

<b>BODY:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>8 December 2004</b>
<b>SUBJECT:</b>	<b>LICENSING ACT 2003</b>
<b>REPORT OF:</b>	<b>COUNCILLOR WILLIAMS ON BEHALF OF THE CABINET</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose:</b>	To approve recommendations on constitutional and related matters.
<b>Contact:</b>	David Robinson, Local Democracy Manager. Telephone 01323 415022 or internally on extension 5022.
<b>Recommendations:</b>	<p><b>Further to the report made to the meeting of the Cabinet on 20 October 2004 and the Cabinet's recommendations thereon the Council is now asked to:</b></p> <p><b>(1) Approve the establishment of a "Licensing Act Committee" of between 10 and 15 members (initially 15); approve the Committee's terms of reference; endorse the Committee's proposed delegated powers; agree membership (Group Leaders to submit nominations based on an 8/7 split, political balance rules to apply as a matter of local discretion) and otherwise authorise the Committee's procedural arrangements as required by the Licensing Act 2003 and Regulations made under the Act.</b></p> <p><b>(2) Approve the establishment of a "General Licensing Committee" with the same Chairman, Deputy Chairman and membership as the Licensing Act Committee and approve the Committee's terms of</b></p>

**General Licensing  
Committee/Licensing  
Sub-committees.**

**(6) That the Assistant Director for Strategy and Democracy, in liaison with the Head of Legal Services, be authorised to amend the Council's Constitution in line with full Council's decisions upon the foregoing recommendations.**

**(7) To note that the Council's Independent Remuneration Panel will consider Special Responsibility Allowances for the Licensing Committees in conjunction with their current review of Councillors' Allowances.**

**(8) To note the staffing, training and other resourcing implications of the Licensing Act as contained in the report to Cabinet.**

<b>1.0</b>	<b><u>Introduction</u></b>	
1.1	This report, for the main part, comprises an extract of relevant sections from the report to Cabinet on 20 October 2004 (at agenda item 10). Changes, in the light of comments made at the Members' Seminar on 10 November 2004, are highlighted in paragraph 3 of this report.	
1.2	A copy of the Cabinet report is available on request – please see end of this report for contact information. A copy is also available on the Council's website at  <a href="http://www.eastbourne.gov.uk/reports/docs/cabinet~20-10-2004~report~04.htm">http://www.eastbourne.gov.uk/reports/docs/cabinet~20-10-2004~report~04.htm</a>	
1.3	An extract from the minutes of the Cabinet's meeting is set out at appendix 3 to this report for information.	
<b>2.0</b>	<b><u>Licensing Act , Statement of Licensing Policy and Other Matters</u></b>	

2.1	<p>The Licensing Act 2003 has introduced a completely new system for regulating the sale and supply of alcohol, all forms of public entertainment (including cinemas and theatres) and late night refreshment cafes. The Act provides that it is the duty of all licensing authorities to carry out their functions under the Act with a view to promoting the licensing objectives, namely:-</p> <p>§ the prevention of crime and disorder</p> <p>§ public safety</p> <p>§ the prevention of public nuisance; and</p> <p>§ the protection of children from harm.</p>	
2.2	<p>Further, the Act requires each local authority to produce a Statement of Licensing Policy that describes how the authority will carry out its licensing functions. This is the subject of a separate report on the agenda for this meeting of the Council.</p>	
2.3	<p><b>This report deals with the Member decision making structures and procedures for implementing the provisions of the Licensing Act 2003. Matters in relation to the following topics were covered in the report to Cabinet on 20 October 2004:-</b></p> <p><b>Summary of licensing provisions.</b> Describing the types of licences and the transitional arrangements for switching from Justices Licences to Local Authority Licences.</p> <p><b>Administration, staffing and resources.</b> The task of handling applications in accordance with the many requirements of the Act, Regulations and Government Guidance would impact significantly upon the Environmental Health, Legal and Democratic Services sections of the Council's workforce.</p> <p><b>Member training.</b> Councillors sitting hearing applications would be required to act in a quasi-judicial fashion. It was important that those Councillors selected for these tasks had the knowledge and skills to enable them to perform their duties to a high standard</p>	
3.0	<p><b><u>Members' Seminar</u></b></p>	

