

General Purposes Committee**on 19th December 2005**Report Title: **Amendments to the Constitution relating to Licensing and Gaming**Report of: **The Head of Legal Services and Monitoring Officer**Wards(s) affected: **All**Report for: **Recommendation to Council****1. Purpose**

1.1 To consider the adoption of Local Licensing Procedure Rules, an addition to the terms of reference of the Licensing Sub-Committees and amendments to the scheme of delegation to officers relating to the Licensing Act 2003 and gaming machine regulation

2. Recommendations

2.1 That Members recommend to full Council:

- (i) the adoption of the Haringey Local Licensing Procedure Rules for Hearings, as set out in Appendix 1 to this report, as a new Part C.9 of the Council's Constitution
- (ii) the amendment of Part E.7 of the Constitution, as set out in Appendix 4 to this report, so as to add certain gaming regulation functions to the terms of reference of the Licensing Sub-Committees
- (iii) the amendment of the Scheme of Delegation to Officers, at Part F.7 of the Constitution, as set out in Appendices 2 and 3 to this report, so as to give powers to:
 - (a) the Head of Legal Services to make arrangements for disposing of cases remitted by the Magistrates after Licensing appeals, and
 - (b) the Assistant Director, Enforcement, to grant permits for no more than two amusement with prizes gaming machines in premises licensed to sell or supply alcohol in accordance with policy agreed by the Licensing Committee

Report Authorised by:

**Davina Fiore – Monitoring Officer
and Head of Legal Services**

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3. Executive Summary

3.1 This report recommends (i) the formal adoption as part of the Constitution of the Local Licensing Procedure Rules already used to regulate hearings for the last 4 months, (ii) amending the functions of Licensing Sub-Committees to include new gaming regulation powers, and (iii) giving the Head of Legal Services new delegated power to make arrangements to deal with cases remitted by the Magistrates Court after an appeal, and (iv) giving new delegated power to the Assistant Director, Enforcement, to grant no more than two amusement with prizes gaming machines in accordance with the policy established by resolution of the Licensing Committee on 6 December.

4. Reasons for any change in policy or for new policy development (if applicable)

4.1 Changes to the jurisdiction of the Council as Licensing Authority, after the main coming into force of the Licensing Act 2003, make it necessary to provide for the regulation of gaming machines in licensed premises.

5. Local Government (Access to Information) Act 1985

5.1 The following background papers were used in the preparation of this report:

(i) The Council's Constitution, and (ii) reports to the Licensing Committee on 6 December 2005 agenda items 7 and 8.

6. Adoption of the Local Licensing Procedure Rules

6.1 The "Haringey Council – Local Licensing Procedure Rules for Hearings under the Licensing Act 2003" are attached as Appendix 1 to this report. These rules were approved by the Licensing Committee on 15 March. At that time Members were advised that the Rules should stay outside the Council's Constitution in order to permit rapid amendment if necessary during a trial period of at least 3 months experience of their operation in practice.

6.2 The Local Licensing Procedure Rules have now been in regular use, on an approximately weekly basis, since late August. Together with the provisions of the Licensing Act 2003 and the Government's "Hearings Regulations" (S.I. 2005/44), the Local Licensing Procedure Rules have been regulating the hearings before Licensing Sub-Committees.

6.3 There have been over 30 contested hearings of applications for the conversion and variation of premises licences, objections by the Police to personal licences and more recently applications for new premises licences. In future, it is likely that Licensing Sub-Committees will be hearing applications for the "review" of existing premises licences where local residents complain of nuisance. The Local Licensing Procedure Rules have proved sufficiently flexible to deal with different types of case successfully.

6.4 The Local Licensing Procedure Rules were approved, with some relatively minor amendments, by the Licensing Committee on 6 December. The Licensing Committee

requested the General Purposes Committee (GPC) to recommend the Rules to full Council for adoption as part of the Council's Constitution.

