons.

11.8 The recommended changes to the Local Licensing Procedure Rules are shown in Appendix 6 which would amend Part C.9 of the Constitution.

12. Timing of the Changes

12.1 The statutory provisions in the 2005 Act relating to applications for premises licences and many other provisions will come into force after 30 April 2007. After 21 May the holders of existing licences under the "old" legislation, and applicants for the new premises licences under the 2005 Act, can both start making applications to this Council. In the event of objections, there would be hearings before LSCs but such hearings would not have to be held at the earliest until late June 2007.

12.2 The holders of existing licences will only be able to claim “grand-father” rights, and avoid possible objections and hearings, if they submit their applications to convert their old licences by 31 July 2007.

12.3 The new premises licences under the 2005 Act will only come into effect on 1 September 2007. On that date the 2005 Act will be fully in force and the “old” legislation, such as the Gaming Act 1968 will be repealed.

12.4 The Licensing Committee and the General Purposes Committee on 8 March can consider the proposals in this report and make their recommendations before the statutory provisions are actually in force. Full Council on 19 March will be asked to consider the report and recommendations “in principle”. However, all formal decisions on the terms of reference and other matters must be made after 30 April 2007.

12.5 For this reason the recommendations of the Licensing Committee and the General Purposes Committee, as approved or modified by full Council on 19 March, will be reported to the Annual meeting of the full Council on 21 May. Annual Council will formally confirm its own terms of reference and those of the Licensing Committee. Full Council can also approve the terms of reference of the LSCs, the delegation of powers to officers and the amendments to the Local Licensing Procedure Rules but subject to these matters all being formally confirmed by the meeting of the Licensing Committee following soon after the Annual Council.

13. Comments of the Head of Legal Services

13.1 The legal implications are set out in the body of this report.

14. Comments of the Director of Corporate Resources

14.1 There are no specific financial implications.

15. Use of Appendices / Tables / Photographs.

15.1 Appendix 1 to this report is the Briefing on the Gambling Act 2005

15.2 Appendix 2 to this report sets out the proposed amendment to the terms of reference of the full Council in Parts E.1 and E.7 of the Constitution.

15.3 Appendix 3 to this report sets out the proposed amendments to the terms of reference of the Licensing Committee in Part E.7 of the Constitution.

15.4 Appendix 4 to this report sets out the proposed amendments to the terms of reference of the Licensing Sub-Committees in Part E.7 of the Constitution.

15.5 Appendix 5 to this report shows the proposed amendments to section 4 of Part F.7 of the Constitution (Scheme of Delegation to Officers)

15.6 Appendix 6 to this report shows the proposed changes to the Local Licensing Procedure Rules in Part C.9 of the Constitution.

BRIEFING FOR MEMBERS ON THE GAMBLING ACT 2005

INTRODUCTION

1. This Briefing is designed to inform Members about some important points concerning the effect on the Council of the Gambling Act 2005 (“the 2005 Act”). It is not intended to give a complete picture of the changes under the Act or the functions of the Gambling Commission. It is not as comprehensive as the Council’s own adopted Statement of Gambling Policy or the Guidance issued by the Gambling Commission (see info@gamblingcommission.gov.uk).
2. The 2005 Act introduces an updated and more effective system for regulating most forms of gaming and betting. It creates a new unified regulator for gambling in Great Britain called the Gambling Commission (“the Commission”).
3. The Commission will have responsibility for granting “operating licences” to all providers of facilities for gambling. These licences will control the detailed operation of every gambling business through conditions. Applicants will have to satisfy the Commission about their honesty, integrity, competence and financial soundness. Key staff will have to obtain a “personal licence” from the Commission after checks on their suitability and competence.

THE ROLE OF LOCAL COUNCILS

4. The main role of local authorities is to decide on the granting of “premises licences” for the following types of gambling:
 - (i) casinos
 - (ii) bingo premises
 - (iii) betting shops
 - (iv) betting on tracks
 - (v) adult gaming centres, and
 - (vi) family entertainment centres
5. This new jurisdiction for Councils is taken over from the local Magistrates who have licensed such premises under existing legislation, such as the Gaming Act 1968, which is due to be repealed by the 2005 Act.
6. Under the 2005 Act the full Council has responsibility for adopting Haringey’s Statement of Gambling Policy. The Council adopted this with effect from 15 January 2007. It sets out the basic approach the Council will take to applications for all the various forms of licence or permit under the 2005 Act. When reaching a decision on an application, Members will have to take into account the individual circumstances of each case.

7. The full Council also has power to pass a resolution not to grant any casino premises licences in the Borough for the next three years. Before passing such a resolution the Council can take into account any principle or matter, not just the national licensing objectives (see paragraph 9 below). For example, the Council could decide that casinos were potentially harmful to low income residents. A resolution would have effect for three years but would have to be renewed thereafter or it would lapse. Once a resolution was in force no application for a casino premises licence could be considered.
8. Most of the other functions under the 2005 Act are legally referred to the Council's Licensing Committee. The Licensing Committee was set up under the Licensing Act 2003 ("the 2003 Act") to be responsible for licensing alcohol sales, public entertainment and night cafes. The 2005 Act adds gambling functions to the existing functions of the Licensing Committee and its Sub-Committees. However, the licensing of gambling will be a quite separate and distinct jurisdiction from licensing alcohol/entertainment. It will have its own legal rules, Guidance from the Commission and Statement of Gambling Policy.

THE LICENSING OBJECTIVES RELATING TO GAMBLING

9. There are also separate national licensing objectives in relation to gambling. These are:
 - (i) preventing gambling from being a source of crime or disorder
 - (ii) ensuring that gambling is carried out in a fair and open way
 - (iii) protection of children and other vulnerable persons from being harmed or exploited by gambling.
10. The first of these objectives will mainly be the concern of the Commission because they will carry out the extensive checks to ensure that applicants for operating licences are not associated in any way with criminal activities. Anyone applying to the Council for a premises licence will first have to have an operating licence covering the relevant gambling activities. Therefore, the Council will not be concerned with the personal suitability of applicants. However, if the premises are in an area where there are particular problems with organised crime then the Council might attach special conditions such as a requirement for door supervisors.
11. The second objective is also mainly the concern of the Commission which will attach the necessary conditions to control the operational details and to ensure that gambling is fair and open.
12. The third objective will more often be relevant to the Council when granting premises licences. The existing policy is to prevent children having any participation in gambling apart from special low stake gaming machines. In any other case the Council would have to consider whether it was necessary to impose special conditions such as the supervision of entrances to the premises.

