

BRISTOL CITY COUNCIL

LICENSING COMMITTEE

13 June 2013

1. ANNUAL BUSINESS

(Report of the Head of Legal Services)

A. MEMBERSHIP OF COMMITTEE

- To note the following council members appointed to serve on the committee for the 2013/14 municipal year:-

Councillors:

Tim Leaman
Alex Woodman
Christopher Davies
Glenise Morgan
Fi Hance
Jay Jethwa
David Morris
Peter Abraham
Ron Stone
Barry Clark
Steve Pearce
Bill Payne
Mhairi Threlfell
Mike Wollacott
Vacancy

B. ELECTION OF CHAIR - MUNICIPAL YEAR 2013/2014

- To elect the Chair of this Committee for the municipal year 2013/14.

C. ELECTION OF VICE-CHAIR - MUNICIPAL YEAR 2013/2014

- To elect the Vice Chair of this Committee for the municipal year 2013/14

D. TERMS OF REFERENCE

- to note the following terms of reference:

Overview

Functions relating to licensing and gambling as set out below.

Licensing Act 2003 (“the 2003 Act”)

1. All those matters relating to the discharge of licensing functions that are referred to the committee by virtue of section 7(1) of the 2003 Act;
2. Other functions which full Council has arranged for the Licensing Committee to discharge, namely:
 - a) Power to grant permission for provision etc of services, amenities, recreation and refreshment facilities on the highway and related powers (sections 115E, 115F & 115K of the Highways Act 1980);
 - b) Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption (section 13(2) of the Criminal Justice and Police Act 2001 (c.16));
 - c) Power to make or revoke an order designating a locality as an alcohol disorder zone (Section 16 Violent Crime Reduction Act 2006);
 - d) The Council’s functions under the third schedule to the Local Government (Miscellaneous Provisions) Act 1982 (as amended); and
 - e) Powers to make and cancel closure notices; make applications for closure orders; issue certificates of termination of closure orders; defend applications for the discharge of closure orders; appeal against the refusal to make closure orders; enforce closure orders; and prosecute for obstruction of authorised officers or for offences in connection with closure orders (sections 19 to 28) of the Criminal Justice and Police Act 2001);

Gambling Act 2005 (“the 2005 Act”)

3. All of those functions under Part 8 of the 2005 Act that are delegated to the Committee by virtue of section 154 of the 2005 Act;
4. Other gambling functions which the full Council has arranged for the Licensing Committee to discharge, namely:
 - a) Duty to comply with requirements to provide information to the Gambling Commission (s.29 of the 2005 Act);
 - b) Functions relating to exchange of information (s.30 of the 2005 Act);
 - c) Functions relating to occasional use notices (s.39 of the 2005 Act);
 - d) Power to designate officer of a licensing authority as an Authorised Person for a purpose relating to premises (section 304 of the 2005 Act);
 - e) Power to make order disapplying section 279 or 282(1) of the Act in relation to specified premises (s. 284 of the 2005 Act);
 - f) Power to exchange information (section 350 of the 2005 Act);
 - g) Power to institute criminal proceedings (section 346 of the 2005 Act);
 - h) Functions relating to the determination of fees for premises licences (the Gambling (Premises Licence Fees) (England and Wales) Regulations 2007 (S.I. 2007/479));
 - i) Functions relating to the registration and regulation of small society lotteries (Part 5 of Sch 11 to the 2005 Act);

E. DATES AND TIMES OF MEETINGS

- to note that meetings of the Licensing Committee and its Sub Committees will be held on a Thursday throughout the forthcoming municipal year. The scheduled dates of the Sub-Committees are printed in the Council diary and are as follows, commencing at 10am:-

20 June	4 July
18 July	1 August

15 August	29 August
12 September	26 September
10 October	24 October
7 November	21 November
5 December	19 December
2 January 2014	

Bristol is a large authority with a correspondingly high number of meetings dealing with business that cannot be delegated to officers. Members attendance at these meetings is essential for the efficient administration of the process. Members are asked to consider their preferred arrangements for ensuring sub-committees will be quorate throughout the Municipal Year, bearing in mind that additional meetings may need to be convened if required in order to fulfil obligations within deadlines imposed under regulations.

F. ESTABLISHMENT OF SPECIAL PURPOSES SUB-COMMITTEE

In accordance with Licensing committee Procedure Rule (LCR) 1(iii) the annual meeting needs to establish a special purposes sub committee comprising the Chair of the Licensing committee, its Vice chair and one other committee member. Its terms of reference must enable it to deal with any matters of business which would ordinarily be referred to the next ordinary meeting of the committee but which are, in the opinion of the Licensing Manager (in consultation with the Chair) of such urgency that they cannot await the date of the next ordinary meeting.

