

**IMPLEMENTATION EXECUTIVE
28 JANUARY 2008**

DEVELOPING LICENSING SERVICES**Executive Summary**

This report provides information on the need for a strategic Licensing Committee and the establishment of Licensing Sub-Committees or Panels.

It describes the nature of the work undertaken by the Licensing Committee and Sub-Committees and contains a proposed 'Scheme of Delegation' to ensure the provision of the service beyond the election of new Members in June 2009

It highlights the need for a mechanism to be in place between 1st April 2009 and the election of the new Council (the pre-election period) to enable Members to determine reviews of licences or hearings held where objections have been received that lie outside officer delegation.

Recommendations

Recommendations are made with respect to two periods of time:

1. After the election of Members in June 2009, it is recommended:

- a. That the new Council appoints a politically balanced Licensing Committee at the earliest opportunity composed of between ten and fifteen members of the Council. Such a Committee should have the following terms of reference:

'To deal with all of the Council's responsibilities under the Licensing Act 2003 and Gambling Act 2005 and any other associated matters that naturally fall within the jurisdiction of the Committee where legislation permits'. (Paras 12 and 15)
- b. That the Licensing Committee will normally meet twice a year (para 16).
- c. That all Members receive the relevant training prior to sitting on any sub-committee.
- d. That officers explore opportunities of working with Area Boards with respect to other licensing activities (para 17).
- e. That once a Licensing Committee is appointed a report is taken to the committee with recommendations regarding the appointment of sub-committees and the scheme of delegation in line with the proposals in paragraph 18 to 23.
- f. That the Head of Democratic Services be given delegated authority to appoint

Members to licensing sub-committees drawn only from the overall membership of the Licensing Committee rather than through the usual political group substitution rules.

2. The period 1 April 2009 to the election of new Members (the pre- election period):

- g. That the Implementation Executive appoint an interim Licensing Committee composed of 12 Members, three from each of the current District Councils that have served on respective Licensing Committees (para 26) to be nominated by those District Councils. Further it is recommended that the need for political balance is waived under the Local Government (Structural Changes)(Transitional Arrangements) (No 2) Regulations 2008 (para 27). (NB. This waiver can be agreed as long as no Member of the IE votes against it.)
- h. That the interim Licensing Committee should be given the delegated authority to appoint sub-committees each composed of the three District Council Members referred to above (para 28) to determine applications or reviews within its respective geographical area.
- i. That the Interim Licensing Committee be recommended to adopt the scheme of delegation as outlined in Appendix 1 (para 29).
- j. That the Head of Democratic Services be given delegated authority to appoint replacement Members to a licensing sub committee from another geographical area where an existing member has a prejudicial interest (para 28)
- k. That a further report be brought to the Implementation Executive in March 2009 requesting the adoption of both the Statement of Licensing Policy and Statement of Principles which will then apply both in the pre-election period and beyond (para 31). In the event that this is not possible (for example further consultation is needed) the existing respective District Council policy statements will continue to have effect.

Reason for Proposal

Statutory requirements for the Council.

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DEVELOPING LICENSING SERVICES

Purpose of Report

1. In April 2009 the new Wiltshire Council will become responsible for the implementation and enforcement of a number of licensing duties. The most critical of these duties are those contained within the Licensing Act 2003 and the Gambling Act 2005 for which the Council will become the Licensing Authority.
2. The purpose of this report is to advise Members of the Implementation Executive (IE) of the requirements of the Licensing Act 2003 and the Gambling Act 2005 and to recommend arrangements that should be put in place to enable the new licensing authority to discharge its responsibilities both in the longer term and more importantly in the shorter term between the 1st April 2009 and the election of the Wiltshire Council members – the pre-election period.

Background

The Licensing Act 2003

3. The Licensing Act 2003 was essentially a deregulatory measure designed to balance freedom of choice and the development of the leisure industry with public protection.
4. It introduced a modernised and integrated scheme covering a number of 'licensable activities'. Such activities are defined within the Act and broadly relate to the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
5. Local Authorities (in Wiltshire, the District Councils) became Licensing Authorities, required to discharge their responsibilities under the Act with a view to promoting a number of licensing objectives, namely:
 - a. The prevention of crime and disorder
 - b. Public safety
 - c. The prevention of public nuisance, and
 - d. The protection of children from harm
6. The responsibilities of the Licensing Authority relate to the determination of applications, review of licences and the drawing up of a Statement of Licensing Policy (SOP). The Act also places a duty on the Council to appoint a Licensing Committee to discharge these functions and for this Committee to delegate functions that it considers appropriate to sub-committees and officers.