BASIC RULES FOR DECIDING APPLICATIONS FOR PREMISES LICENCES

13. Under the 2005 Act, the Council's licensing bodies must "aim to permit the use of premises for gambling in so far as the authority think it –
 - (i) in accordance with any relevant Code of Practice
 - (ii) in accordance with the Commission's Guidance
 - (iii) reasonably consistent with the 3 national licensing objectives and
 - (iv) in accordance with the Council's own Statement of Gambling Policy."

COMPARISON BETWEEN THE LICENSING ACT 2003 AND THE GAMBLING ACT 2005

14. In many ways the procedures for granting premises licences under the 2005 Act are comparable to those under the 2003 Act. Under both Acts applications have to be advertised publicly and objections ("relevant representations) can be made within a time limit by local residents or businesses and by specified "responsible authorities" such as the Police or Fire Authority. If there are objections then the application would be heard by one of the Licensing Sub-Committees under Procedure Rules that aim to secure fairness and the opportunity for all the parties to put forward their case. Once granted a premises licence will continue for the life of the relevant business.
15. There are, nonetheless, several important differences between the procedures under the 2003 Act and the new procedures under the 2005 Act.
16. Under the 2003 Act an application which is not subject to a valid objection must be granted. Under the 2005 Act the Council, as local licensing authority, has the power to refuse a premises licence even where there are no objections. However, there would have to be clear and sustainable reasons why the application was in conflict with the Guidance, the licensing objectives and/or the Statement of Gambling Policy.
17. Similarly, under the 2005 Act the Council can impose its own conditions even where there have been no objections to an application for a premises licence. Again, there would have to be clear and sustainable reasons for this.
18. Under the 2005 Act, but not the 2003 Act, there are a set of standard mandatory conditions that have to be imposed on each licence depending on the type of premises. For example, a licence for bingo premises must have attached a condition requiring a prominently placed notice that sets out the admission charge, participation fee and any amount that will be deducted from the participation fee in respect of prizes.
19. There are also a smaller number of default conditions that Councils have a discretion to remove or vary. Councils can impose their own special conditions, if these are justifiable, and provided they do not conflict with any condition attached to the operating licence.

20. Under the 2005 Act applicants for premises licences will not submit their own “operating schedule” as they do under the 2003 Act. This is because the operational details of the gambling business will already be controlled by the operating licence granted by the Commission.
21. The issues that will be considered by the Council in the case of applications under the 2005 Act will therefore be much narrower than in the case of the 2003 Act. Generally, the Council would be look at any special factors in the location or character of the premises that might require the application to be refused or require special conditions set by the Council.
22. The 2005 Act is clearer than the 2003 in stating expressly that the Council must not have regard to the existence or likelihood of planning permission or building control consent when any application for a premises licence is considered.
23. Under both the 2003 and 2005 Acts applications for premises licences can be subject to objections (“relevant representations”) from local residents and businesses and from a list of statutorily defined “responsible authorities”. Some of these “responsible authorities” are listed under both Acts, for example, the Police, Fire Authority and those Council Services responsible for town planning, public health, environmental protection and child protection. Under the 2005 the list of “responsible authorities” also includes the Commission and H.M. Revenue & Customs. It should be noted that the Licensing Authority itself, under the 2005 Act but not the 2003 Act, can make relevant representations against an application and can initiate a “review” of an existing licence.

GRAND-FATHER RIGHTS

24. The transitional provisions for the 2005 Act, as with the 2003 Act, allow for the holders of existing licences under the “old” legislation to benefit from “grand-father” rights. This means that existing betting offices, bingo premises, tracks and gaming machine arcades will automatically be entitled to a new premises licence under the 2005 Act for their existing gambling activities provided they apply to the Council by 31 August 2007. These premises licences will be subject to the statutory mandatory conditions and the default conditions. Any addition to those activities would require an application for a variation which could be subject to objections but the Council could not disallow activities already permitted under the old law.

RIGHTS OF APPEAL

25. An applicant for a premises licence who is aggrieved by the Council’s refusal to grant it or by the imposition of any special conditions has a right of appeal to the local Magistrates Court. The same right of appeal applies to a local resident/business or responsible authority that made an objection to an application which the Council decided to grant. The Magistrates have the power to rehear the application afresh or to remit the matter back to the Council for decision with a direction about a specific point. Decisions by the

Council under the 2005 Act will also be potentially subject to applications for Judicial Review but, because of the cost and the wide rights of appeal to the Magistrates, such cases are likely to be rare.

[the words proposed for addition or insertion are shown in italics and underlined and the words proposed for deletion are shown struck through]

PART 3, Section C – Terms of Reference of Full Council and Non-Executive Bodies - in the new Council Constitution. This extract starts at page 8 of Section C under the heading “Committees”.

[In the old Constitution this was Part E.7]

6. Licensing Committee

- (1) The Licensing Committee has all the functions referred to it by law under the Licensing Act 2003 *and the Gambling Act 2005*. These include:
- (a) To be responsible for monitoring the operation of the Acts, and licensable activities *and gambling* in the Borough;
 - (b) To receive reports on these matters and on the functions delegated to the Licensing Sub-Committees and to officers. To call for a report on any individual case;
 - (c) To be consulted on the review and determination of the Licensing Policy Statement *and the Statement of Gambling Policy* including procedures for Council consultation with external stakeholders;
 - (d) To determine the procedures to be followed in handling applications, notices, representations and all hearings, subject to the relevant Regulations;
 - (e) *Subject to Regulations, to determine the fees payable for applications for premises licences and related matters under the Gambling Act 2005;*
 - (f) To exercise the functions of the Licensing Sub-Committees in relation to any premises, site or event where 500 or more persons are to be present;
 - (f) To exercise the functions of the Licensing Sub-Committees in any case referred to the Committee by its Chair, or by the Chair of a Licensing Sub-Committee on the grounds of its special significance or difficulty;
 - (g) In a Council Election Year when there is a need to hold a hearing in the period between Election day and the Annual Meeting of the Council, those Members of the Licensing Committee who are re-elected as Councillors shall meet as the Licensing Committee to

exercise any of the functions of the Licensing Sub-Committees, or under (e) above, and shall elect a Chair for the meeting.

