



<b>REPORT OF:</b>	HEAD OF CORPORATE POLICY, PERFORMANCE & PARKING
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<b>TO:</b>	LICENSING & REGULATORY COMMITTEE
<b>DATE:</b>	8 JUNE 2016

<b>SUBJECT:</b>	<b>LICENSING &amp; REGULATORY COMMITTEE: PROTOCOL AND PRACTICE</b>
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**RECOMMENDATIONS:**

1. That all applications under the Licensing Act 2003 and the Gambling Act 2005 be heard by a sub-committee of three members, taken from the full committee membership.
2. That any other applications be heard by a sub-committee of three members or the full committee, at the discretion of the Chairman of the Licensing and Regulatory Committee in consultation with officers.
3. To consider:
  - a) the options for the appointment of chairmen to sub committees as set out in paragraph 24;
  - b) adopting the Protocol for the appointment and operation of all sub committees as set out in Annex 1 subject to (a) above; and
  - c) authorise the Head of Corporate Policy, Performance and Parking, in consultation with the Chairman of the Committee, to approve the Protocol (Annex 1) accordingly.
4. Adopt the hearing procedure notes as set out in Annex 2.

Licensing & Regulatory Committee has authority to approve the above recommendations.

Any recommendations in relation to Members Allowances are a matter for Full Council to determine following a report from the Independent Remuneration Panel.

**SUMMARY**

At its meeting on 14 April 2016 Council agreed to amalgamate its Licensing Committee and its Regulatory Committee into one new committee to be known as the 'Licensing & Regulatory Committee'.

This report sets out proposed governance arrangements for the new committee, in particular the establishment of sub-committees and the procedures to be followed when determining applications.

## **STATUTORY POWERS**

1. The Council has a statutory obligation to determine licensing matters under the provisions of the Licensing Act 2003, the Gambling Act 2005, the Local Authorities (Miscellaneous Provisions) Act 1976, the Scrap Metal Dealers Act 2013 and all other licensing and registration functions set out in paragraph B of Schedule 1 of the Local Authority (Functions and Responsibilities) England Regulations 2000 as amended.
2. The Council is also responsible for determining applications under schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, which includes sex shop licences.

## **BACKGROUND**

3. At its meeting on 14 April 2016 Council agreed to amalgamate the former Licensing Committee and Regulatory Committee into the Licensing & Regulatory Committee.
4. With effect from 27 May 2016, the newly formed committee is delegated authority for dealing with all licensing matters under the above legislation.
5. Under its terms of reference, the Licensing and Regulatory Committee is responsible for agreeing its own governance arrangements including for the establishment of sub-committees.

## **PREVIOUS PRACTICE**

### **Licensing Committee**

6. A Licensing Committee of 15 members was appointed under the requirements of the Licensing Act 2003 and the Gambling Act 2005. Membership of the committee was politically balanced, although not required to be so.
7. The full committee sat only rarely, primarily to make annual appointments and to review licensing policy.
8. The main business of determining applications was dealt with by a sub-committee of three. Any member of the Licensing Committee may be appointed to a sub-committee, subject to the inclusion of a nominated chairman and to members not sitting on applications within their own wards or in which they had an interest.
9. The Committee agreed a pool of five nominated Chairmen of Sub Committees who could be called upon to chair hearings on a case by case basis. This role attracts a Special Responsibility Allowance under the Members Allowance Scheme.
10. Substitutes were not appointed to the Licensing Committee.
11. These arrangements were adopted in line with issued Guidance under Section 182 of the Licensing Act and have always worked well, with no major issues to report.

12. It has sometimes proved difficult, however, to arrange dates within the specified deadlines that coincide with the availability of nominated chairmen.
13. Although applications were frequent when the Licensing Act 2003 was introduced, the number of hearings has dropped considerably in recent years and they now average only two or three each year.

### **Regulatory Committee**

14. A Regulatory Committee of ten members was appointed under the requirements of the Local Government (Miscellaneous Provision) Act 1976 and other associated legislation.
15. Membership of the committee was required to be politically balanced and nominated substitutes were appointed by each political group.
16. The committee dealt primarily with applications relating to private hire and hackney carriage licences.
17. As with the former Licensing Committee, applications have been infrequent in recent years, and the committee sits rarely.

