

## **Committee: Licensing Committee**

**Date: 11 January 2011**

Agenda item: 4

Wards: All

### **Subject: Delegations to the Licensing Committee**

Lead officer: Helen White, Head of Civic and Legal Services

Lead member: Councillor Martin Whelton, Cabinet Member, Community and Culture

Contact officer: Fabiola Hickson, Senior Litigation Lawyer

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#### **Recommendations:**

- A. The Licensing Committee approve the recommended amendment to the Constitution with regards the creation of an additional Licensing Committee whose function is to deal with Licensing matters not covered by the Licensing Act 2003 and the Gambling Act 2005.
  - B. The Licensing Committee approve the recommended amendments to the constitution in appendix 1 to this report.
  - C. If the Licensing Committee approves the above recommendations that the Monitoring Officer as part of the review of the Constitution, progresses the changes as per Article 15.2, Part 2 of the Constitution.
  - D. The Licensing Committee adopts the proposed amended sub-committee delegations in Appendix 1.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. Currently a review is taking place of the Constitution and the Parts relating to the Licensing Committee have been identified as requiring amendment.
- 1.2. At the Licensing Committee held on the 21st October 2010 when agreeing the minutes it was noted that Civic & Legal Services were preparing a report on changes to the Constitution to enable the different licensing functions carried out by the Council under various legislation to be dealt with by the existing Licensing Committee or a second Licensing Committee if the licensing matter did not fall under the Licensing Act 2003. The Committee agreed to receive a report on the proposals at the meeting to be held on the 11th January 2011.

## **2 DETAILS**

- 2.1. The current Licensing Committee was established under the Licensing Act 2003. The Committee is responsible for all The Licensing Act 2003 ("Licensing Act) and The Gambling Act 2005 ("The Gambling Act") activities (except policies and fees) and its functions can be found in Part 3-B. 1.3A of the Constitution.
- 2.2. Under Part 3-B, 1.3A (b) (iv) of the Constitution, the Committee also has the function of delegating functions to sub-committee(s) or officers as appropriate, having regard the guidance issued by the Secretary of State.

The Licensing Committee delegations agreed by the Licensing Committee on the 1st February 2005 can be found at Part 3-F, Section G of the Constitution. The delegations granted to the Licensing Sub-Committee relate solely to Licensing Act 2003 functions and there is no express delegation with regards The Gambling Act 2005. Notwithstanding Section 154 (3) of the Gambling Act states that Sections 7(9) and 10 of the Licensing Act apply in relation to functions that are delegated under the Gambling Act, Section 154 (4) substitute functions in section 10(4) of the Licensing Act. Therefore the Constitution in its current form is not complete on the delegations to sub committees dealing with Gambling Act matters and the proposed amendments rectify this.

- 2.3. Furthermore, with regards Gambling Act Procedures and Hearings, once again Part 3-F section G refers to Licensing Act Hearing Regulations but there is no express reference to the Gambling Act procedure and hearings. The Hearing Regulations for the latter legislation is broadly similar to the Licensing Act, but there are slight differences. The proposed amendments to the Constitution addresses this.
- 2.4. Under Section 7(5) of the Licensing Act 2003 where a matter relates to a licensing function of a licensing authority and to a function of the authority which is not a licensing function ("the other function") the authority may refer the matter to its Licensing Committee and arrange for the discharge of the other function by the Licensing Committee. However, as the Constitution currently stands the authority does not expressly refer to the provisions of Section 7(5), or is worded to enable matters that fall under S7(5) to be dealt with by the Licensing Committee or makes reference to specific types of matters that can also be dealt with by the Licensing Committee though they are not a licensing function. The proposed amendments in Appendix 1 enables the Licensing Committee (referred to in Appendix 1 as Licensing Committee 2003) to deal with these other functions.
- 2.5. A recent example of this situation was the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 of the Policing and Crime Act 2009 which relates to Sex Establishments. As establishments such as lap dancing clubs provide entertainment which would fall under the provisions of the Licensing Act as regulated entertainment, they would require premises licences. Under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 these establishments would also require separate licences to operate and if an application was made which results in a hearing under Schedule 3 paragraph 10 (19), this hearing can be heard by a Committee or a sub committee. If it was expressed in the Constitution that under Section 7 (5) the authority had referred such matters to the Licensing Committee, then the Licensing Committee could have adopted the amended legislation rather than it being referred to the General Purposes Committee. With regards hearings of applications under Schedule 3, paragraph 10(19) presently it is not clear who would deal with these under the Constitution. The proposed amendments in Appendix 1 would be an opportunity to rectify the problems identified above with regards section 7(5) and delegate to the Licensing Committee matters that fall under that section. In turn the Licensing Committee could delegate Licensing sub committees to hear applications under Schedule 3 of the Local Government (Miscellaneous provisions) Act.