- (2) Excluded from the Licensing Committee's terms of reference are:
- (a) The functions statutorily referred to the General Purposes Committee, *The Executive and the full Council* including the *formal* review and determination of the Licensing Policy Statement *and the Statement of Gambling Policy*;
 - (b) The functions delegated to the Licensing Sub-Committees, as set out below, except where referred back to the Committee under subparagraph 6(1)(f) above.

[the words proposed for addition or insertion are shown in italics and underlined and the words proposed for deletion are shown struck through]

[the words in **bold text** which refer to the dates when specific functions come into effect, or are repealed under the Gambling Act 2005, are intended for explanation and direction and not as a part of the permanent text of the Constitution]

PART 3, Section C – Terms of Reference of Full Council and Non-Executive Bodies – in the new Council Constitution. This extract starts at page 16 of Section C under the heading “Sub-Committees and Panels”.

[In the old Constitution this was Part E.7]

3. Under Licensing Committee

3.1 Licensing Sub-Committees

General Provisions

- (a) To exercise all the functions listed in ~~sub-paragraphs (c) to (q)~~ below these terms of reference in relation to any premises, site or event where less than 500 persons are to be present;
- (b) The Chair of a Licensing Sub-Committee may, before hearing it, refer any case falling within ~~(a)~~ above these terms of reference to the Licensing Committee on the grounds of its special significance or difficulty. This power may also be exercised by the Chair of the Licensing Committee;
- (c) Licensing Sub-Committees have the power to make final decisions on behalf of the Council on matters within their terms of reference and there is no right of appeal to the Licensing Committee.

Functions under both the Licensing Act 2003 and the Gambling Act 2005

- (d) To determine applications for premises licences where relevant representations have been made;
- (e) To determine applications for provisional statements where relevant representations have been made;
- (f) To determine applications for variations of premises licences where relevant representations have been made;

- (g) To determine valid applications for review of premises licences;
- (h) To decide on any other matter ~~within the licensing functions under the Licensing Act 2003~~ where it is necessary or desirable for Members to make that decision;

Functions under the Licensing Act 2003 alone

- (i) To determine applications to vary designated premises supervisors following police objections;
- (j) To determine applications for transfer of premises licences following police objections;
- (k) To consider police objections made to interim authority notices;
- (l) To determine applications for club premises certificates where relevant representations have been made;
- (m) To determine applications to vary club premises certificates where relevant representations have been made;
- (n) To determine valid applications for review of club premises certificates;
- (o) To decide whether to give counter notices following police objections to temporary event notices;
- (p) To determine applications for grants of personal licences following police objections;
- (q) To determine applications for renewals of personal licences following police objections;
- (r) To decide on revocation of personal licences where convictions come to light after grant;

Functions under the Gambling Act 2005 alone

- (s) To determine applications for transfer of premises licences following representations by the Gambling Commission or others;
- (t) To determine applications for the reinstatement of premises licences where relevant representations have been made;
- (u) To decide whether to give counter notices following objections to temporary use notices;

- (v) To determine applications for the grant of club gaming permits and club machine permits where objections have been received;
- (w) To determine proposals to cancel club gaming permits and club machine permits where the holder requests a hearing;
- (x) When the licence holder requests a hearing, to determine officer proposals: (i) to make an order removing the entitlement of an on-premises alcohol licence holder to have one or two gaming machines, or (ii) to cancel or vary a licensed premises gaming machine permit;
- (y) To determine licensed premises gaming machine permit applications for 5 or more machines and all applications for any number of machines where there is cause for concern about the proper management of the premises;
- (z) ~~To determine applications for permits for amusements with prizes gaming machines in accordance with the policy resolution of the Licensing Committee on 6 December 2005; [this sub-paragraph to be deleted on repeal with effect from 1st June 2007]~~
- (aa) ~~To determine applications for permits for games or lotteries under section 16 of the Lotteries and Amusements Act 1976; [this sub-paragraph to be deleted on repeal with effect from 1st September 2007]~~
- (bb) ~~To determine applications for orders permitting games under section 6 of the Gaming Act 1968; [this sub-paragraph to be deleted on repeal with effect from 1st September 2007]~~

APPENDIX 5

[The words proposed for addition and insertion are shown in italics and underlined]

APPENDIX E in the new Council Constitution - Scheme of Delegation to Officers

PART F.7

Section 4 – Delegated Powers of the Director of Urban Environment

[the text shown below would be added to the end of the schedule of statutory delegations starting at page 110 of Part F.7 in the Constitution]