The Gambling Act 2005

7. Like the Licensing Act 2003, the Gambling Act 2005 is a deregulatory measure designed to consolidate licensing functions undertaken by Councils and the magistrates courts. It also establishes the Council as the Licensing Authority whose role is to discharge licensing functions relating to the Gambling Act and to work with the Gambling Commission, established as an independent national

regulator of commercial gambling.

8. The Gambling Act has three objectives which are set out in the Act:-
 - a. Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - b. Ensuring that gambling is conducted in a fair and open way
 - c. Protecting children and other vulnerable persons from being harmed or exploited by gambling.
9. As with the Licensing Act the responsibilities of the Licensing Authority relate to the issue and review of premises licences for a range of different premises, the granting of permits mainly for gaming machines and registrations of small society lotteries and occasional use notices. The Gambling Act delegates these functions to the Licensing Committee of the Authority under Section 154. Similarly functions can also be delegated to sub-committees and officers where this is considered appropriate. The Licensing Authority is also responsible for drawing up a Statement of Principles commonly referred to as the Gambling Policy.

Main Considerations for the Implementation Executive

10. The main considerations for the IE relate to the following areas:
 - a. The appointment of a Licensing Committee to deal with both Licensing (Section 6 Licensing Act 2003) and Gambling (Section 154 Gambling Act 2005) functions
 - b. The establishment of a Scheme of Delegation for both Acts to enable subcommittees and officers to undertake these functions effectively
 - c. Consideration and adoption of both the Statement of Licensing Policy (Licensing Act 2003) and the Statement of Principles (Gambling Act 2005)
11. Each of these areas will be explored below both for the future and short term.

The Appointment of the Licensing Committee

12. Section 6 of the Licensing Act 2003 places an obligation on the Council to appoint a Licensing Committee. Further, all matters relating to the licensing functions of the Licensing Authority must be discharged through this Committee (Section 7) including the licensing functions contained within the Gambling Act 2005. It is recommended therefore that a Licensing Committee be appointed at the earliest opportunity by the new Council following elections in June 2009.
13. The role of the Licensing Committee is that of a strategic overview of licensing functions (alcohol, entertainment and gambling) and in appropriate cases the determination of applications e.g. particularly contentious, high profile or large-scale event cases.
14. There is no provision in the 2003 Act that the Licensing Committee should be politically balanced and considered opinion suggests that the Committee falls outside the requirements of both the Local Government Act 1972 and the Local Government and Housing Act 1989 in terms of political balance. However, the rationale for this is unclear and if the scope of the Licensing Committee should

be extended to cover non-Licensing Act or non-Gambling Act licensing activities as permitted under section 7(3) of the 2003 Act, good practice suggests the Committee should be politically balanced.

15. It is therefore recommended that the Licensing Committee is politically balanced and composed of between ten and fifteen members as prescribed in the Licensing Act, the final number being dependent on the outcome of the elections. This will provide flexibility for the new Council to determine the optimum size of committees. Further it is recommended that the terms of reference for the Committee be as follows:

‘To deal with all of the Council’s responsibilities under the Licensing Act 2003 and Gambling Act 2005 and any other associated matters that naturally fall within the jurisdiction of the Committee where legislation permits’.

16. The demands placed on the Licensing Committee are not as onerous as, for example the proposed strategic Planning Committee, and it is recommended therefore that the Committee only meets on a twice yearly basis as a matter of routine.
17. It may be with time that some of the wider licensing functions could be delegated to Area Boards but this is unlikely to be the case with actions under the Licensing or Gambling Acts because of the quasi-judicial nature of these duties. It is however recommended that officers explore opportunities of working with Area Boards with respect to other licensing activities.