- 2.6. As stated above the current Licensing Committee is established under the Licensing Act 2003 and it can only deal with licensing matters that fall under that Act and the Gambling Act. Therefore other licensing functions such as the designation of streets for the purpose of street trading cannot be dealt with by the current Licensing Committee [referred to in Appendix 1 as the Licensing Committee (2003)]. At present street designations are dealt with by the General Purposes Committee and it is proposed that a second Licensing Committee (referred to in appendix 1 as Licensing Committee (miscellaneous)) is established under the discretionary power contained in Section 101 of the Local Government Act 1972 in order to deal with the designation of streets for street trading purposes or any other licensing function that does not fall under the other Licensing Committee. The membership of the two committees would be the same, but the Committee is constituted and run under different powers.

### **3 ALTERNATIVE OPTIONS**

- 3.1. The Constitution remains as it is now and matters which do not fall under the current Licensing Committee are dealt with by the General Purposes Committee.

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. No consultation with regards this report, however, if the Licensing Committee approves recommendations A, B and C of this report then the proposed amendments would be subject to consultation.

### **5 TIMETABLE**

- 5.1. Subject to the Constitutional Review Timetable.

### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. No implications identified.

### **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The implications are in the main body of this report.

### **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. No implications identified.

### **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. No implications identified.

### **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. No implications identified.

### **11 APPENDICES - THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- 11.1. Appendix 1 - proposed amendments to the Constitution in relation to Licensing functions.

### **12 BACKGROUND PAPERS**

- 12.1. None

## Constitution part 3 – Licensing committee (2003)/Licensing Committee (miscellaneous)

### 8 Licensing committee (2003)/Licensing Committee (miscellaneous)

- 8.1 **These committees will consist of the same membership and be scheduled to meet at the same time to deal with:**
- (a) **Licensing Committee (2003)**
    - (i) **Matters which can be dealt with by the Licensing Committee established by the Licensing Act 2003**
  - (b) **Licensing Committee (miscellaneous)**
    - (i) **Matters which cannot be dealt with by the Licensing committee established under the Licensing Act 2003**
- 8.2 Membership:
- 10 Members
- 8.3 Functions – **Licensing Committee (2003):**
- (a) To discharge on behalf of the Council all of its licensing functions which are not reserved to full Council **or another decision maker** pursuant to the provisions of:
    - (i) ~~the [Licensing Act 2003](#) and~~
    - (ii) **the [Gambling Act 2005](#)**
    - (iii) **Schedule 3 of the Local Government (Miscellaneous Provisions Act 1982 (in respect of sex establishments))**.
  - (b) To advise the Council on its Statements of Policy with respect to the exercise of its licensing functions relating to
    - (i) the ~~[Licensing Act 2003](#) and~~
    - (ii) **the [Gambling Act 2005](#)**
  - (c) **To agree any Statements of Policy relating to Schedule 3 of the Local Government (Miscellaneous Provisions Act 1982 (in respect of sex establishments))**~~Licensing Act 2003 and Gambling Act 2005.~~
  - ~~(c)~~(d) To review ~~the Council's said~~ **the** Statements of Policy at such times as it considers appropriate **and report to Council when required.**~~and report to Council on recommended revisions.~~
  - ~~(d)~~(e) To delegate functions to sub committee(s) or officers as appropriate, having regard to guidance issued by the Secretary of State
  - ~~(e) To deal with entertainment licenses and associated consents and street trading licenses~~
- 8.4 **Functions – Licensing Committee (miscellaneous)**
- ~~(d)~~
  - (a) To deal with any other licensing matter which must be dealt with by a committee of the council and cannot be deal with by the Licensing Committee (2003)
  - (b) To deal with any matter which the Chief Executive considers appropriate to be referred to the Licensing Committee (miscellaneous)

