

Agenda item:

[No.]

Licensing Committee on 14 April 2008

Report Title: **Delegated Powers to Appoint to Licensing Sub-Committees**

Report of: **The Monitoring Officer and the Assistant Chief Executive, People Organisation and Development**

Wards(s) affected: **All**

Report for: **Decision by the Licensing Committee**

1. Purpose (That is, the decision required)

1.1 To confirm the delegation of power to the Head of Local Democracy and Member Services to appoint Members to Licensing Sub-Committees in circumstances where the Sub-Committee would otherwise be unable to function constitutionally.

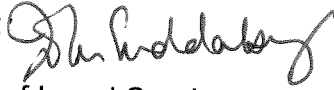
2. Recommendations

2.1 That the Licensing Committee agree and confirm the delegation of power to the Head of Local Democracy and Member Services:

- (i) to appoint the membership of a special Licensing Sub-Committee from among the Members of the Licensing Committee, and
- (ii) to appoint an additional Member, or Members, to any scheduled meeting of a Licensing Sub-Committee from among the Members of the Licensing Committee whenever the appointment of a Substitute Member (under Part 4 Section B paragraph 49 of the Constitution) would be impracticable and the meeting would otherwise be inquorate.

2.2 That the exercise of the above delegated powers by the Head of Local Democracy and Member Services be carried out so far as practicable in consultation with the Chair of the Licensing Committee and the Chief Whip of each Group and with a view to achieving political balance in the membership of Licensing Sub-Committees.

2.3 That the Scheme of Delegation to Officers in Appendix E, Part F7, Section 9 of the Council's Constitution be amended as shown in the Appendix to this report.

Report Authorised by: 

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3. Director of Finance Comments

3.1 There are no specific financial implications

4. Head of Legal Services Comments

4.1 The legal and constitutional implications are set out in the body of the report

5. Local Government (Access to Information) Act 1985

5.1 The Council's Constitution

6. Background

- 6.1 The Council's Licensing Committee and its Sub-Committees are set up under special rules contained in the Licensing Act 2003, and Regulations made under that Act, rather than the usual rules found in local government legislation which apply to other Committees and Sub-Committees. For this reason, the granting of the delegated powers recommended in this report requires the confirmation of the Licensing Committee to be legally effective, notwithstanding that full Council has already approved the delegated powers.
- 6.2 Government Guidance recommends Councils to establish Licensing Sub-Committees (LSCs) to hear the majority of contested applications. Where LSCs are set up each Sub-Committee must consist of three Members from the parent Licensing Committee. It would be unlawful for a hearing to proceed when there were more than three or less than three Members on the LSC.
- 6.3 All ten of the Licensing Committee Members receive specific training on the conduct of Licensing and Gambling hearings. It would be unlawful for any Member other than a Member of the parent Licensing Committee to serve on a LSC even on a single occasion.
- 6.4 There is a further potential problem caused by the legal duty on Councils to hear contested applications within a fixed deadline which is generally 20 working days from the end of the public consultation period. This means that any adjournment of a hearing from the date originally fixed may expose the Council to complaint or legal challenge. In any event, adjournments are likely to cause inconvenience and expense to the parties including local residents.

6.5 There are currently three LSCs numbered "A", "B" and "C" set up by the parent Licensing Committee. LSCs "A" and "B" both comprise two Majority and one Minority Party Member. LSC "C" has two Minority and one Majority Party Member. Although in practice the Licensing bodies are "politically balanced" in their membership, there is no legal requirement for this. It would be perfectly lawful for a LSC to comprise Members from only one Party Group should that be necessary on any particular occasion.

7. Report

7.1 The great majority of hearings take place at regular meetings of the three LSCs which are scheduled in advance each year. However, there has been a recent increase in the number of hearings to be accommodated within the timetable. This is because of the coming into force of the Gambling Act 2005 in September 2007 which has brought with it several contested applications for betting shops. There has also been a growth in the number of applications by Police and local residents to "review" the licences of problem public houses.

7.2 There is also the possibility that an urgent hearing may be required to hear a Police objection to a temporary event notice under the Licensing Act 2003. This would be likely to mean setting up a LSC hearing with less than one week's notice and probably on a date other than one scheduled for a regular LSC meeting.

7.3 Since the flow of applications and the timetable for hearing them is not within the Councils control, there has been an increased need to hold special meetings to conduct hearings on dates not within the previously agreed schedule. It is often difficult or impossible to secure all the Members from one of the regular LSCs for these special meetings and so there has to be a membership from different LSCs.

7.4 Where the membership of a special LSC is close to that of one of the regular LSCs, with two of the three Members, then reliance has been placed on the procedure for appointing a "Substitute Member" under the Committee Procedure Rules (paragraphs 49 to 55 in Part 4 Section B of the Council's Constitution). But this is not wholly safe or satisfactory.

8. Appointing Special Licensing Sub-Committees

8.1 It would be preferable to have a specific procedure for setting up special LSCs so as to permit maximum flexibility over the choice of three Members from the parent Committee. It would not be practicable to have the parent Licensing Committee meeting to set up each special LSC and it would not be legally possible to delegate such matters to the Chair of the Licensing Committee alone. Therefore, it is being recommended that power to appoint special LSCs be delegated to the Head of Local Democracy and Member Services.

8.2 This delegated power would be exercised in consultation with the Chair of the Licensing Committee and the Chief Whip of each party group. Every effort would be

made to achieve political balance in the membership of all special LSCs taken over the municipal year as a whole, even if this is not always practicable in relation to each individual meeting.