Scheme of Delegation: Sub-committees and Officers

18. In order to discharge duties under the Licensing Act 2003 and the Gambling Act 2005 it is recommended that the Licensing Committee delegates certain functions to sub-committees. Each sub-committee should be composed of three Members of the full Licensing Committee (Section 9 Licensing Act 2005). There is no requirement for political balance with respect to the sub-committees but every effort will be made when selecting members to serve on these sub – committees to ensure cross-party representation.
19. Each subcommittee has a quasi-judicial status and will have full delegated powers (Section 10 Licensing Act 2003) to enable it to reach decisions on contested applications and adjudicate over the review of any licences. This is undertaken by way of a ‘licensing hearing’. Such hearings are conducted in a way similar to Magistrates Courts with Members considering the case on the written and oral evidence from the parties on the day. The hearing follows a set procedure and a ‘record of the proceedings’ is taken that will be used in the event of any subsequent appeal to the Magistrates Court. The procedure for hearings has been prescribed by the Secretary of State in the Licensing Act 2004 (Hearings) Regulations 2005.
20. As both the Licensing and Gambling Acts are now fully established, demand for sub-committees is less regular and generally unknown. In 2008 the need to convene a sub-committee only arose on 18 occasions across the county. There is therefore no need to have diarised sub-committee meetings. However, sub-committees do need to be responsive and have to be convened at short notice

(within 20 days) so there is a need for flexibility. In order to achieve this and fulfil these statutory obligations it is recommended that sub-committees of three Members are convened as and when required. Selection of the Members should be based on the following criteria:

- a. That the Member selected is available on the designated date
 - b. That the Member selected is not the representative for the area in which the premises subject to the hearing or review is situated
 - c. That cross party representation on all sub-committees should be achieved where at all possible.
21. Regard will also be required to be had of any other prejudicial interests under the Code of Conduct for Members that may arise. Members will clearly have to take account of such interests and notify Legal and Democratic Services as soon as possible so that a replacement Member can be appointed. The Head of Democratic Services should therefore have delegated authority to appoint Members to sub-committees drawn only from the overall membership of the Licensing Committee rather than through the usual political group substitution rules.
22. Section 10 of the Licensing Act 2003 also allows for the delegation of duties to officers by the Licensing Committee for certain administrative functions or where no objection has been received with respect to an application. District Councils currently have very similar schemes of delegation for both licensing and gambling functions which reflect the 'recommended delegation of functions' provided as guidance for both Acts. These Schemes of Delegation clearly illustrate the split in delegation between sub-committees and officers and have served well for the purposes of discharging Licensing and Gambling Act functions. These are reproduced as Appendix 1 to this report. It is recommended that both schemes are adopted by the new Licensing Committee.
23. It is likely that a further report to the new Licensing Committee with recommendations for sub-committees, Scheme of Delegation and procedure will be required in due course as these decisions, post elections, have to be taken by the new Licensing Committee. They are outlined here to provide information for the IE but also as they are relevant for the interregnum.

The Appointment of the Licensing Committee and Scheme of Delegation – The Pre-election period

24. The Local Government (Structural Changes)(Transitional Arrangements) (No 2) Regulations 2008 which came into force on 28th November 2008 (hereafter known as the 2008 Regulations) provide for preparing councils to appoint temporary co-opted Members to discharge licensing functions for the pre-election period, i.e. 1st April 2009 up to the fourth day after the elections.
25. There are two categories of co-opted Members, those District Council Members on the IE and those District Council Members who are currently Members of a committee established to exercise the Licensing functions of a District Council.

26. As alcohol, entertainment and gambling licensing are specialist functions carrying quasi-judicial responsibilities and bearing in mind that there is an obligation on the Council to appoint a Licensing Committee it is recommended that an interim Licensing Committee is appointed for the interregnum. Further it is recommended that the number of Members should be restricted to twelve, three from each of the existing District Councils and that these members should have previously served on District Licensing Committees.
27. In this case it would be appropriate for the IE to waive any political proportionality as permitted by the 2008 Regulations, providing no Member of the IE votes against it. In waiving this requirement the IE will ensure the transfer of knowledge, experience and understanding pending the new arrangements and ensure a robust system in the event of continuing Licensing and Gambling policies (see para 33 below)
28. The interim Licensing Committee should be given the delegated authority to appoint sub-committees of three members. Common sense suggests that the panels be composed of the three District representatives who should preside over hearings regarding applications or reviews that arise from premises in that former District Council area unless they have an interest as outlined above (paras 20 & 21). If this event arises the Head of Democratic Services should be delegated authority to appoint an alternative Member from another authority.
29. It is recommended that the Scheme of Delegation given in Appendix 1 be adopted by the Interim Licensing Committee for this period. This will enable routine non-controversial business to continue by officers, minimising the amount of activity required of the sub-committees. It is hoped that the need for sub-committees during this period will be minimal.