3.1	<p><b>The Seminar held on 10 November 2004 was well attended with 20 Councillors present. The purpose of the seminar had been to brief Members on progress (and the latest guidance and draft regulations from the Department of Culture, Media and Sport), the draft Statement of Licensing Policy, and the proposed constitutional changes and to allow Members to comment upon both the Statement and constitutional changes in advance of their consideration by full Council.</b></p>
3.2	<p><b>Comments arising from the seminar having a bearing upon the constitutional measures were:-</b></p> <ul style="list-style-type: none"> <li>· Members' role in relation to the assessment of the validity of objections. It is proposed that certain Councillors will be consulted prior to any notification being given that representations made in respect of a premises licence are considered to be "vexatious or frivolous".</li> <li>· Members' role in relation to uncontested licence applications, especially for premises licences, which would normally fall to be dealt with by officers under delegated powers.</li> <li>· Legal advice that the quorum for licensing sub-committees convened under the Licensing Act should not be less than 3.</li> <li>· A consensus view of members that the provision for "regulatory" SRAs (special responsibility allowances) be continued notwithstanding the proposed enlargement of the pool of regulatory councillors from 12 to 15.</li> </ul> <p>Detailed arrangements to take into account the first 2 of the above will be covered in the report due to be made to the first meeting of the Licensing Act Committee. Only the Committee itself (and not the Council) can determine its delegation arrangements. The matter of sub-committee quorum has been incorporated in the constitutional proposals at appendix 2 of this report. The last matter, concerning allowances, will be reported to the Independent Remuneration Panel.</p>

4.0	<p><b><u>Constitution – the Member decision making structures and procedures</u></b></p>
4.1	<p><b>Licensing Committee.</b> The Act provides that each licensing authority must establish a licensing committee consisting of at least 10, but no more than 15, members of the authority. The Guidance envisages that the Committee's role will be limited to providing an overview of the licensing activities by receiving regular reports on decisions taken and in reviewing the operation of the Council's licensing policy. All decisions on applications will be taken by either one of a number of licensing sub-committees or by a Council officer acting under delegated powers. The sub-committees would be required to have a minimum membership of 3. The Government's recommended delegation of functions is set out in Appendix 1.</p>
4.2	<p>Because of the way the legislation is worded, legal opinion suggests that it may not be lawful for the Council to have other licensing functions, such as taxi licensing, dealt with by an all-purpose licensing committee. Only functions that have some relationship to Licensing Act functions may be discharged by a committee established under the Act. The view is taken that when Parliament approved the Act they had in mind the creation of a body that could in many respects be seen to stand apart from the Council. Therefore, as it does not appear possible to create a single committee, there are 2 options:-</p>
4.3	<p>Option 1. Create the 2 separate committees - a "Licensing Act Committee" and a "General Licensing Committee". They would each have their own terms of reference, membership and procedures. The former governed by the Licensing Act regulations and the latter under the Council's usual constitutional rules. The intention would be for the 2 committees to have the same chairman and membership, meet at the same times (one after the other) etc. A similar arrangement would operate for the sub-committees with a clear distinction being made between the 2 different sets of functions.</p> <p>Option 2. Set up a Licensing Act Committee on its own and retain the current Licensing Panel for all non Licensing Act functions. At present any licensing and byelaw policy issues are dealt with by Planning and Licensing Committee, with the Panel dealing with applications that cannot otherwise be dealt with under officers delegated powers. But should we continue to take non-Licensing Act matters to a Planning and Licensing Committee in the future? For the Committee to retain licensing in its title and among its functions could be confusing to outsiders when we have another committee called Licensing Committee meeting at different times with a different membership?</p>
4.4	<p>Option 1 is recommended. The aim is to achieve, so far as the Act allows, the creation of a single pool of Councillors dealing with all licensing matters.</p>