<u>Gambling Act 2005</u>	<u>The delegations below do not include the functions of the Licensing Sub-Committees</u>	
<u>Sections 29, 30, 350 and Schedule 6 Parts 1 & 4</u>	<u>Duties and powers to provide information required or requested by the Gambling Commission or other bodies</u>	<u>AD-Enf</u>
<u>Sections 33, 37, 41, 42, 43 and 44</u>	<u>Power to prosecute and enforce against offences including unlawful use of premises for gambling activities</u>	<u>AD-Enf</u>
<u>Section 156</u>	<u>Duty to make publicly available the register of premises licences and to provide copies on payment of prescribed fees</u>	<u>AD-Enf</u>
<u>Section 161</u>	<u>Power to make representations on applications for premises licences</u>	<u>AD-Enf</u>
<u>Sections 163 to 165 and 167 to 169</u>	<u>Powers to grant or reject applications where valid representations have not been made, to give relevant notices and to impose or exclude conditions</u>	<u>AD-Enf</u>
<u>Section 185</u>	<u>Power to prosecute for failure to keep licence on premises or make it available on request</u>	<u>AD-Enf</u>
<u>Sections 186 to 190</u>	<u>Power to alter or provide copies of premises licence on application and to enforce provisions. Power to vary or transfer a premises licence where valid representations have not been made and to impose or exclude conditions</u>	<u>AD-Enf</u>
<u>Sections 192 to 196</u>	<u>Power to notify surrenders, revoke premises licence on non-payment of fees and to reinstate licence</u>	<u>AD-Enf</u>
<u>Section 197 to 200</u>	<u>Power to grant an application for review of a premises licence or to reject an application under s.198(1), to initiate any review and to make all arrangements connected with the hearing of a review by Members</u>	<u>AD-Enf</u>

<u>Sections 206 to 209</u>	<u>Power to conduct appeals</u>	AD-Enf
<u>Sections 218, 220, 222, 225, 226, 227, 228 and 234</u>	<u>Power to give counter-notice in response to a temporary use notice, to acknowledge temporary use notice, to agree with other parties in the event of objection that a hearing is unnecessary, to dismiss objections, to conduct appeals and to endorse, return and provide copies of temporary use notices and to maintain and make available the register</u>	AD-Enf
<u>Section 242</u>	<u>Power to prosecute for making a gaming machine available for use in contravention of an operating schedule or Regulations</u>	AD-Enf
<u>Section 247 and Schedule 10</u>	<u>Power to grant or reject applications for the grant or renewal of permits for family entertainment gaming machines including consideration of representations, making notifications, replacing permits, the conduct of appeals, maintaining and making available the register, providing copies on payment of fees and enforcement of all provisions</u>	AD-Enf
<u>Section 258 to 261 and Schedule 11</u>	<u>Power to prosecute and enforce in cases of unlawfully promoting or facilitating a lottery and misusing profits of lotteries and exempt lotteries</u>	AD-Enf
<u>Section 262 and Schedule 11 Parts 4 & 5</u>	<u>Power to register or refuse registration of small society and non-commercial society lotteries in accordance with the provisions including cancellations, provision of copies, the conduct of appeals, maintaining and making available records and enforcing all provisions</u>	AD-Enf
<u>Section 274 and Schedule 12</u>	<u>Power to grant or refuse applications for the grant or renewal of club gaming permits or club machine permits in accordance with the provisions including grant by "fast track procedure", variation, cancellation, and surrender of permits, the conduct of appeals, maintaining and making available the register, providing copies on payment of fees and enforcement of all provisions</u>	AD-Enf
<u>Section 283 and Schedule 13</u>	<u>Power to grant, refuse or modify applications for licensed premises gaming machine permits in accordance with the provisions including the variation, transfer or cancellation of permits, the conduct of appeals, maintaining and making available the register, providing copies on payment of fees and enforcement of all provisions</u>	AD-Enf
<u>Section 284</u>	<u>Power to make orders for specific premises removing the right to provide exempt gaming under section 279 or the right to make up to two gaming machines available for use under section 282 in accordance with the requirements for notifications, considering representations and the conduct of appeals</u>	AD-Enf

<u>Section 289 and Schedule 14</u>	<u>Power to grant or refuse applications for prize gaming permits in accordance with the provisions including amendment and renewal of permits, the conduct of appeals, maintaining and making available the register, providing copies on payment of fees and enforcement of all provisions. Power to prepare a draft statement of principles in relation to prize gaming permits for approval by Members</u>	AD-Enf
<u>Section 304</u>	<u>Power to designate officers as authorised persons for the purposes of the Act</u>	AD-Enf delegation to AD only
<u>Section 305</u>	<u>Power to undertake activities to assess compliance with the Act or detect offences</u>	AD-Enf
<u>Section 307, 309, 310, 311, 312, 313, 314, 315, 317, 318, 319, 322 and 326</u>	<u>Power to enter premises in connection with facilities for gambling, gaming machines at family entertainment centres, premises licensed for alcohol, prize gaming permits, clubs, licensed premises, lotteries, temporary use notices, and to exercise all functions under these provisions including application for warrants and enforcement against obstruction</u>	AD-Enf
<u>Section 342</u>	<u>Power to prosecute in relation to persons giving false or misleading information</u>	AD-Enf
<u>Section 346</u>	<u>Power to prosecute for any offence referred to in this section</u>	AD-Enf
<u>Section 349</u>	<u>Power to prepare and consult upon a draft statement of principles and any review or revision of such statement subject to Members' approval of the final statement or revision</u>	AD-Enf

[the words proposed for addition or insertion are shown in italics and underlined and the words proposed for deletion are struck through]

[the recommended changes are on pages 1, 2, 3, 6, 7 and 11]

HARINGEY COUNCIL – LOCAL LICENSING PROCEDURE RULES FOR HEARINGS UNDER THE LICENSING ACT 2003 AND THE GAMBLING ACT 2005

Interpretation

1. “Acts” means the Licensing Act 2003 *and the Gambling Act 2005*

“Applicant” means a natural person or other legal entity making any application *or initiating any procedure* or giving any notice for any form of licence, certificate, consent or determination in accordance with the Acts

“Application” means any type of application, *procedure* or notice for any form of licence, certificate, consent or determination for which provision is made under the Acts

“Chair” means the Chair of the Licensing Committee or Licensing Sub-Committee determining the relevant application

“Committee clerk” means the officer(s) instructed by the Head of Members’ Services *Local Democracy* to attend Licensing Sub-Committee meetings to take the minutes and assist with the proper running of the meetings

“Council” means the Council of the London Borough of Haringey

“Gambling hearing” means a hearing by a Sub-Committee to determine an application under the Gambling Act 2005

“Hearing” means a Gambling hearing or a Licensing Hearing as appropriate to the application

