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TO:	LICENSING COMMITTEE
DATE:	17 JUNE 2014

SUBJECT:	LICENSING COMMITTEE: PROTOCOLS AND PROCEDURES
RECOMMENDATIONS: (i) Note the decision of Council to remove protocols from the Constitution. (ii) Adopt the existing licensing protocols and procedures subject to future review. (iii) Introduce a revised procedure for dealing with mediated licensing applications.	
REASONS FOR RECOMMENDATIONS: To note that the Licensing Committee may now agree its own protocols. To amend the procedure for dealing with mediated applications in the interests of efficiency.	

Licensing Committee has authority to approve the above recommendations

1. SUMMARY

1.1 At its meeting on 12 April 2014 Council adopted the recommendation for a revised Constitution to come into effect from 1 May 2014.

1.2 One of the changes has been to withdraw the committee protocols from the Constitution. Council has agreed that committees should be delegated authority to establish their own arrangements.

1.3 It is recommended that the Licensing Committee should retain its existing protocols and procedures as these have worked well to date.

1.4 It is proposed, however, to introduce a new procedure note for dealing with mediated applications.

2. RELEVANT LEGISLATION

- 2.1 The Licensing Act 2003 “makes provision about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment, about offences relating to alcohol and for connected purposes”.
- 2.2 The Licensing Act 2003 (Hearings) Regulations 2005, Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 and Amended Guidance issued under Section 182 support the Act in providing guidance on the procedures to be followed when determining applications.

3. CONSIDERATION OF LICENSING APPLICATIONS

- 3.1 The requirements for dealing with applications are straightforward, both where there are no representations or where there are representations which cannot be dealt with by mediation:
 - 3.1.1 Where there have been no representations, the licensing authority must grant the application subject only to conditions consistent with the operating schedule and relevant mandatory conditions.
 - 3.1.2 In these circumstances the licensing authority may delegate authority to officers to approve the application.
 - 3.1.3 Where representations have been received, and are not dealt with through mediation, a hearing has to be called and the application must be determined by a Licensing Committee or Sub Committee thereof.
- 3.2 The legislation and procedures to be followed are less clear, however, where representations have been received but are dealt with through mediation, with agreement reached between all interested parties. In effect:
 - 3.2.1 Section 10 (4) of the Act provides that the licensing authority may not sub-delegate any of its functions to an officer where representations have been received. No exceptions are made to this provision.
 - 3.2.2 Nonetheless, Section 18 of the Act makes the provision that a hearing need not be held if all the parties agree that this is unnecessary; and
 - 3.2.3 Regulation 10 of the Licensing Act 2003 (Hearings) Regulations 2005 equally provides for the withdrawal of representations.
- 3.3 In practice, the common approach adopted by most authorities is for the representations to be withdrawn, with the written agreement of all the parties, and for the application to be dealt with as if there had been no representations, meaning delegation to officers to approve.
- 3.4 In certain circumstances, however, representations may not be withdrawn, despite mediation and agreement having been reached.
- 3.5 The application must, therefore, be determined by a Sub Committee.

3.6 At present, a formal meeting is called and the Sub Committee attends to approve mediated applications.

3.7 This is despite the fact that there are no relevant representations to be considered and no legitimate grounds to either refuse the application or attach further conditions.

4. DEALING WITH APPLICATIONS WHERE REPRESENTATIONS HAVE BEEN RECEIVED BUT AGREEMENT IS REACHED THROUGH MEDIATION

4.1 It is recommended that a procedure should be adopted whereby the Sub Committee may approve a mediated application, but without the need to hold a hearing or to attend in person.

4.2 Annex 1 sets out the suggested procedure which is recommended to the Committee for its adoption.

5. IMPLICATIONS

Financial

5.1 There will be a cost-saving through not having to hold formal hearings, involving both members and officers.

Resources

5.2 This will in turn mean a resource saving, as licensing, legal and democratic services officers will be released from the need to attend hearings.

Legal

5.3 The Council is under a general duty to act fairly, and the right to a fair hearing requires that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The right to a fair hearing is also guaranteed by Article 6(1) of the European Convention on Human Rights.

5.4 If all parties enter mediation and an agreement is reached (in writing) and this revised procedure is followed then Article 6 (1) is upheld, no interference.

5.5 Equality Act 2010, Public Sector Equality Duty (section 149) must form part of this decision process (see 5.6 below). Licensing Act 2003 should also be considered, in particular section 182 Home Office guidance and s183 Hearings. Both are silent on mediation, no negative implications in this regard.

Equality Impact Assessment

5.6 An equality impact assessment has been undertaken and no negative issues have been highlighted. All interested parties will be required to formally agree in writing

to the terms of the mediated agreement before the procedure for approving the application is put into effect.

6. CONSULTATION

- 6.1 The Licensing Committee Chairman and Sub Committee Chairmen in 2013-14 have been consulted on the proposals.

Background papers:

Licensing Act 2003 and accompanying guidance.