4.5		<p><b>Expanded Regulatory Pool?</b> The Council currently has a “Regulatory Pool” of 12 Councillors. A simple approach might be to enlarge the pool to 15. Those 15 Councillors would then comprise the Licensing Committees. Sub-committees comprising 3 Councillors (i.e. licensing sub-committees) would then be set up to hear those applications that cannot be dealt with by Officers under delegated powers. There is, however, concern that in the initial period, expecting all the existing 8 regular “Planning” members to take on licensing duties may be unrealistic and that we need to involve additional Councillors above the extra 3 required to expand the current Regulatory Pool from 12 to 15.</p>
4.6		<p><b>Planning Committee.</b> The existing Planning and Licensing Committee would be re-named the “Planning Committee” and its current licensing functions (e.g. in relation to such matters as taxis, byelaws etc) transferred to a new General Licensing Committee.</p>
4.7		<p><b>Licensing Panel.</b> The existing Licensing Panel would be disbanded and its functions transferred to the new General Licensing Committee. For the main part all non-licensing Act functions would be delegated to a sub-committee of the General Licensing Committee which would operate in much the same way as the current Panel.</p>
4.8		<p><b>Licensing Act Committee Membership.</b> The membership of the new Committee should we feel be established at 15 initially. In time, once the transitional period is completed and the level of normal licensing activity becomes apparent, this can be reviewed, and the number reduced to say 10. The overall size of the Regulatory Pool may however need to be about 15 (initially more as discussed in paragraph 3.2 above) to ensure that a sufficient number of councillors are available for both planning and licensing duties. A committee of 15 with a political balance split of 8/7 would mean that all the controlling group Councillors apart from the Cabinet members and the Mayor would be members of the Committee. Although it is understood that the political balance rules do not apply to the Committee it is assumed that the Council will nevertheless choose to apply them. The Council currently excludes from membership of its Regulatory Pool the Mayor and members of the Cabinet. This is a matter of local discretion, although many Councils follow the practice of excluding Cabinet members from committees such as Planning. The Council retains the option of reviewing this though it is assumed that Members will want to maintain the Council’s current approach.</p>

4.9	<p><b>General Licensing Committee.</b> As discussed in paragraphs 4.2 to 4.4 above this Committee would have the same membership as the Licensing Act Committee and meet according to the same timetable. For the main part, as will be the case with the Licensing Act Committee, its functions will be discharged by either a sub-committee or officers under delegated powers. It is not intended to change the current delegations to officers other than in respect of licences (e.g. entertainment licences) now to be the subject of the Licensing Act 2003.</p>	
4.10	<p>An analysis of the number of occasions when environmental health/licensing matters came before the Planning and Licensing Committee over the past 3 years (back to October 2001) shows that there were 4 reports to committee in that period.</p>	
4.11	<p><b>Sub-committee Membership and Chairmanship.</b> It is envisaged that the 3 member Licensing sub-committees be selected from the membership of the Committees. Political balance is not required and it may be difficult to achieve it in any event. It is therefore proposed that the sub-committees be constituted without regard to political affiliation and instead that members be selected on the basis of their availability. An exception would need to be made for a sub-committee convened under the General Licensing Committees' remit. In these cases it is a requirement that the political balance rules are followed. It is also suggested that a team of Chairmen be identified. They would receive additional training to equip them for their particular role. It is recommended that initially up to 5 Councillors be chosen for this role.</p>	
4.12	<p><b>Licensing Act Committee/Sub-committee Proceedings, Quorum and Substitution.</b> The draft regulations cover such matters as public notice of hearings, access to papers, rights of attendance and a requirement that hearings are held in public unless it is determined that the public interest would not be served by a public hearing. No provision is made in respect of quorum and substitution. It is believed that the Council will be able to set its own rules in relation to these matters. The usual quorum rules (one quarter or 2, whichever is the greater) should therefore apply with the exception of a licensing sub-committee convened under the Licensing Act where legal advice in relation to interpretation of the Act's wording has suggested that a quorum of 3 (i.e. the specified membership number for the sub-committee) should be set. With regard to substitution, it is considered that no substitution should be allowed both in respect of the Committees and the sub-committees. This is to ensure that only Councillors who have received appropriate training will be able to participate. In the case of the sub-committees, the absence of a substitution rule will ensure that, at any reconvened sitting of a hearing, only the members who originally sat at the earlier hearing on a particular application can be present.</p>	
4.13	<p><b>Terms of Reference.</b> Draft terms of reference for both licensing committees are set out in Appendix 2.</p>	

4.14	<p><b>First and Future Meeting of the Licensing Act Committee.</b> It is recommended that the Committee holds its first meeting in January and that Group Leaders nominate the Councillors to be appointed to membership of the Committee with effect from 8 December 2004 (the date of full Council). This assumes that the current 12 members of the regulatory pool are members of the Licensing Committees. At their first meeting the Committee will be asked to note its remit and formally agree delegations to sub-committees and officers and agree the appointment of the standing chairmen of the sub-committees. This meeting should also be used as an opportunity to give councillors who will shortly be sitting as members of the Licensing Sub-committees considering contested applications a final briefing on their responsibilities and the procedures to be followed at hearings.</p>	
4.15	<p>In future, the Committee will, in all probability, be required only to meet about twice a year. Its role will essentially be limited to monitoring the operation of the licensing function. All contested applications will be handled by the licensing sub-committees and officers will have power to process and deal with all non-contested applications.</p>	
4.16	<p>Meetings of the General Licensing Committee will be held as and when required and will normally be set for the same date as the Licensing Act Committee.</p>	
5.0	<p><b><u>Implications</u></b></p>	
5.1	<p>Consideration of the financial, staffing, equality and community safety implications in respect of the implementation and operation the new licensing regime were given in the report to Cabinet on 20 October 2004.</p>	
<p><b>Councillor Christopher Williams</b></p> <p><b>Cabinet Member</b></p>		
<p><b>Background Papers:</b></p> <ol style="list-style-type: none"> <li>1. Licensing Act 2003</li> <li>2. Department of Culture, Media and Sport Guidance</li> <li>3. Draft Regulations</li> </ol> <p>Links to the above may be found at the Department of Culture, Media and Sport Website at <a href="http://www.culture.gov.uk/alcohol_and_entertainment/default.htm">http://www.culture.gov.uk/alcohol_and_entertainment/default.htm</a></p>		