“Hearings Regulations” means The Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005 no. 44) *in relation to licensing hearings and The Gambling Act (Proceedings of Licensing Committees and Sub-Committees) (England and Wales) Regulations 2007 in relation to gambling hearings.*

“Interested party” has the meaning prescribed in the Acts

“Legal representative” means the officer(s) instructed by the Head of Legal Services to attend Licensing Sub-Committee meetings to advise on matters of law and procedure

“Licensing hearing” means a hearing by a Sub-Committee to determine an application under the Licensing Act 2003

“Licensing Committee” means the Council’s statutory Committee under the Acts

“Licensing representative” means the officer(s) instructed by the Assistant Director, Enforcement to administer application procedures and to attend Licensing Sub-Committee meetings to advise on licensing matters and gambling matters

“Licensing Service” means the Service under the Assistant Director, Enforcement responsible for administering the Council’s functions under the Acts

“Member” means Haringey Councillor appointed to serve as a Member of the Licensing Committee or a Licensing Sub-Committee as the context requires

“Notice” means any notice made in accordance with the Acts, or Regulations made thereunder, in relation to an application

“Objector” means each interested party, responsible authority, other natural person or legal entity who/which has made a relevant representations or an objection or given any notice in relation to any application

“Party/Parties” means the applicant(s) and/or the objector(s) in relation to any particular application

“Premises” means any premises, ~~or~~ land, vessel, vehicle or moveable structure in respect of which an application is made

“Relevant Representation” means any relevant representation made in accordance with the Acts, or Regulations made thereunder, in relation to an application

“Responsible authority” has the meaning prescribed in the Acts

“Sub-Committee” means a Licensing Sub-Committee to which the Licensing Committee of the Council has delegated powers to determine applications. Unless the context otherwise requires, this shall be interpreted to include the Council’s Licensing Committee when that Committee is hearing an application within its terms of reference.

“Ward Councillor” means a Haringey Councillor representing a Ward within which are located any premises that are the subject of an application.

Scope and Application

2. These Rules apply to all applications *and hearings* made in accordance with the Acts, or Regulations made thereunder. These Rules should be read and interpreted in conjunction the Hearings Regulations and the Acts.
3. *Council/Committee Standing Orders do not apply to hearings except the Standing Order on Attendance/Substitute Members.*

Pre-Hearing Procedure

4. The Licensing Service will notify the relevant Ward Councillors of each application, notice or relevant representation relating to premises within their Ward within 2 working days of receiving such application, notice or relevant representation. This requirement is in addition to any requirement arising under the Hearings Regulations.
5. The Licensing Service may seek to mediate between the parties to an application with a view to securing: -
 - (a) the withdrawal of any relevant representation or notice, or
 - (b) the agreement of the parties that a hearing is unnecessary.
6. If, in any case, the parties agree that a hearing is unnecessary, the Licensing representative, in consultation with the Chair, shall decide whether the Council consider that a hearing is unnecessary to determine the application and shall give notice of that decision to the parties forthwith.
7. In any case where it has been decided that a hearing is unnecessary, the Sub-Committee shall consider the application at an ordinary meeting. In reaching its decision, the Sub-Committee shall take into account the form of application and accompanying documents, any written relevant representations and notices that have not been withdrawn and any report or other documents that appear to be relevant.

Membership and Quorum for Hearings

8. Where an application relates to premises within a Ward, then a Ward Councillor shall not take part in the decision upon that application as a Member.
9. So far as practicable, hearings will be arranged so that the Sub-Committee determining the application does not include Members representing any Ward in which premises affected by the application are located
10. The quorum for any hearing of a Sub-Committee shall be three Members and the quorum for any hearing by the Licensing Committee shall be four Members.

11. Any Member arriving after the commencement of a hearing, or leaving during the course of a hearing, shall take no part, or no further part, in the conduct of that hearing or the decision on the application in question.

Councillors' Participation in Hearings

12. A Councillor, who is not a Member of the Sub-Committee determining the application in question, may participate in the hearing but only if the Councillor is an objector who has made relevant representations in accordance with the Hearings Regulations and the Acts, or if the Councillor has been asked to attend by a party in order to act as a witness or a representative for that party.
13. A Councillor, who is a Member of the Sub-Committee determining the application in question, will have a prejudicial interest in that application if the he/she makes a relevant representation by way of objection to it and may well have a prejudicial interest if he/she has otherwise been involved in supporting or opposing the application. Any Member of a Sub-Committee who has a prejudicial interest for these or other reasons must not participate in the decision upon the application and must not be present at the hearing in any capacity or at all.
14. Any Member of a Sub-Committee who has made a relevant representation by way of objection to an application on behalf of his/her constituents and who cannot attend the hearing personally by reason of Rule 13, should arrange to be represented by an agent or a fellow Ward Councillor who is not a Member of the Sub-Committee.
15. A Councillor will have a personal interest in an application if it might reasonably be regarded as affecting that Councillor (or his/her spouse/partner, relatives, friends, employer or business) to a greater extent than other residents in the area. A Councillor with a personal interest shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee. This is in order to avoid any possible allegation of bias.
16. Whenever a Councillor, who is not a Member of the Sub-Committee, intends to participate in a hearing in accordance with Rule 12, the Councillor must consider whether he/she has a personal or a prejudicial interest before the hearing. A Councillor with a personal interest, who is not a Member of the Sub-Committee determining the application, may participate in a hearing in accordance with Rule 12 but must disclose such an interest first. A Councillor with a prejudicial interest, who is not a Member of the Sub-Committee determining the application, must not be present at the hearing in any capacity or at all. Members must be aware that their Code of Conduct applies to all Councillors at all times in whatever capacity they attend a hearing.
17. Where a Member of a Sub-Committee has had any form of personal or business involvement with a party to an application, which is to be

determined by the Sub-Committee, or with any person connected to a party, then the Member must consider whether such involvement could amount to a personal or a prejudicial interest or whether such an interest could exist for any other reason. If there is any doubt on this matter, the Member must seek the advice of the Monitoring Officer or the legal representative.