9. Appointing Additional Members to Regular Licensing Sub-Committees

- 9.1 The Council's Local Licensing Procedure Rules prevent any Member of a LSC from hearing an application arising from premises in the Member's own Ward. Care is taken to observe this rule when allocating each hearing to a LSC. However, even with this safeguard, it occasionally happens that a Member will discover a "conflict of interest" that makes it impossible for them to serve on a forthcoming LSC. For example, this might be a realisation that they have some connection with one of the parties.
- 9.2 It also happens that a Member on a forthcoming LSC may fall ill or be unable to attend owing to some emergency beyond his/her control.
- 9.3 In most cases where a Member listed on the agenda as part of the LSC is unable to attend the meeting, it will be possible for that Member, or the relevant Group Chief Whip, to appoint a Substitute Member under the Committee Procedure Rules. Written notice to appoint a Substitute Member must be given to the Head of Local Democracy and Member Services by 10.00 a.m. on the day of the meeting (if the meeting is at 18.00 or later). The name of the Substitute Member must be notified in writing to the Head of Local Democracy and Member Services by the Chief Whip no later than 3 hours before the advertised start time of the meeting.
- 9.4 There was an episode where the inability to invoke the Substitute Member procedure because of the passing of the time limits resulted in a LSC having to be adjourned when a Member could not attend. Although such cases are likely to be unusual, it is now recommended that a "fall back" procedure be made available.
- 9.5 If Members agree, this will be a delegation to the Head of Local Democracy of power to appoint an additional Member or Members to any scheduled meeting of a Licensing Sub-Committee whenever the appointment of a Substitute Member would be impracticable and the meeting would otherwise be inquorate. Any additional Member would be a trained Member of the parent Licensing Committee and, so far as practicable, the Chair of the Licensing Committee and the Chief Whips of each group would be consulted about the appointment.

10. Consultation and Decision-Making Procedure

- 10.1 The Chair of the Licensing Committee was consulted about the contents of the report to the Constitution Review Working Group (CRWG) and he was in agreement with the recommendations.
- 10.2 A version of this report was considered by the CRWG at its meeting on 28 February. Members accepted the recommendations but with additional requirements that the exercise of the delegated powers by the Head of Local Democracy and Member

Services should be, so far as practicable, in consultation with the Chief Whip of each Group and with a view to achieving political balance in the membership of Licensing Sub-Committees.

- 10.3 The report to full Council on 31 March 2008 incorporated these points. Members at full Council approved the recommendations, at paragraphs 2.1 to 2.3 above, subject to confirmation by the Licensing Committee which is being sought at this meeting on 14 April.

11. Appendix

- 11.1 The Appendix to this report sets out the recommended text changes to the Scheme of Delegation to Officers in Appendix E, Part F.7, Section 9 of the Council's Constitution.

APPENDIX

EXTRACT FROM SCHEME OF DELEGATION TO OFFICERS AT APENDIX E, PART F.7, SECTION 9 OF THE COUNCIL'S CONSTITUTION

[Proposed changes and additions are shown in italics and underlined]

Section 9 Proper Officer and Specified Officer Functions

1.4 Head of Local Democracy and Member Services

The Head of *Local Democracy and Member Services* has been appointed Proper Officer and specified officer in relation to:

- (a) Part VA and Schedule 12A of the Local Government Act 1972 (Access to Information) and the Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2000-2002 (Access to Information);
- (b) Except as provided in 1.6 below, section 191 (information to assist Ordnance Survey) of the Local Government Act 1972;
- (c) Sections 225 and 229 and Schedule 14, Part II, Paragraph 25 (7) of the Local Government Act 1972, and Section 41(1) of the Local Government (Miscellaneous Provisions) Act 1976 (custody of, and certifying, documents);
- (d) The Local Government and Housing Act 1989, Section 2(2) (Maintenance of list of politically restricted posts);
- (e) Section 19 of the Local Government & Housing Act 1989 and Regulations made thereunder (Members' Interests Regulations);
- (f) Section 8 of the Representation of the People Act 1983, as the officer who will act as Deputy to the Electoral Registration Officer in the event of the latter's incapacity or a vacancy arising.

In addition the Head of *Local Democracy and Member Services* is empowered:

- (g) To determine the appointment of outside members to the "pool" from which the membership of School Admissions Appeals Panels and School Exclusions Appeals Panels are drawn;
- (h) To determine the membership of individual Appeals Panels (under (g) above) and the selection of Chairs of these Panels;

- (i) To make appointments of representative School Governors as notified by the Executive Member for Education or the Opposition Spokesperson, as appropriate;*
- (j) To make appointments to vacancies on the Standing Advisory Council on Religious Education and Conference Committees;
- (k) To make appointments to the membership of special Licensing Sub-Committees from among the Members of the Licensing Committee;
- (l) To appoint an additional Member or Members to any scheduled meeting of a Licensing Sub-Committee from among the Members of the Licensing Committee whenever the appointment of a substitute Member under the Committee Procedure Rules (Part 4, Section B) would be impracticable and the meeting would otherwise be inquorate;
- (m) The exercise of the delegated powers in (k) and (l) above shall be, so far as practicable, in consultation with the Chair of the Licensing Committee and the Chief Whip of each Group and with a view to achieving political balance in the membership of Licensing Committees.