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**APPENDIX 1**

**Recommended delegation of Licensing Act functions:**

**(a) Extract from Guidance issued under Section 182 of the Licensing Act 2003**

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Officers*</b>
Application for personal licence		If an objection made	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases

Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

(b) Other delegations:

<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Officers</b>
Extension of time limits under the Hearings Regulations (Reg. 11)		In cases where the sub-committee is conducting a hearing	All other cases
Appointment of "standing" chairmen of sub-committees.	All appointments		
Appointment of members to serve on a licensing sub-committee.			All appointments (Assistant Director for Strategy and Democracy)

\*Officers. Delegation is to the Environmental Health Manager unless a different officer is specified)

## APPENDIX 2

### Licensing Committees

## Draft Terms of Reference

(for incorporation within Section B of Part 3 of the Council's Constitution)

# Licensing Act Committee

Composition:

Between 10 and 15 members who undertake relevant training in regulatory matters.

Membership to be balanced to political proportions on the Council

The quorum for the Committee shall be in accordance with Council Procedure Rule 8 (i.e. one-quarter of the membership or 2 members whichever is the greater).

Substitutes will not be allowed.

### Terms of reference:

(1) To undertake all the Council's functions as Licensing Authority under the Licensing Act 2003 and to do so with a view to promoting the Act's licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm) and with regard to the Council's Statement of Licensing Policy and any guidance issued by the Secretary of State under S. 182 of the Act.

**(2) To delegate its functions to sub-committees or officers subject to the restrictions imposed under the Act and the Guidance and Regulations made thereunder.**

(3) To appoint sub-committees of 3 members chosen from the membership of the Committee to carry out those functions. Sub-committees need not be politically balanced. Sub-committee quorum to be 3.

(4) To appoint up to 5 of its membership to act as standing chairmen who will be entitled to chair meetings of the licensing sub-committees.

(5) To keep the Council's Statement of Licensing Policy under review in each of the 3 years for which the Policy is current and to make recommendations to the Council in relation to the revision of the Policy.

(6) To receive summary reports on determinations made by the licensing sub-committees and decisions made by officers and generally monitor workloads and performance.

**(7) To encourage partnership working between the Council and all other relevant agencies and interests including local people and business with a view to promoting the licensing objectives of the Act.**

\_(Note: If not quorate, the Committee is required, by virtue of Section 7(9) of the Licensing Act 2003, to refer any of the above matters which it is unable to deal with to the full Council for determination).

**The Committee's proceedings (and that of its sub-committees) shall be in accordance with Regulations made under the Licensing Act 2003.**

## \_General Licensing Committee

Composition:

Membership (including Chairman and Deputy Chairman) and quorum and substitution rules as for the Licensing Act Committee

**Terms of reference:**

**(1) To undertake all the Council's functions with respect to licensing and enforcement other than licensing functions arising out of the Licensing Act 2003 and development control enforcement arising out of the Town and Country Planning legislation.**

(2) To appoint a sub-committee of 3 members chosen from the membership of the Committee to carry out these functions where such powers or duties fall outside the delegated authority of the accountable officer (the sub-committee to act within policy guidelines approved by the Committee and otherwise in accordance with Council policies). Sub-committees to be politically balanced. Sub-committee quorum to be in accordance with Council Procedure Rule 8 (i.e. not less than 2).