18. A Councillor who has participated in a decision by the Council to make any application, or to support or assist an application made by another person, shall not participate in decision-making on the application in question as a Member of the relevant Sub-Committee.

Lobbying of Members and Expressions of Opinion by Members

19. If a Member of a Sub-Committee is approached by a party or a lobbyist for or against an application to be determined by that Sub-Committee, then the Member must: -
- (a) explain that he/she cannot discuss the matter, and
 - (b) refer the lobbyist to another Councillor who is not a Member of the Sub-Committee or to the Licensing Service who can give further information on the process of dealing with the application, and
 - (c) keep an adequate written record of the approach, and
 - (d) disclose the fact of the approach before the hearing in accordance with Rule 51(c).
20. If a Member of a Sub-Committee receives any written representation either supporting or opposing an application to be determined by that Sub-Committee, then the Member shall pass the representation to the Licensing Service for appropriate action.
21. A Member of a Sub-Committee must avoid expressing any personal opinion about the merits of an application to be determined by that Sub-Committee and must not take any action that would bring into question the Member's capacity to consider the application objectively.
22. A Member of a Sub-Committee must not accept any gift, favour or free hospitality that could be seen as connected to any application to be determined by that Sub-Committee.
23. Members of Sub-Committees are not to be influenced by party political factors or pressures when determining any application.

Non-Attendance at Hearings

24. Where a party has not notified the Council that he/she does not intend to attend or to be represented at a hearing, and that party fails to attend the hearing then the Sub-Committee may either: -
- (a) adjourn the hearing to a specified date where it considers this to be necessary in the public interest, or

- (b) hold the hearing in the party's absence.
- 25. Normally, a party who fails to attend a hearing in the circumstances described in Rule 24 above, will be allowed one further opportunity to attend the hearing adjourned to a specified date.
- 26. Where an adjournment is granted, the Licensing representative shall make every reasonable endeavour to contact the party who failed to attend by telephone or in person in order to warn them of the new date for the adjourned hearing and the likelihood that the application will be determined in that party's absence in the event of further failure to attend.

Calling Witnesses

- 27. Where a party wishes to call a witness to give evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing stating: -
 - (a) the name of the witness, and
 - (b) a brief description of the point or points upon which the witness' evidence may assist the Sub-Committee in making its decision on the application
- 28. Where a party has given notice under Rule 27, the Licensing Service shall forthwith communicate this notice to the other party/parties, if possible by electronic means or by the most rapid practicable alternative means.
- 29. Where a party has given notice under Rule 27, the Sub-Committee shall consider at the commencement of the hearing whether it will permit the party to call the witness for the purpose(s) notified. Such permission shall not be refused at a gambling hearing and shall not be unreasonably withheld at a licensing hearing or at any hearing where there has not been full compliance with Rule 27.

Documentary Evidence

- 30. Where a party wishes to rely upon documentary evidence at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. This notice shall be accompanied by six copies for the Council and sufficient additional copies of all the relevant documentary evidence for each other party made known to the notifying party. Compliance with this Rule is especially important in relation to documents that are not easy to photocopy because, for example, they are coloured or not A4 size.
- 31. Where a party has given notice under Rule 30, the Licensing Service shall forthwith communicate all the relevant documentary evidence to the other party/parties if possible by electronic means or by the most rapid practicable alternative means.

32. Where a party has complied fully with Rule 30, that party shall have the right to have the relevant documentary evidence admitted and, subject to the provisions of the Hearings Regulations, the Sub-Committee shall take such evidence into account in making its decision.
33. In any case where a party wishes to rely upon documentary evidence but has not fully complied with Rule 30, then at the commencement of the hearing the Sub-Committee shall follow this procedure: -
- (a) the Chair shall establish whether the other party/parties consent to the documentary evidence being admitted, and
 - (b) if all the other parties so consent, then the documentary evidence shall be treated as if Rule 32 applied to it, or
 - (c) if any party does not so consent, and the documentary evidence has only been made available to all the parties at the hearing, then the Sub-Committee shall refuse to admit it, or ~~decide whether to admit the documentary evidence nonetheless~~
 - (d) if any party does not so consent, and the documentary evidence has been made available to all the parties before the hearing but there has not been full compliance with Rule 30, then the Sub-Committee shall decide whether to admit the documentary evidence nonetheless, and
 - (e) in making its decision under Rule 33(d), the Sub-Committee shall have regard to any reasons given for the late production of the documentary evidence, or other non-compliance with Rule 30.
 - (f) in making its decision under Rule 33(d), the Sub-Committee shall consider how far any other party may be prejudiced by the late production of the documentary evidence, or other non-compliance with Rule 30, and also the extent of the prejudice to the party seeking to rely upon the evidence if its admission is refused.
 - (g) in making its decision under Rule 33(d), the Sub-Committee shall consider whether it would be desirable in the public interest to adjourn the hearing for any period of time, or to another date, in order to allow any other party a reasonable opportunity to consider the documentary evidence.
 - (h) in making its decisions under Rules 33(d) and 33(g) above, the Sub-Committee shall consider any representations by the parties and the advice of its legal representative.
34. Where a party wishes to rely upon documentary evidence at a hearing but considers that any details of that evidence should be treated as confidential, for example the name or address of the signatory of a letter, then the party may exclude such confidential details from any documentary evidence sent to the Licensing Service under Rule 30. This Rule does not apply to any notice given or relevant representation made, since the originator must state his/her name and address in order for it to be valid.
35. In any case where confidential details are excluded under Rule 34, the Licensing Service must be informed that a request will be made by the party under Rule 42. If permission is refused under Rule 43, the whole or part of the relevant documentary evidence may be excluded from consideration. If

permission is granted to exclude any confidential details, this may affect the weight to be given to the rest of the related evidence under Rule 58.