The Statement of Licensing Policy and Statement of Principles (Gambling Policy)

30. In order for the licensing authority to discharge its licensing functions it is required to draw up a Licensing Statement or Statement of Licensing Policy (SOP) (Licensing Act) and Statement of Principles (Gambling Act) to which it must have regard to when undertaking its licensing functions. These policies have to be reviewed every three years and be the subject of a full consultation process.
31. Currently there are four policies for each Act across the County Area. It is an objective of the service to harmonise these policies as soon as possible into two single documents. To this end two separate policies have already been drafted and are currently the subject of consultation. It is the intention of the Service Director to bring a further report to the IE in March at the end of the consultation period so that the Executive can adopt the new policies which will serve for both the interregnum and the future after the June 2009 elections as this is a function that cannot be delegated to the Licensing Committee.
32. In the event that it is not possible to adopt harmonised policies, the 2008 Regulations provide for the continuation of the existing Licensing and Gambling policies providing a single document for each covering the whole area is completed no later than one year after 1st April 2009 (Regulation 12).

33. In this eventuality it is appropriate for the sub-committees to preside over applications arising from premises within the former district area to ensure consistent application of the licensing and gambling policies.

Training

34. Due to the quasi-judicial nature of these hearings full training will be given to Members of the Licensing Committee at an early opportunity to assist them with these responsibilities. Invitations will also be sent to non Licensing Committee Members should they wish to attend. The co-option of existing Licensing Committee Members in the interregnum will negate the need for training at this time.

Environmental Impact of the Proposal

35. There is minimal environmental impact of these proposals. Successful application of the licensing functions should reduce the impact of licensable activities on the public i.e. noise and public disorder.

Equality and Diversity Impact of the Proposal

36. The impact of these proposals is assessed as 'low' against the Council statutory responsibilities. There are potential implications with respect to human rights and these are considered in paragraph 39 below

Risk Assessment

37. Licensing is a statutory undertaking. Should the proposals in this report not be adopted it would leave the Wiltshire Council in a position of being unable to undertake its statutory responsibilities and functions under the Act. This will result in criticism of the Council and compromise the reputation of the new Wiltshire Council.

Financial Implications

38. There are no additional financial implications of the proposals contained within this report. In fact the reverse is true. The integration of the licensing service across the county should afford efficiency savings for the Wiltshire Council in terms of officer and Member costs in the long term although this has yet to be quantified.

Legal Implications

39. The provisions contained within the Licensing Act 2003 are, in the Government's view compatible with the requirements of the Human Rights Act 1998. However whilst it appears that the Licensing Act itself is compatible with the Human Rights Act there remains an obligation on the authority itself to act in a way that is also compatible with this Act. The possibility of acting in an incompatible way may arise at various stages such as during the review of premises licenses or drawing up the Statement of Licensing Policy. It is therefore incumbent on the authority to remain vigilant to these possibilities at all times as it discharges its responsibilities under the Licensing Act.

40. The licensing service is a high profile regulatory service important for protecting the public but also for ensuring the development of the leisure industry and economic viability. Fair application of licensing functions is critical for the reputation of the Council and for building trust and confidence in its service provision.

Conclusion

41. The provisions within the Licensing Act 2003 and Gambling Act 2005 are statutory requirements of the Council. This report has outlined arrangements that can be adopted both in the interregnum and longer term to ensure that the Council acts in accordance with these obligations.

Background Papers

None

Appendix

Appendix 1 Scheme of Delegation: Licensing Act 2003 and Gambling Act 2005