**Constitution part 3 – Licensing committee (2003)/Licensing Committee  
(miscellaneous)**

**9 Licensing sub-committees of the Licensing Committee (2003)**

9.1 Membership:

- Any three members of the Licensing Committee (2003)

**9.19.2 Delegation to licensing sub-committees Functions**

(a) **To exercise all the powers necessary to hold any hearing under the provisions of:**

- (i) **the Licensing Act 2003**
- (ii) **the Gambling Act 2005**
- (iii) **Schedule 3 of the Local Government (Miscellaneous Provisions Act 1982 (in respect of sex establishments)**

~~(a) To exercise all of the powers in the Licensing Act 2003 (Hearings) Regulations 2005 (Statutory Instruments 2005 No 44 and 78) which may be exercised during the course of a hearing held to determine those applications, notices and representations details in S10(4)(a,b,c & d) and Paragraphs 4(3)(a), 16(3)(a) and 26(3)(a) of Schedule 8 (transitional provisions) of the Licensing Act 2003 and for which provisions has not been otherwise made by the Licensing Committee.~~

~~(b) To make applications or representation to the relevant licensing authority when Merton is a responsible authority as defined in S13(4)(g) or S69(4)(g) of the Licensing Act 2003.~~

~~(c) The following powers be delegated to licensing sub-committees where they are in session:~~

~~(d) Dispensing with a hearing of all parties agree that a hearing is unnecessary — hearing regulation 9(1)~~

~~(e) Extending time limits — hearing regulation 11(1)~~

~~(f) Adjourning the hearing — hearing regulation 12(1)(a) and hearing regulation 20~~

~~(g) Arranging for the hearing to be held on specified additional date(s) — hearing regulation 12(1)(b)~~

~~(h) Excluding the pullback from all or part of the meeting — hearing regulation 14(2)~~

~~(i) Questioning any party to the hearing — hearing regulation 17~~

~~(j) Consideration of representations or notices — hearing regulation 18~~

~~(k) Determining the relevance of information — hearing regulation 19~~

~~(l) Decision to hear in the absence of a party or parties — hearing regulation 20~~

~~(m) Procedure and conduct of hearing — hearing regulations 21 (where the procedure agreed by Licensing Committee is silent), 22, 23, 24 and 25~~

~~(n) Determination of applications — hearing regulations 26 and 27~~

~~(o) Rectification of irregularity — hearing regulations 32 and 33~~

**Constitution part 3 – Licensing committee (2003)/Licensing Committee  
(miscellaneous)**

~~(p) Any other power granted to the Authority under the Act, and any Guidance or regulations issued by the Secretary of State which may be exercised during the course of a hearing held to determine those applications, notices and representations detailed in S10(4)(a,b,c & d) and Paragraphs 4(3)(a), 16(3)(a) and 26(3)(a) of Schedule 8 (transitional provisions) of the Licensing Act 2003 and for which provision has not been otherwise made by the Licensing Committee~~

- 9.3 Delegation to **chief officer responsible for licensing**~~Head of Planning and Public Protection~~ **by the Licensing Committee (2003)**
- (a) Decision on whether an application, notice or representation received by the authority **in connection with any hearing or proposed hearing** is valid, relevant, frivolous or vexatious.~~in terms of the requirements of the Licensing Act 2003 and any guidance or regulations issued by the Secretary of State~~
- (b) Determination of ~~licence~~ applications ~~made under the Licensing Act 2003~~**Licensing Act 2003** that do not require a hearing to be held.
- 9.4 Delegation to ~~Head of Civic and Legal Services~~**chief legal officer by the Licensing Committee (2003)**
- (a) Issue of notice of hearing
- (b) Dispensing with hearing (if all parties agree to do so prior to the hearing)
- (c) Extension of time limits where the need to do is apparent prior to a hearing – in consultation with the Chair of the Licensing Committee
- (d) Rectifying irregularities identified while the Committee or a sub committee is not in session