36. Where a party wishes to rely upon a model, or any form of evidence that cannot be photocopied, at a hearing that party must give written notice to the Licensing Service of this intention no later than ten working days before the date of the hearing. The party seeking to rely upon such evidence shall indicate in the notice, so far as practicable, the nature of that evidence and the purpose(s) of producing it.
37. Where a party has given notice under Rule 36, the Licensing Service shall forthwith communicate all relevant information about the evidence to the other party/parties if possible by electronic means or the most rapid practicable alternative means.
38. Rules 30 to 33 shall be applied flexibly to evidence of the type described in Rule 36 with a presumption that such evidence will be admitted if it materially helps the Sub-Committee to understand relevant issues between the parties at the hearing.

Petitions

39. Petitions shall on each page state their purpose and contain a warning to potential signatories that they are liable to be made public and that a copy will be supplied to other parties to the application. Each person signing should print their name and address legibly. At the end a petition must state the name(s) and address(es) of the persons circulating the petition and the dates on which this took place.
40. A petition must comply with Rule 39 unless the Sub-Committee decide to waive compliance with any requirement(s) for a good reason. A petition shall also be treated as documentary evidence and Rules 30 to 33 shall apply.

Private Hearings and Confidential Evidence

41. In accordance with the Hearings Regulations, hearings shall take place in public unless a decision to the contrary is made under Rule 43 in any case.
42. Where a party or a witness consider that any giving of evidence, or part of any evidence, or part of a hearing, should be held in private, then the party or their witness shall make such request to the Chair at the commencement of the hearing.
43. The Sub-Committee may decide to exclude members of the public from any part of a hearing and/or treat any evidence as confidential where the Sub-Committee consider that the public interest in preserving the confidentiality of any evidence outweighs the public interest in that part of the hearing taking place in public.

44. For the purposes of Rule 43, a party, a witness and any person assisting or representing a party, may be excluded from any part of a hearing or from hearing or seeing any particular evidence. Where the Sub-Committee decide to hold part of a hearing in private, a party and/or his/her representative shall not be excluded except for very special reasons.
45. Where the Sub-Committee decide to hold part of a hearing in private, the officers of the Licensing Service will not be excluded except for very special reasons. The Committee Clerk and legal representative shall not be excluded.
46. Before making any decision under Rules 43 or 45, the Sub-Committee shall consider the advice of its legal representative.
47. Where any part of a hearing takes place in private, the hearing will be adjourned immediately thereafter for a period of time sufficient to enable the Committee clerk to prepare a fair summary of the evidence and proceedings heard in private. This summary will exclude all details that the Sub-Committee, acting with the advice of its legal representative, consider should remain confidential. Upon the resumption of the hearing, the summary will be read out publicly in the presence of all the parties.
48. Rules 41 to 47 shall apply as nearly as may be practicable to documentary evidence where, with the consent of the Sub-Committee, confidential details may be disclosed to the Sub-Committee but excluded from disclosure to the public or persons mentioned in Rule 44.
49. Rules 41 to 47 shall apply, as nearly as may be practicable, where a witness wishes to disclose his/her name and/or address or other details only to the Sub-Committee and Council officers but not to the public or persons mentioned in Rule 44.
50. Whenever any evidence or information has been treated as confidential under Rules 41 to 49, the Sub-Committee shall consider whether to alter the weight given to that evidence in accordance with Rule 58.

Commencement of the Hearing

51. At the commencement of each hearing the Sub-Committee shall follow this procedure but may omit or abridge any step or Rule as appropriate -
 - (a) The Chair will introduce him/herself and invite the Members and officers to introduce themselves
 - (b) The Chair will invite the parties to introduce themselves and their representatives (if any)
 - (c) The Chair will invite Members to disclose any contacts they may have had before the hearing with the parties or lobbyists for them.
 - (d) If any party fails to attend the hearing, the Sub-Committee shall decide whether to proceed with the hearing in the absence of that party or whether to adjourn the hearing to another date. The Sub-Committee

- shall have regard to Rules 24 and 25 and Regulations 12 and 20 of the Hearings Regulations in making such decisions.
- (e) The Chair will explain the procedure to be followed by reference to these Rules.
 - (f) The Chair will suggest the order of the topic headings for discussion at the hearing and will then invite the comments of the parties. In the light of such comments the Sub-Committee will confirm the order of the topic headings or amend them.
 - (g) The Chair will ascertain whether there are any requests by any of the parties to call a witness and the Sub-Committee will then determine any such request under Rule 29.
 - (h) The Chair will ascertain whether there is likely to be a request from any of the parties to cross-examine a witness called by another party and, if so, the reasons given for seeking a cross-examination. The Sub-Committee will then determine whether to allow such cross-examination in the interests of establishing relevant facts.
 - (i) The Chair will ascertain whether there are any requests by any of the parties to produce documentary evidence, including models etc., and whether there has been full compliance with Rules 30 to 37. In the event of any non-compliance these Rules, the Sub-Committee shall decide whether to admit the evidence and/or adjourn the hearing under Rules 33 and 38.
 - (j) The Chair will ascertain whether there are any requests by any of the parties to treat any evidence as confidential or to hear any of the evidence, or hold any part of the hearing, in private. If so, the Sub-Committee shall decide the request under Rules 43 to 49.
 - (k) In any case where the Licensing Service has informed a party that there are particular points on which the Sub-Committee will need clarification, the Chair will then invite the party to provide such clarification.

Procedure and Evidence at Hearing

- 52. In accordance with Hearings Regulations, the hearing shall take the form of a discussion led by the Chair. With permission of the Chair the other Members of the Sub-Committee may ask questions of the parties, their representatives and witnesses and may lead the discussion on specific topics or points.
- 53. The hearing shall follow the order of the topic headings determined under Rule 51(f) unless there is a good reason to depart from this agreed by the Sub-Committee.
- 54. The Chair, or Member leading the discussion, shall endeavour to ensure that each party has a reasonable opportunity to explain their case under each topic heading. The parties, their representatives and witnesses have a duty to make their evidence and comments succinct and relevant to the issues under discussion.
- 55. A party shall not be permitted to cross-examine another party or their witness unless this has been allowed under Rule 51(h). If a party has concerns

relating to the evidence or comments of another party or their witness, this should be explained to the Sub-Committee so that the Chair can question the other party/witness about these concerns before completing that topic heading.

