

Agenda Item:

Report to: LICENSING COMMITTEE

Date: 7 February 2005

Report from: Borough Solicitor

Title of report: LICENSING ACT 2003 - IMPLEMENTATION

Purpose of report: To advise on the delegations to officers and sub-committees, appointment of sub-committees and procedure for the hearing of applications, and training.

Recommendations: That Members agree:-

- i) the delegations to officers and sub-committees as set out in Appendix A;
- ii) to appoint 3 sub-committees of 3 members, to be convened as set out in the report;
- iii) the political balance rules are not to apply to the sub-committees;
- iv) quorum is to be 2, with the chair to have a second or casting vote;
- v) the procedure for hearing of applications as set out in Appendix B;
- vi) only members who have undergone appropriate training to sit on a sub-committee.

It is not possible to produce the appendices to this document on the Internet due to the number of images it contains. If you would like a copy, please contact Katrina Strong on 01424 781719 or email kstrong@hastings.gov.uk

1.0 INTRODUCTION

- 1.1 The Licensing Act 2003 (the Act) has its first appointed day today, 7 February 2005.
- 1.2 The significance of the first appointed day is that the local authority, acting by its Licensing Committee, has the power to entertain and process applications from existing licensees to convert their licences to personal and premises licences. These are the so-called grandfather rights. This a transitional phase and the existing licences remain in force until the second appointed day when the converted licences come into effect. On the second appointed day, which is expected to be in November 2005, the old regime lapses and the new system of personal and premises licences and club premises certificates takes effect.

2.0 DELEGATION OF FUNCTIONS

- 2.1 Council has delegated its licensing functions, at least those covered by the Licensing Act 2003, to its Licensing Committee.
- 2.2 The Guidance issued by the Secretary of State under Section 182 of the Act recommends delegation of functions to sub-committees and officers. The recommended delegations are set out in Appendix A and reflect the Guidance.
- 2.3 Reference to Appendix A will show that, except where relevant representation is made on an application, the decision will be delegated to officers. The Executive Director, Environment and Safety and his nominees are the appropriate officers for delegation purposes. As the Executive Director has responsibility for other functions, which may give rise to relevant representations, it is anticipated that the licensing functions will be delegated to the Licensing Manager. It is necessary for the Committee to formally agree this scheme of delegation to officers, which becomes incorporated in Part 8 of the Constitution. Council agreed a prospective amendment to the Constitution in April 2004.

3.0 SUB-COMMITTEES

- 3.1 In cases where there is a relevant representation a hearing is required and there then has to be a hearing before members. The Guidance recommends that the application is decided by a sub-committee of Licensing Committee. As you know, this Committee has a membership of 15. It is proposed that the Committee appoints 3 sub-committees of 3 members to ensure the flexibility required to accommodate hearings within the statutory time frames and that hearing lists are manageable for members. At this stage, it is impossible to predict how much work there

may be for the sub-committees. Appointment of 3 sub-committees would enable them to be hearing cases at the same time, in much the same way as the magistrates' court operates. Whilst unlikely, nevertheless we need to have that flexibility built in. Currently, there are programmed monthly meetings of a sub-committee which should be adequate for the transitional period. Others will be convened as and when necessary, subject to the statutory 5 day notice period.

- 3.2 Whilst it is recommended that 3 sub-committees are set up, it is not recommended that Committee appoints members to each sub-committee. Again to ensure maximum flexibility, and fairness to members, it is proposed that a rota operates so that members are requested to sit on a sub-committee to be convened. So far as possible, sub-committees will be programmed but volume of work and urgency might require convening of additional sub-committee meetings.
 - 3.2.1 Again in the interests of flexibility, it is recommended that, whilst efforts will be taken to convene a balanced sub-committee, the Committee resolves that the political balance rules are not to apply to these sub-committees. If any member votes against such a motion, then it falls under the political balance rules.
 - 3.2.2 On the question of quorum, the above provisions are designed to enable, so far as is possible, that we will be able to field a sub-committee of 3 at all times. However, of course, there will be situations where a member is unexpectedly eg conflicted out or taken ill and the sub-committee is left with 2 members. In those exceptional circumstances, a quorum of 2, with the chair having the usual second vote, would enable a decision to be made. We can, of course, build in safeguards against such situations, which are undesirable for several reasons, by having a reserve member on stand-by and by scrupulous attention by members to any possibility of conflict on receipt of the papers for the sub-committee. Of course, it would not be possible to introduce a new member part way through a hearing; members are required to be present during the whole of the hearing when considering licensing matters.

4.0 PROCEDURE AT THE HEARING

- 4.1 The Secretary of State has made regulations governing the holding of hearings and these set out a number of requirements concerning eg the time in which a hearing is to be held, notice of hearing to whom and how much, information to accompany the notice of hearing. Subject to the requirements in the Regulations, a local authority may devise its own procedure. A suggested procedure is attached as Appendix B.
- 4.2 In order that the procedure is quite clear to the applicant and other concerned parties, the regulations require that a copy of the notice is sent out with the notice of hearing and is explained by the Chair at the

beginning of the hearing. It is suggested that the procedure be a standard enclosure in the agenda papers, an aid for the parties and members, and the procedure be posted on the Council's website for the broader audience.

5.0 TRAINING

- 5.1 It is essential that Members sitting on sub-committees have undergone appropriate training on the new Act. Many members of the Committee have already undergone a day's training on the law and procedures under the Act. Three more training sessions have been arranged for the 17 February, 1 March and 7 March. The training provided will be a combination of repetition and update on the Act and regulations made under it and presentation on hypothetical applications and role play.
- 5.2 Members are encouraged to ensure that they attend two of the three sessions. As knowledge and understanding of the Act and procedures under it are crucial to the proper conduct of application hearings, it is recommended that only those members who have undergone training may sit on a sub-committee hearing an application.

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Appendix A: Recommended Delegation of Functions
Appendix B: Procedure for hearing Applications