RECOMMENDED

- That the Licensing committee establish a Licensing (Special Purposes) Sub-Committee with the terms of reference set out in Appendix A;

- that the membership of the special purposes sub committee comprise the Chair, the Vice Chair and one other member;
- that the committee appoint from amongst its number one other member to serve on the sub committee

G. ESTABLISHMENT OF OTHER SUB-COMMITTEES

LCR1(iv) requires that the annual meeting establish any other sub committees considered necessary and in respect of each of them

- (a) agree the membership;
- (b) agree the terms of reference.

In accordance with the Licensing Act 2003 sub committees may be established but they must comprise no more and no less than three members each.

At its meeting on 9 February 2005 the Licensing Committee established Licensing (Hearings) sub committees comprising any three members of the Licensing committee. That meeting appointed each member of the Licensing Committee to serve on any such sub committee (of three) which is convened so as to include him/her in its membership.

It is recommended that this year the Licensing committee continue with this approach.

The recommended terms of reference are set out in Appendix A.

RECOMMENDED

- (a) that the Licensing committee establish Licensing (Hearings) sub committees comprising any three members of the Licensing committee and that each member of the licensing committee be appointed to serve on any such sub committee which is convened so as to include him or her in its membership; and
- (b) that each of the sub committees so established shall have the terms of reference as set out in Appendix A

H. DELEGATIONS TO SUB COMMITTEES AND OFFICERS

Section 10 of the Licensing Act 2003 allows the Licensing committee to arrange for the discharge of any functions exercised by it –

- a) by a sub committee established by it, or
- b) subject to certain statutory limitations, by an officer of the licensing authority

Section 10 of the Licensing Act 2003 also applies to certain Gambling Act 2005 functions that fall within this Committee's terms of reference, that is, those gambling functions that are referred to in paragraph 3 of the Committee's terms of reference.

In previous years the Committee conferred delegated power on each of the sub committees it established to discharge all functions falling within their terms of reference (which for the avoidance of doubt includes all matters ancillary thereto). It is recommended the annual meeting do the same in respect of any sub committees it decides to establish having considered this report.

The functions referred to in paragraphs 2 and 4 of the committee's terms of reference are governed by different law as far as the ability to delegate the decision making process is concerned. Those matters are delegated to the Committee by the full council in exercise of its powers of delegation under section 101 of the Local Government Act 1972. Under that section the Committee itself enjoys the power to delegate those matters to one or more of its sub committees and/or to an officer of the council.

It is anticipated that some applications made under the paragraph 2 and 4 functions may prompt the right to be heard in accordance with the rules of natural justice and/or the rights enjoyed by citizens to a public hearing where Article 6 of the Convention applies. Therefore, whilst it is anticipated that most decisions connected with the discharge of these functions will fall to be made by a delegated officer, provision has been made in the recommended Terms of Reference of the hearings sub committees for applications to be referred to such a sub committee by a delegated officer (paragraph 22 of the terms of reference set out in Appendix A refers). This particular provision also enables applications under the Licensing or Gambling Act to be decided by a sub committee notwithstanding the law does not absolutely require this (e.g. because there are no

representations). Whilst it is not expected this will often be utilised it does enable matters to be given a public airing where that is judged to be reasonable and appropriate.

Officer delegations

In accordance with LCR1 the annual meeting should review the delegations to officers. The Committee's responsibilities have greatly expanded since its first annual meeting and this report recommends comprehensive delegations to sub committees and officers covering the vast majority of the Committee's responsibilities whilst continuing to ensure that:

- (i) Officers are not authorised to make any decision which by law may only be made by Members meeting as a Committee or duly authorized sub committee; and
- (ii) The delegations reflect the policy of Bristol city Council with regard to the decision whether certain representations are to be disregarded by virtue of being judged to be frivolous or vexatious

Licensing Act 2003 and Gambling Act 2005

In the discharge of its licensing functions the committee must have regard to the guidance issued by the Secretary of State or the Gambling Commission (as appropriate) and to the Council's own adopted statements of policy. The recommendations in such national guidance reflect the fact that there are many decisions which the law simply does not allow an officer to take. For example an officer cannot determine an application for a premises licence under either Act where relevant representations have been made.

The Council's published statements of licensing policy recommend that the Licensing Committee follow the delegations recommended in national guidance but that, for the reasons set out in the Council's policy statements, the committee should depart from that guidance in respect of decisions about whether or not representations are frivolous or vexatious.

In previous years the committee has effected its delegations in accordance with the Council's adopted statement of licensing policy and it is recommended that this practice should continue for Gambling Act functions as well as for the Licensing Act functions. This is covered in recommendation 1 below.

