

REPORT OF:	HEAD OF ENVIRONMENTAL HEALTH SERVICES
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TO:	LICENSING COMMITTEE
DATE:	22 MAY 2007

AGENDA ITEM NO:	8	WARD(S) AFFECTED:	ALL
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SUBJECT:	GAMBLING ACT 2005 COMMITTEE PROCEDURES.
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RECOMMENDATIONS:

The Licensing Committee agree the following procedures:

- (i) The Gambling Act 2005 Hearings Rules (Annex 1)
- (ii) The Licensing Act 2003 and Gambling Act 2005 Procedure (Annex 2).

SUMMARY

1. The Council is required to hold a hearing in specified circumstances to consider applications under the Gambling Act 2005 (the Act). The circumstances are set out in the list of delegated functions that was approved by Council on 19 April 2007. These applications will be heard by the Licensing Sub-committee
2. Although the Licensing Committee must observe all statutory requirements in the hearing of those applications, it is entitled to draft its own procedures to govern the way in which hearings are conducted. The procedures should ensure that all hearings are conducted in a fair and consistent manner.
3. The Licensing Sub-Committee already has a set of procedures and a set of hearing rules to govern the conduct of applications under the Licensing Act 2003. However, due to procedural differences between the Licensing Act 2003 and the Gambling Act 2005 the existing procedures and hearing rules are not appropriate for dealing with hearings under the Gambling Act 2005.
4. Therefore, a new set of procedures and hearing rules are required for the Gambling Act 2005 and the Committee is being asked to approve those new procedures and hearing rules.

STATUTORY POWERS

1. The Gambling Act 2005 (the Act) provides that all decisions relating to premises licences are delegated to the Licensing Committee that has been established under Section 6 of the Licensing Act 2003.
2. The Licensing Act 2003 Section 9(3) allows that 'subject to any such regulations, each licensing committee may regulate its own procedures and that of its sub-committees'.
3. Section 154(1) of the Act, applies the Licensing Act 2003 (Hearings) Regulations 2005 to the proceedings of committees in relation to their functions under Part 8 of the Act ("Premises Licences"). These Regulations do not however take into account the procedural differences between the two Acts, and would have required further modification to ensure compliance with the Act.
4. In order to avoid confusion and preserve the distinct objectives of the two Acts, the Department for Culture, Media and Sport decided to introduce The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, which came into force on 30 April 2007.

ISSUES

5. The new Regulations are based on the Licensing Act Regulations to ensure a degree of continuity and familiarity. This theme has been continued in the proposed procedures, and unless the Act requires a specific departure from previously adopted procedures, they have been maintained and reproduced in the attached annexes.

LEGAL IMPLICATIONS

6. The Licensing Committee operates in a quasi-judicial capacity, therefore it is important to ensure that its conduct is compatible both with the Human Rights Act 1998, and principles of natural justice.
7. The Regulations require that specific information relating to the conduct of the hearing and procedures to be followed at the hearing be sent to each of the relevant persons with the notice of hearing. These procedures along with the notice of hearing will satisfy these requirements and ensure transparency and consistency in the process.

FINANCIAL IMPLICATIONS

8. There are no resource implications since the procedures seek to consolidate existing best practice and do not place any additional burden on licensing authorities.

Background Papers: None

Annex 1: The Gambling Act 2005 - Hearings Rules.

Annex 2: The Licensing Act 2003 and Gambling Act 2005 Procedure.

**RBBC Licensing Sub-Committee – The Gambling Act 2005 Hearings Rules.
Gambling Act 2005 and Gambling Act 2005 (Proceedings of Licensing Committees
and Sub-committees) (Premises Licences and Provisional Statements) (England
and Wales) Regulations 2007**

1. General

- 1.1 Items will be referred to the Sub-Committee in accordance with the Council's Constitution and the Officer Scheme of Delegation.
- 1.2 Council applications for premises licences will be decided by the Licensing Committee, even when no representations are made.

2. Composition of Sub-Committee

- 2.1 The Sub-Committee shall comprise of three members appointed from the Licensing Committee.¹ One member shall be an appointed Sub-Committee Chairman. The quorum shall be three.
- 2.2 No member of the Sub-Committee shall sit on an application in his/ her own ward.

3. Right of attendance, assistance and representation

- 3.1 An interested party who has made an objection/representation may attend and address the hearing and may be assisted or represented by any person whether or not that person is legally qualified, subject to the notification requirements in paragraph 3.4.
- 3.2 An interested party: ²
 - (a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,
 - (b) has business interests that might be affected by the authorised activities. or
 - (c) represents persons who satisfy paragraph (a) or (b).

¹ Licensing Act section 9.

² Gambling Act section 158

- 3.3 Applicants or Interested parties may be assisted or represented by their ward councillor/s provided that the Sub Committee is notified within the period specified in the notice of hearing.
- 3.4 Applicants, Interested parties and Relevant Authorities must notify the Sub Committee 5 working days prior to the hearing that they intend to attend and/or address the hearing, and that at the hearing they will request permission from the Sub-Committee for any other person/s to appear at the hearing to assist them, or act as a witness (including the matters that the witness will give as evidence)³.
- 3.5 Parties who do not notify the Licensing Authority as in paragraph 3.4 will not be permitted to make the address referred to.