6.5 The content of the Local Licensing Procedure Rules is within the jurisdiction of the Licensing Committee. The remit of the GPC is only to decide whether to recommend the Rules to full Council for adoption. In this context, the Government's "Local Government Act Constitutions Direction" 2000 states that Council Constitutions should include "any rules governing the conduct and proceedings and meetings of a Committee or Sub-Committee".

6.6 GPC Members will note that there are already three Codes or Protocols in the Constitution (Parts C4, C5 and C6) governing the conduct of Members of the Planning Applications Sub-Committee (PASC) and the hearing of representations before PASC. To secure consistency of treatment, it would be appropriate to adopt the Local Licensing Procedure Rules which cover equivalent matters relating to Licensing.

7. Delegation to Head of Legal Services relating to Remitted Appeal Cases

7.1 Whenever any of the parties to a licensing application is aggrieved by a decision of a Licensing body, they have a right of appeal to the local Magistrates Court. In most cases it is likely that the Magistrates would exercise their jurisdiction to re-hear the case afresh and substitute their own decision for that of the Council, assuming that the Magistrates reached a different conclusion.

7.2 However, in some cases the Magistrates may use their power to remit the case back to the Licensing Authority with a "Direction" to dispose of the case in a particular manner, for example, by including certain evidence excluded at the initial hearing. In such a case there would be a re-hearing before a Licensing Sub-Committee of the Council.

7.3 The practical arrangements for this would need to be authorised by the main Licensing Committee. Since it would not be a cost effective use of resources to hold a Committee meeting only to make a relatively minor procedural decision, it is recommended that the formal procedural decisions be delegated to the Head of Legal Services acting in consultation with the Chair of the Licensing Committee. This would not remove the right of Members of the relevant Licensing Sub-Committee to make the eventual decision on the substantive issues in the appeal case at the end of the re-hearing.

7.4 The power to be delegated would cover guidance on how to apply the Direction of the Magistrates Court to the re-hearing. For example, this might include specifying which Members were (or were not) to participate in the re-hearing, what evidence was to be included or excluded and which persons were to be notified of the re-hearing and permitted to participate.

7.5 If in any case the Chair of the Licensing Committee considered that the procedural decision was so important that it needed a Member-level decision, then the Chair could require the matter to be referred to the full Committee rather than being dealt with under the delegated power.

7.6 The proposed text of the new delegated power is set out in Appendix 2 to this report. It would appear in Part F.7 section 2 (delegations to officers in the Chief Executive's Service) at the end of the list of statutory powers under the heading "Licensing Act 2003 – section 181". GPC Members are requested to recommend this to full Council for incorporation into the Constitution.

8. Proposed Changes relating to Gaming

8.1 Appendix 5 to this report is the report on the Gaming Act provisions considered by the Licensing Committee on 6 December. In summary, the Council as Licensing Authority has acquired responsibility for many aspects of gaming regulation in premises licensed to sell or supply alcohol. This jurisdiction was taken over from the Magistrates Courts upon the main coming into force of the Licensing Act 2003 on 24 November.

8.2 The Licensing Committee agreed all the recommendations to it in paragraph 2.1 of the report. The first decision at 2.1 (a) was a resolution that permits for "fruit" or "slot" gaming machines would only be granted in main-purpose amusement arcades (as has long been the Council's policy) or in premises licensed to sell/supply alcohol excluding premises that only serve alcohol with meals (to accord with the legislation). In broad terms, fruit machines will only be allowed in amusement arcades, pubs and bars but not, for example, in fish and chip shops or non-alcohol cafes.

8.3 The Licensing Committee agreed at paragraph 2.1 (b) to grant no more than two fruit machine permits to premises licensed to sell/supply alcohol, in accordance with the policy above, without the need for a hearing. This simply continues the former practice of the Magistrates. To implement this decision, there needs to be an amendment to the current delegated power granted to the Assistant Director, Enforcement, so as to allow him/her to grant a maximum of two permits in premises licensed for the sale/supply of alcohol.