In respect of the functions referred to in paragraphs 2 and 4 of the Committee's Terms of Reference the Committee will know that the full council has itself effected delegations to the relevant

Director in Part 3 of its constitution. The Committee is informed that the relevant Directors have, in line with what is recommended in that constitution, made arrangements under which appropriate subordinate officers assist them in the discharge of these tasks on behalf of the Council as a whole. It is recommended that the Committee note and approve these arrangements.

It is therefore recommended that:

1. In respect of the functions referred to in paragraphs 1 and 3 of its Terms of Reference the Committee makes the following arrangements:

Subject to the limitations set out in (a) and (b) below officers occupying the following posts:-

Enforcement and Regulatory Services Manager
Regulatory and Compliance Unit Manager
Licensing Administration Manager
Enforcement Co-ordinator
Senior Enforcement Officer
Licensing Officer
Enforcement Officer

are authorised to discharge any function which in law may be discharged by an officer of the licensing authority.

Limitations

(a) The power to decide whether representations are frivolous or vexatious may only be made in respect of applications that officers would be empowered to proceed to determine themselves should it be decided that the representation under consideration is either frivolous or vexatious.

(b) An Officer may not decide whether to grant or refuse an application under the Licensing Act 2003 for a personal license in any case where there are unspent convictions.

2. In respect of the functions referred to in paragraphs 2 (a) and (b), 4(a) – (f) and 4(g) to (i) inclusive of the Committee's Terms of Reference the committee notes the arrangements made by the full council and the delegated Director under which his subordinate officers assist him in discharging functions on behalf of the Council. The Committee approves the continuation of such arrangements as if they had been made directly and particularly by this committee

3. For the avoidance of doubt the Head of Legal Services and officers within his team who assist him in this task shall continue to be authorised to institute and defend legal proceedings of any kind falling within this Committee's terms of reference
4. The possession of delegated powers shall not prevent a delegated officer bringing a matter before an appropriate body of Members but this should only be done following consultation with the Chair of the Licensing committee.

RECOMMENDED:

1. That all sub committees established by the Licensing committee shall have delegated authority to discharge all functions falling within their terms of reference;
2. That the Committee approves delegations to officers as recommended in paragraph H of this report; and
3. that for the avoidance of doubt any authority conferred upon a sub committee or an officer in connection with the discharge of any function includes the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of the function concerned

Contact Officer:

Allison Taylor,
Democratic Services Team
Telephone: (0117) 922 2237

TERMS OF REFERENCE

Licensing (Hearings) Sub-Committees

Any three members of the Licensing committee may constitute a Licensing (Hearings) Sub-Committee having the following terms of reference:

To discharge the following functions:-

Under the Licensing Act 2003:

1. Determination of application for premises licence where representations have been made;
2. Determination of application for provisional statement where presentations have been made;
3. Determination of application for variation of premises licence where representations have been made;
4. Determination of application to vary designated premises supervisor following police objections;
5. Determination of application for transfer of premises licence following police objections;
6. Consideration of police objection made to interim authority notice;
7. Determination of application for club premises certificate where representations have been made;
8. Determination of application to vary club premises certificate where representations have been made;
9. Decision to give counter-notice following police objection to temporary event notice;
10. Determination of application for grant of personal licence following police objections;
11. Determination of application for renewal of personal licence following police objections;
12. Revocation of personal licence where convictions come to light after grant etc;

13. Determination of application for review of premises licence in a case where relevant representations (within the meaning of Section 52 (7) of the Act) have been made;
14. Determination of application for review of club premises certificate in a case where relevant representations (within the meaning of Section 88 (7)) have been made;
15. Review following closure order in a case where relevant representations have been made;
16. Determination of application for grant of personal licence where unspent convictions;
and the following Gambling Act functions:
17. Determination of application for premises licence where representations have been made;
18. Determination of application for variation of a premises licence where representations have been made;
19. Determination of application for to transfer a premises licence following representations by the Commission;
20. Determination of an application for a provisional statement in respect of which representations have been made
and generally:
21. Determination of an application of any type falling within the terms of reference of the Licensing Committee that has been referred by a delegated officer for consideration by the Committee

Licensing (Special Purposes) Sub-Committee

The Licensing (Special Purposes) Sub-Committee shall have the following terms of reference:-

To discharge the following functions on behalf of the Licensing Authority:-

1. Any matter of business which would ordinarily be referred to an ordinary meeting of the full Licensing Committee but which is judged by the Licensing Manager (in consultation with the Committee Chair) to be of such urgency that a decision cannot await the next ordinary meeting of the Licensing Committee;

-
2. To discharge any other licensing function as authorised by the Licensing Committee from time to time.