4. Failure of parties to attend the hearing⁴

- 4.1 If a party has informed the Licensing Authority that s/he does not intend to attend or be represented at the hearing, or has left the hearing in circumstances enabling the Committee to reasonably conclude that s/he does not intend to participate further, the hearing may proceed in their absence.
- 4.2 Where a party has indicated their intention to, but fails to attend or be represented at the hearing, the Sub-Committee may:
- (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date;
 - (b) decide in the first instance to adjourn the hearing, but on the second or subsequent occasion hear the matter in the party's absence;
 - (c) hold the hearing in the party's absence.
- 4.3 Where the Sub-Committee holds the hearing in the absence of a party, the Sub-Committee must consider the application, representations or notice made by that party.⁵

³ Regulations para 6

⁴ Regulations para 10

⁵ Regulations para 10(2)(3)

5. Hearing to be in public

- 5.1 Subject to paragraph 5.3 all hearings must take place in public, except where the public interest requires the public's exclusion from the hearing or part of the hearing.⁶
- 5.2 A party and any person assisting or representing a party may be treated as a member of the public
- 5.3 The Sub-Committee may direct that all or part of the hearing must be in private if it is satisfied that it is necessary in all the circumstances of the case having regard to;⁷
- (a) any unfairness to a party that is likely to result from a hearing in public
 - (b) the need to protect as far as possible the commercial or other legitimate interests of a party

6. Exclusion of disruptive persons⁸

- 6.1 The Sub-Committee may require any person attending the hearing who is in its opinion behaving in a disruptive manner, or in breach of conditions specified in (b) below, to leave the hearing and may:
- (a) refuse to permit that person to return; or
 - (b) permit him/ her to return only on such conditions as the Sub-Committee may specify.
- 6.2 An excluded person may, before the end of the hearing, submit to the Sub-Committee in writing any information that s/he would have been entitled to give orally had s/he not been required to leave.⁹

⁶ Regulations para 8(1)

⁷ Regulations para 8(2)

⁸ Regulations para 11

⁹ Regulations para 11 (3)(a).

7. Procedure at hearing

- 7.1 At the beginning of the hearing, the Chairman shall explain to the parties the procedure which the Sub-Committee intends to follow.¹⁰
- 7.2 At the beginning of the hearing, the Sub-Committee shall consider any request made for permission for another person to appear at the hearing, only provided that notice has been made under paragraph 3.4 above.
- 7.3 A party shall be entitled to:
- (a) in response to a point upon which the Licensing Authority has given notice that it will want clarification, give further information in support of its application, representations or notice;
 - (b) if given permission by the Sub-Committee, question any other party; and
 - (c) address the Sub-Committee.
- 7.4 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.
- 7.5 Where there is more than one representation raising the same or similar grounds, the Sub-Committee may request that only one party address it on behalf of the parties who have made the representations in question.
- 7.6 In considering any representations or notice made by a party, the Sub-Committee may take into account documentary or other information produced by a party in support of its application, representations or notice either before the hearing or, with the consent of all the other parties, at the hearing.¹¹
- 7.7 The Sub-Committee shall disregard any information given by a party, or any person to whom permission to appear at the hearing is given by the Sub-Committee, which is not relevant to their application, representations or notice (as applicable) or, in the case of another person, the application, representations or notice of the party requesting their appearance.

¹⁰ Regulations para 9(2)

¹¹ Regulations para 9(5)(b)

- 7.8 Hearsay evidence may be admitted before the Sub-Committee.
- 7.9 The weight, if any, to be attached to hearsay evidence shall depend upon its nature and source.
- 7.10 Where a party intends to make reference to a particular Code of Practice or any other relevant document as part of its submission, it will declare this to the Sub-Committee within 5 working days of the start of the hearing's commencement.
- 7.11 Cross-examination shall not be permitted unless the Sub-Committee considers it appropriate to consider the representations, application or notice as the case may require.¹²
- 7.12 Parties shall be entitled to make closing submissions. The closing submissions of the responsible authorities, the interested parties and the applicant shall proceed in that order.

8. Determination of applications

- 8.1 ¹³When considering applications for premises licences and temporary use notices, the licensing authority shall aim to permit the use of the premises in so far as the authority think it;
- (a) in accordance with any relevant code of practice under section 24 of the Act,
 - (b) in accordance with any relevant guidance issued by the Commission under section 25 of the Act,
 - (c) reasonably consistent with the licensing objectives¹⁴ subject to paragraphs (a) and (b) above, and
 - (d) in accordance with the statement published by this authority under section 249 of the Act (subject to paragraphs (a) to (c)).