8.4 The proposed text to amend the delegated powers is set out in Appendix 3 to this report. It would appear in Part F.7, section 4, (delegations to officers in the Environmental Services Directorate) under the heading "Gaming Act 1968 - section 34". There is already a delegation covering decisions on permits outside amusement arcades. The changes would make clear that the delegation extended to granting "up to two" permits, but no more, in premises licensed for the sale or supply of alcohol with a proper bar. This would exclude premises only licensed to sell alcohol served with meals which by law cannot apply for fruit machine permits.

8.5 The scope of the delegated power here will be limited to grant or refusal. There is no procedure for objections by third parties. There is no power to impose conditions on permits. However applicants will be advised to ensure that fruit machines are sited so as to permit proper supervision and the prevention of any abuse.

8.6 The other delegated power under section 34 relates to amusement arcades. Members should note that there is no legal power for the Council to refuse to renew a permit for an amusement arcade except where there is clear evidence that proper measures have not been taken to exclude persons under age 18 or inspection by the Council has been obstructed. In such a case officers would, of course, refuse the permit. Applications for the new grant of permits for amusement arcades would be referred to

Members who would have a discretion to grant or refuse. A small technical amendment to the terms of the delegation makes this clearer.

8.7 Finally, the existing terms of reference of the Licensing Sub-Committees should be amended to include the new jurisdiction of these bodies to decide applications for more than two fruit machine permits in alcohol licensed premises. This addition will also cover the powers to determine the rare applications for permits for gaming under section 16 of the Lotteries and Amusements Act 1976 and section 6 of the Gaming Act 1968, as explained in paragraphs 3.3 (2) and (3) of Appendix 5.

8.8 The recommended amendment to the terms of reference is set out in Appendix 4 to this report. The terms of reference of the Licensing Sub-Committees are contained in Part E.7, section 3, paragraph 3.01. Three new sub-paragraphs (q), (r) and (s) are proposed to cover the matters agreed in principle by the Licensing Committee.

8.9 GPC Members are requested to recommend all the above changes to full Council for adoption as amendments to the Constitution.

9. Recommendations

9.1 That Members recommend to full Council:

- (i) the adoption of the Haringey Local Licensing Procedure Rules for Hearings, as set out in Appendix 1 to this report, as a new Part C.9 of the Council's Constitution
- (ii) the amendment of Part E.7 of the Constitution, as set out in Appendix 4 to this report, so as to add certain gaming regulation functions to the terms of reference of the Licensing Sub-Committees
- (iii) the amendment of the Scheme of Delegation to Officers, at Part F.7 of the Constitution, as set out in Appendices 2 and 3 to this report, so as to give powers to:
 - (a) the Head of Legal Services to make arrangements for disposing of cases remitted by the Magistrates after Licensing appeals, and
 - (b) the Assistant Director, Enforcement, to grant permits for no more than two amusement with prizes gaming machines in premises licensed to sell or supply alcohol in accordance with policy agreed by the Licensing Committee.

10. Comments of the Director of Finance

10.1 There are no specific financial implications

11. Comments of the Head of Legal Services

11.1 The legal implications are set out in the body of the report

12. Equalities Implications

12.1 There are no specific equalities implications

13. Use of Appendices / Tables / Photographs

- 13.1 Appendix 1 sets out the Haringey Local Licensing Procedure Rules for Hearings under the Licensing Act 2003 now proposed for recommendation to full Council and adoption as part of the Constitution.
- 13.2 Appendix 2 sets out the recommended new delegation to the Head of Legal Services of power to make arrangements for disposing of cases remitted to the Council by the Magistrates Court.
- 13.3 Appendix 3 sets out the recommended amendments to the delegation to the Assistant Director, Enforcement, of powers to grant permits for no more than two amusements with prizes gaming machines in premises licensed to sell or supply alcohol in accordance with policy agreed by the Licensing Committee.
- 13.4 Appendix 4 sets out the recommended addition of certain gaming regulation functions to the terms of reference of the Licensing Sub-Committees
- 13.5 Appendix 5 is the report to the Licensing Committee on 6 December about Gaming Act Provisions.