**(3) To deal with appeals relating to the any of the above other than where a separate right of appeal exists to another non-Council body.**

**The Committee's proceedings (and that of its sub-committees) shall be in accordance with the Council's approved Constitutional procedures.**

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**APPENDIX 3**

**Extract from the minutes of the meeting of the Cabinet held on 20 October 2004:-**

**\*38. LICENSING ACT 2003** (page 334, minute 122, 2003/04 minutes). The Licensing Act 2003 had introduced a completely new system for regulating the sale and supply of alcohol, all forms of public entertainment (including cinemas and theatres) and late night refreshment cafes. The Act provided that it was the duty of all licensing authorities to carry out their functions under the Act with a view to promoting the licensing objectives, namely:-

- § the prevention of crime and disorder
- § public safety
- § the prevention of public nuisance; and
- § the protection of children from harm.

Guidance had been issued by the Secretary of State for Culture Media and Sport in July 2004. Subsequently, draft Regulations to be made under the Act, were published in mid-September. The draft regulations provided the detail of how the new licensing regime would operate, including forms, plans, and operating schedules. A separate consultation on fees was expected shortly. Consultation on the draft regulations for permitted temporary activities was not expected until March 2005.

Councillor Williams presented the report of the Assistant Director for Housing and Health, the Assistant Director for Strategy and Democracy and the Head of Legal Services. The report covered 5 main topics as follows:

- **Summary of licensing provisions.** Describing the types of licences and the transitional arrangements for switching from Magistrates' Licences to Local Authority Licences.
- **Constitution – the Member decision making structures and procedures.** The arrangements to be set out in the Council's Constitution specifying the functions to be carried out, the membership of committees and sub-committees and delegation arrangements. A draft of the delegation arrangements and Licensing Committee terms of reference were given in appendices to the report.

· **Statement of Licensing Policy.** The Council was required to consult upon and adopt a Licensing Policy. The Policy would need to be in accordance with the Act and comply with Government Guidance and would require full Council approval as part of the Council's Policy Framework

· **Administration, staffing and resources.** The task of handling applications in accordance with the many requirements of the Act, Regulations and Government Guidance would impact significantly upon the Environmental Health, Legal and Democratic Services sections of the Council's workforce. It was important that adequate preparations were made.

· **Member training.** Councillors sitting hearing applications would be required to act in a quasi-judicial fashion. It was important that those Councillors selected for these tasks had the knowledge and skills to enable them to perform their duties to a high standard.

Councillor Marsh was permitted to address the Cabinet further to a request under Council Procedure rule 11.3 and commented on the training requirements for members and seeking clarification on the application of political balance rules to sub-committee membership.

**RESOLVED (Key Decision):** (1) That the Council, at their meeting on 8 December 2004, be recommended to:

(a) Approve the establishment of a "Licensing Act Committee" of between 10 and 15 members (initially 15); approve the Committee's terms of reference; endorse the Committee's proposed delegated powers; agree membership (Group Leaders to submit nominations based on an 8/7 split, political balance rules to apply as a matter of local discretion) and otherwise authorise the Committee's procedural arrangements as required by the Licensing Act 2003 and Regulations made under the Act.

(b) Approve the establishment of a "General Licensing Committee" with the same Chairman, Deputy Chairman and membership as the Licensing Act Committee and approve the Committee's terms of reference and delegation arrangements.

(c) That the Licensing Act Committee hold its first meeting in January 2005 to transact the business indicated in paragraph 4.14 of the report.

(d) Agree that Sub-committees of 3 members, drawn from the membership of the Licensing Committees, be established as required under either of the Licensing Committees, and that up to 5 members be appointed by the Council as standing chairmen and to agree that the political balance rules will not apply to Licensing Act sub-committees.

(e) That the Planning and Licensing Committee be renamed the "Planning Committee" and its terms of reference amended accordingly and that the Licensing Panel be disbanded and its functions taken on by the General Licensing Committee/Licensing Sub-committees.

(f) That the Assistant Director for Strategy and Democracy, in liaison with the Head of Legal Services, be authorised to amend the Council's Constitution in line with full Council's decisions upon the foregoing recommendations.

(g) To note that the Council's Independent Remuneration Panel will consider Special Responsibility Allowances for the Licensing Committees in conjunction with their current review of Councillors' Allowances.

(2) That the staffing, training and other resourcing implications of the Licensing Act be noted and that the transfer of responsibility for public charitable collections (street and house to house collections) to the Licensing Team be endorsed.

(3) That it be noted that full Council will be asked to consider and adopt a Statement of Licensing Policy at their meeting on 8 December 2004 following a period of public consultation.

(Note: Councillors Elkin and Lucas declared personal interests in this matter as they both currently held

licences for the sale for or retail of alcohol at their business premises).