56. Where permission has been given to a party to call a witness, that witness may give evidence in one or more stages when the discussion covers the appropriate topic heading(s). Normally, a witness will be invited by the Chair to make a statement. The witness will then be subject to cross-examination by the other party/parties if this has been allowed under Rule 51(h). Then the Sub-Committee may question the witness. A party shall not re-examine his/her own witness except with the consent of the Chair to clarify a significant point in earlier evidence.
57. At the end of each topic heading the Chair shall invite the Licensing Service or legal representative to make any comments that they may consider necessary. With the consent of the Chair, these officers may question parties or witnesses directly or put their questions through the Chair.
58. Strict legal rules of evidence shall not apply. However, in considering what weight to place on the evidence or comments of any party or witness, the Sub-Committee shall have regard to the extent to which information was:
 - (a) within a witness' direct knowledge, and
 - (b) clearly and specifically related to the points at issue in the hearing, and
 - (c) tested by questioning.
59. The Chair shall be responsible for the orderly conduct of the hearing. The Chair may require any person to be silent and may regulate the order in which persons speak at the hearing. The Chair will endeavour to prevent remarks which are repetitious or irrelevant or which amount to unsubstantiated offensive allegations against any person, present or not.
60. The Chair may require any person at the hearing who is considered to be behaving in a disruptive manner to leave the meeting and may prohibit his/her return except on compliance with specified conditions. A person excluded from a hearing under this Rule may put in writing any information or submission they intended for the hearing. At a gambling hearing the Sub-Committee must take any such information into account in reaching its decision.
61. The Chair on his/her own motion may indicate the decision of the Sub-Committee on any procedural matter within the scope of these Rules notwithstanding that the decision is stated in these Rules to be that of the Sub-Committee. This is subject to the right of any Member, who makes an immediate request, to have the matter put to the vote of the Sub-Committee as a whole. Rule 66 will apply to such a vote.
62. In accordance with the Hearings Regulations, each party has the right to make a closing address to the Sub-Committee in order to summarise his/her

case at the end of the hearing. Unless the applicant consents to a different order, the applicant shall have the right to make the final address.

63. Each party must be allowed an equal maximum period of time to make a closing address. Normally, the Chair will invite each party to state how much time that party will require. However, the Sub-Committee may fix a greater or lesser maximum time for each closing address provided that this is reasonable in relation to the weight and complexity of the issues at the hearing.

Time Limit for Hearings

64. At 9.30 p.m. the Chair must ask the Sub-Committee to agree –
 - (a) to continue the hearing in hand and, if necessary, to suspend these Rules so as to allow it to continue for a reasonably short time beyond 10.00 p.m. when this is necessary to complete the hearing and advisable in the interests of fairness, or
 - (b) to adjourn the hearing until a date to be fixed.
65. Hearings shall not normally continue later than 10.00 p.m. and no new hearing shall be commenced after 10.00 p.m.

Decision Making

66. At the end of a hearing the Sub-Committee may confer publicly and announce its decision on the application(s) immediately.
67. Alternatively, the Sub-Committee may defer reaching its decision until a later time or date, in so far as this accords with the Hearings Regulations.
68. In any case, and whether or not Rule 66 applies, the Sub-Committee may retire with the Committee clerk and legal representative to another room to deliberate in private.
69. The Sub-Committee, if making a decision at that time, must reach their decision by a majority vote. The Licensing Committee, if making a decision at that time, must reach their decision by a majority vote but, in the event of an equality of votes, the Chair shall have a second, or casting, vote.
70. The decision(s) will then be summarised in writing and the Sub-Committee will return to the public meeting so that the Committee clerk can read out the decision(s) in the presence of all the parties and their representatives.
71. If the Sub-Committee require any clarification of matters of fact before reaching their decision(s), the Sub-Committee shall return to the public meeting and put questions to the parties, their witnesses or the Licensing representative in the presence of all the parties and their representatives.

72. If the legal representative gives legal advice on any point(s) material to the Sub-Committee's decision(s), this advice will be summarised and read out by the legal representative in public before the Committee Clerk reads out the decision(s).

Waivers and Irregularities

73. The Chair may agree to waive any of these Rules, including any time limit, in the case of any individual application where he/she considers that there is good reason to do so. Excepted from this power to waive are Rules 8 to 23 (inclusive). Any permanent variation of these Rules must be decided by the Licensing Committee.
74. Any irregularity arising from any failure to comply with any provision of these Rules before the Sub-Committee has made a determination shall not of itself render the proceedings void.
75. In any case of such an irregularity the Sub-Committee shall, if Members consider that any person may have been prejudiced as a result of the irregularity, take such steps as Members think fit to cure the irregularity before reaching a determination of the application(s). In any such case the Sub-Committee shall consult the legal representative before deciding upon any steps to cure the irregularity.
76. In any case where it appears after the Sub-Committee's determination that the decision has been vitiated by incorrect information or any procedural or legal error, the Legal Representative shall advise the Chair of this and of the steps necessary to remedy the problem. With the consent of the Chair, the Sub-Committee may reconvene to take the steps advised and/or to amend its decision. With the consent of the Chair in an appropriate case, the Members of the Sub-Committee may signify their consent to any steps advised and/or any amended decision without reconvening in person. When the legal representative so advises, the parties affected shall be invited to a reconvened hearing or, where appropriate, to signify their consent to any steps proposed without attending in person.

Cases Remitted by the Magistrates on Appeal

77. On an appeal to the Magistrates Court, the Court may remit the case to the Council for it to determine in accordance with the Direction of the Court. The Chair of the Licensing Committee on legal advice may wish the Council to contest that Direction by further legal proceedings. If not, the Chair will receive advice from the Head of Legal Services on how to comply with the Direction of the Court and will be requested to agree the appropriate procedure. So far as possible, these Rules will apply to any further hearing with such modifications as are advised to secure compliance with the Direction of the Court.