

LICENSING COMMITTEE: 30 May 2008

Report of the Chief Strategic Planning and Environment Officer

LICENSING SUB-COMMITTEES

1 Background.

- 1.1 The Licensing Act 2003 requires the establishment of a Licensing Committee consisting of at least ten, but not more than fifteen members. The Council at its meeting on 16th October 2003 first approved the creation of a Licensing Committee comprising 12 members. The Licensing Act 2003 functions, other than the establishment of a Statement of Licensing Policy, which need to be discharged by the Licensing Authority, are automatically referred to the Licensing Committee.
- 1.2 The Act provides that certain decisions and functions required may be taken or carried out by the Licensing Committee or delegated to Sub-Committees. To ensure effective performance in meeting the requirement of the Act it will be necessary to delegate authority to Licensing Sub-Committees consisting of three members of the full Committee.
- 1.3 This report is to recommend the re-establishment of Licensing Sub-Committees in respect of hearings of contested applications and licence reviews under the Act.

2 Licensing Sub-Committees

- 2.1 To meet the need to determine the applications within statutory timescales it will be necessary to establish Licensing Sub-Committees to deal with the objections in accordance with the Guidance issued by the Secretary of State. As it may occasionally be necessary for a number of Sub-Committees to meet at the same time, in the interests of effective performance it is recommended that the Committee establish three Sub-Committees to meet the demand and that all members of the Licensing Committee be considered eligible to serve on any Sub-Committee. The Terms of Reference of the Sub-Committees will be:

“To discharge the functions of the Licensing Committee within the powers conferred by Sections 7 and 10 of the Licensing Act 2003.”

- 2.2 The functions of the Sub-Committee will be mainly non political and it is recommended in the interests of flexibility, practicality and effectiveness that the members be selected from the members of the Licensing Committee without consideration of political proportionality. The Licensing Committee is of course politically balanced on a proportionate basis.

- 2.3 To cover for the eventuality of one member being unavoidably detained or having to disqualify themselves from consideration on a particular application, it may be that a quorum of two should be set for a Sub-Committee. However, there are some doubts about the legality of this course of action. The issue is explored in the Legal Implications Section of this Report
- 2.4 The hearings will deal with complex matters and it is recommended that a legal advisor should be available at the hearing to advise members as necessary. The Regulations stipulate that the Licensing Authority must provide for a record of the hearing to be taken in a permanent and intelligible form and kept for six years. It will therefore be necessary for a Committee Administrator to attend the meeting to keep the record.

3 Achievability

This report contains no equality or property implications.

4. Legal Implications

- 4.1 Section 9(1) of the Licensing Act 2003 states that a Licensing Committee may establish one or more Sub-Committees consisting of three members of the Committee. The Act gives the Secretary of State power to make Regulations which would specify the quorum for meetings of the Sub-Committees.

Section 9(3) of the Act states that subject to such Regulations the Licensing Committee may regulate its own procedure and that of its Sub-Committees.

- 4.2 The various Regulations that have been made by the Secretary of State contain no reference to a quorum for Sub-Committees. In the absence of such reference, there is some uncertainty as to whether the Licensing Committee may itself set a quorum under Section 9(3) of the Act which allows it to regulate its Sub-Committees' procedure.

One view is that the Licensing Committee may set a quorum. In a Sub-Committee of three members the quorum would be two. However, if a quorum of two were set there would be a problem in the event of disagreement between the two members. To give the Chairman a casting vote would mean that the determination was made by one person alone rather than the Sub-Committee.

When the Licensing Act 2003 came into force three years ago there was a view held by some of the legal profession that the wording of Section 9(3) of the Licensing Act 2003 is not explicit enough to allow the Committee to set a quorum. If this view is correct then any decision made by a Sub-Committee of two will be void and of no legal effect. The solution would be to require the attendance of all three members at a Sub-Committee. That is undoubtedly the safest course of action. However it is not practical. If the attendance of all

three members could not be achieved on every occasion the statutory time limits for determination of an application would not be met.

There are thus risks in either having a quorum of two, or requiring the attendance of all three members. The Licensing Committee in Cardiff on 12th January 2005 resolved that Sub-Committees should have a quorum of two, and that is the system that has been operated in Cardiff without challenge since that time. It therefore seems to be the preferable course. It is also the case that the national concern about the issue which existed three years ago seems to have died away.

It is recommended that there be a quorum of two, but members are urged to make every effort to attend a Sub-Committee meeting so as to avoid potential legal challenge.

5. Financial Implications

- 5.1 There are no direct financial implications arising from the report. The appointment of Licensing Sub-committees will enable the authority to meet its statutory duties. The service is financed through a system of nationally set application fees.

9. Recommendation

- 9.1 It is recommended that:
- a) The Licensing Committee delegate authority for Licensing Sub-Committees to discharge its functions within the powers conferred by Sections 7 and 10 of the Licensing Act 2003.
 - b) That a quorum of two be set for the Licensing Sub-Committees.
 - c) The Committee nominate three members to Chair each of the three Sub-Committees.
 - d) That a meeting of a Sub-Committee be scheduled for 10.00am every Friday commencing from 6 June 2008, with the membership being on a rota basis in accordance with a schedule organised by the Clerk to the Council.

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Chief Strategic Planning and Environment Officer

1 May 2008

This report has been prepared in accordance with procedures approved by Corporate Directors.

Background Papers:

1. Report to the Licensing and Public Protection Committee of 7 January 2004 entitled "Licensing Act – Committee Delegation and Authorisation."
2. Government Consultation on Draft Regulations and Orders to be made under the Licensing Act 2003.