¹² Regulations para 9(5)

¹³ Gambling Act section 153

¹⁴ The objectives are;(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 gambling is conducted in a fair and open way and (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

- 8.2 The Sub-Committee shall make its determination either at the conclusion of the hearing or otherwise as prescribed by the Regulations.
- 8.3 The Sub-committee may extend the time limits for determining either a premises licence or review where it considers an extension to be in the public interest.¹⁵
- 8.4 All reasons for decisions must be clearly documented. They should:
- (a) summarise the key aspects of the evidence given by each side on the issue;
 - (b) state the weight placed on the evidence and why;
 - (c) state why refusal of the licence or attachment of the condition is necessary in order to promoted a particular licensing objective;
 - (d) state that the Licensing Authority has had regard to national guidance and local policy; and
 - (e) state that the Licensing Authority has nevertheless had regard to the individual merits of the case, human rights, and the rules of natural justice before reaching this decision.
- 8.6 Where the Gambling Act 2005 does not make provision for the period within which the Sub-Committee must notify a party of its determination, the Sub-Committee will do so forthwith on making its determination.
- 9. Record of proceedings**
- 9.1 A permanent and intelligible record of the hearing shall be kept for six years from the date of determination (including any appeal or judicial review).¹⁶
- 9.2 Clerical mistakes in any document recording a determination of the Licensing Committee or errors arising in such documents from an accidental slip or omission may be corrected by the Committee.¹⁷

¹⁵ Regulations para 14(1)

¹⁶ Regulations para 15

¹⁷ Regulations para 17

10. Postponments.¹⁸

10.1 Subject to the provisions of the Regulations, where it considers it necessary for its consideration of any representations or notice made by a party, the Sub-Committee may:

- (a) postpone the hearing to a specified date; or
- (b) arrange for a hearing to be held on a date specified by the committee..

10.2 Where the Sub-Committee adjourns the hearing to a specified or additional date, it will, as soon as reasonably practicable, notify the parties of the new or additional date, time and place for the hearing ¹⁹

11. Waiver of rules

11.1 Except where prescribed by the Regulations, the Sub-Committee may in any particular case dispense with or modify these rules.²⁰

11.2 Any irregularity resulting from any failure to comply with the Regulations shall not of itself render the proceedings void. If the Sub-Committee considers that any person may have been prejudiced as a result of the irregularity, it shall take such steps as it thinks fit to cure the irregularity before reaching its determination.²¹

11.3 In particular, the Sub-Committee may extend a time limit provided for in the Regulations for a specified period where it considers this to be necessary in the public interest. ²²

11.4 Where the Sub-Committee has extended a time limit it must forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.²³

¹⁸ Regulations para 7

¹⁹ Regulations paras 7(3)(4) & 10(4)

²⁰ Regulations para 3(2)

²¹ Regulations para 16(1), (2)

²² Regulations para 14(1)

²³ Regulations para 14(2)

**RBBC Licensing Sub-Committee - Licensing Procedures for The Licensing Act
2003 and Gambling Act 2005.**

(The order of business shall be at the discretion of the Sub-Committee, but will normally proceed in accordance with and in the order of the paragraphs below.)

1. The **Chairman** will introduce him/ herself, the other members of the Sub-Committee, and such officers as are present, indicating their role in the proceedings and the procedure to be followed.
2. The **Chairman** will ask the interested parties present to identify themselves, to indicate if they wish to address the Sub-Committee, and ask whether agreement has been reached on any of the issues which are in dispute.
3. The **Sub-Committee** will consider any request made by a party for permission for another person to appear at the hearing (to represent them, to give evidence, or both).
4. The Chairman will ask the **Licensing Officer** to introduce the report, give a brief outline of the application received and issues requiring consideration by the Sub-Committee.
5. The parties will normally be invited to **address the Sub-Committee** in the following order:
 - (a) **Applicant (or representative);**
 - (b) **Responsible Authorities;**
 - (c) **Other interested parties** who have previously submitted a report to the Council and wish to address the Sub-Committee.
6. **Questions** can be put to the Licensing Officer, applicant, Responsible Authorities and the other interested parties by and in the following order:
 - (a) The **Licensing Officer** regarding particular points upon which the Council has previously given notice it will seek clarification;

- (b) The **Sub-Committee** regarding particular points upon which it has previously given notice that it will seek clarification;
 - (c) The **Sub-Committee** on any other topic;
 - (d) The **other parties** at the hearing in the order nominated by the Chairman.
7. The Responsible Authorities, the interested parties and the applicant will make **closing submissions** in that order.
 8. After hearing the representations of the parties, the **Sub-Committee** may ask all other persons to withdraw from the room, or may withdraw itself, in order to allow it to make its deliberations.
 9. The Sub-Committee may ask the **Council's Legal Adviser** during deliberations to provide advice. The Legal Adviser may inform the parties of advice given.
 10. If it is necessary to recall any party to **clarify points in issue**, all parties will be invited to return.
 11. The Sub-Committee shall **make its determination** at the conclusion of the hearing (if required by legislation) or else within five working days.
 12. The **Chairman** will inform those present of the Sub-Committee's decision forthwith (if made), giving its reasons, and confirm that a written notification of the decision and the reasons for it will be provided within the relevant timescale.

COMMITTEE FORMALLY CLOSED