REPORT OF:	HEAD OF COMMUNITY SAFETY & ENVIRONMENTAL HEALTH
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TO:	*LICENSING COMMITTEE*
DATE:	*25 MAY 2010*

AGENDA ITEM NO:	8	WARD(S) AFFECTED:	ALL

SUBJECT:	LICENSING ACT 2003: LICENSING COMMITTEE TERMS OF REFERENCE.

RECOMMENDATIONS:

1. **To recommend to the Executive that the Licensing Committee Terms of Reference as listed in the Council's Constitution are amended to cover all functions of the Council in relation to the Licensing Act 2003 unless specifically excluded by legislation or delegated to the Licensing Sub Committee or Officers.**

SUMMARY

1. **An officer review of licensing processes has identified that the current Licensing Committee Terms of Reference does not follow the general practice adopted by other local authorities. The Committee has been allocated very specific functions which have resulted in some powers within the Licensing Act 2003 remaining the responsibility of full Council.**

2. **The specific nature of the current Licensing Committee functions does not provide the Committee with the ability to respond to legislative changes or delegate relevant matters to a Licensing Sub Committee or officers. The changes proposed will provide this flexibility.**

STATUTORY POWERS

1. Section 7 of the Licensing Act 2003 (the Act) states that all matters relating to the discharge by a licensing authority of its licensing functions are, by virtue of this subsection, referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority. The Statement of Licensing policy is specifically excluded from this delegation and remains the responsibility of full council.

ISSUES

2. The main provision of the Act which provided the general framework of, and apparatus for, the new regime took effect from December 2003. More recently officers have been made aware of a range of enforcement powers within the Act, some of which have been introduced by amendment or subsequent regulation.

3. During the implementation of the Act the Council was recommended to follow the Scheme of Delegations as recommended by the Secretary of State in Guidance published under S 182 of the Act. [Council minute ref.50; 9 December 2004]. This style of prescriptive delegation has inevitably lead to omissions within the Licensing Committee Terms of Reference, with the effect that some powers, for example the ability to withdraw a club premises certificate where the club no longer satisfies the conditions for being a qualifying club, remains the responsibility of full Council.

4. Without the responsibility to discharge general functions under the Act (other than those specifically excluded by legislation) the Licensing Committee is unable to delegate appropriate functions to its Sub Committee or officers. In these circumstances the delegation must be sought from full Council which may be both untimely and inefficient.

LEGAL IMPLICATIONS

5. Article 15.02 of the Council's Constitution states that "changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Executive, following consideration of a report from the Monitoring Officer". It would therefore appear that there is an inconsistency with the Constitution and the legislative provision, and it will be necessary to ask the Executive to recommend to Council that the proposed changes are adopted.

6. The absence of specific delegations will affect the Council's ability to respond to applications and take enforcement action. This may result in some applications which cannot be heard within statutory time frames as being deemed refused. Any lack or delay of enforcement activity may leave the Council open to legal challenge.

FINANCIAL IMPLICATIONS

7.   The recommendation would ensure that the Councils business is conducted in the most efficient and effective way.

Background Papers: None

Annexes: None