## **PROPOSALS**

### **Committee structure**

18. Annex 1 sets out the proposed protocol for forming a sub-committee, and it is proposed that the protocol should be applied to all future sub-committee hearings.
19. For applications brought under the Licensing Act 2003 and the Gambling Act 2005, and in accordance with the relevant legislation and issued guidance, a sub-committee of three members should sit to hear and determine these applications.
20. For other applications brought before the Committee, which will mainly be those for private hire and hackney carriage licences, it is recommended that the Chairman of the Licensing and Regulatory Committee should be consulted to determine whether or not to take these to a sub committee, based upon the individual merits of each application.
21. The hearing procedures notes will apply in all instances, whether applications are heard by a sub committee or the full committee.

### **Appointment of chairman of a sub-committee**

22. In the past, five nominated chairmen were appointed from the Licensing Committee to chair hearings before a sub-committee.
23. In view of the small number of hearings that have been required in recent years, and the constraints that this sometimes places upon the organisation of a hearing within tight deadlines, the committee may wish to review its previous practice.
24. The following options are put forward for the Committee's consideration:
  - that nominated chairmen continue to be appointed by the Licensing & Regulatory Committee; or
  - that all members of the committee be eligible to chair a sub committee; and
    - the chairmanship is rotated between members subject to availability and experience; or
    - an item is placed at the start of each agenda inviting the sub committee to appoint a chairman.
25. These options could increase flexibility for the setting of dates, and may also have the benefit of allowing all members to gain experience of chairing a sub-committee.
26. It should be noted that the Members Allowance Scheme currently provides for five nominated chairmen to be paid a fixed special responsibility allowance, regardless of the number of hearings held or attended.
27. Given the recent low volume of hearings, if the Committee is minded not to appoint nominated chairmen, consideration could be given to reviewing this allowance.
28. Any changes proposed to the current Members Allowance Scheme are for Full Council to determine following a report from the Independent Remuneration Panel.

### **Substitutes**

29. Substitutes may be appointed to the Licensing & Regulatory Committee.
30. It is recommended, however, that substitutes should not sit on any sub-committee because a pool of 15 members provides sufficient resilience to appoint from. The current arrangement provides for a 'stand by' member to serve on the sub committee in the event that a member is unable to attend at the last minute.

### **Hearing procedure**

31. Annex 2 sets out hearing procedure notes to be adopted for dealing with applications. These fall into two main categories: liquor licensing ('Series A) and hackney carriage (taxi) and private hire licensing (Series B).

32. The procedure notes are based upon a review of current practice and conform with all prevailing legislation and the principles of equality and fair treatment for all.

## **IMPLICATIONS**

### **Financial**

33. There are no relevant financial implications to take into account, although there may be a financial saving should the Committee decide not to nominate sub-committee chairmen, because these are currently paid a special responsibility allowance.
34. If members decide not to appoint nominated sub-committee chairman the Independent Remuneration Panel will be advised so that it can take this into account when making recommendations for the Members' Allowance Scheme in future years.

### **Legal**

35. 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 as applied by Schedule 1 of the Human Rights Act 1998.

### **Equality Impact Assessment**

36. The proposed arrangements for hearing applications would have no negative impacts upon equality.

## **CONSULTATION**

37. The Group Leaders and the Chairmen of the previous Licensing Committee and Regulatory Committee have been consulted on the proposals.

### **Background papers:**

None.

Licensing & Regulatory Committee  
8 June 2016

Agenda Item: ~~x~~6  
Licensing and Regulatory Committee  
Protocol and Practice

# Licensing & Regulatory Committee

## Protocol for the establishment of a sub-committee

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**For all applications to be determined by a sub-committee, the following procedure shall be followed:**

1. A sub-committee shall be composed of three members appointed from within the membership of the Licensing & Regulatory Committee.
2. Substitutes may not be appointed to a sub-committee.
3. Members may not sit on an application within their own Ward.
4. A chairman shall be appointed on each sub-committee.
5. Wherever possible, membership of a sub-committee shall be proportionally balanced, subject to the following criteria:
  - 4.1 number of seats held by each group upon the Licensing & Regulatory Committee and availability of members;
  - 4.2 deadline within which a hearing must be held;
  - 4.3 rotation of membership.
6. A standby member shall be appointed to each sub-committee, who may take the place of an appointed member in the case of an unexpected absence.
7. When a hearing is required, the Democratic Services Officer will notify all Licensing & Regulatory Committee members, advising them of the proposed date and asking them to provide details of their availability.
8. The Democratic Services Officer will then be responsible for establishing the membership of a sub-committee and will notify all members when the membership has been confirmed.
9. Meetings of a sub-committee will be arranged as and when required, and may be held either in the day or in the evening.



# Licensing & Regulatory Sub-Committee

## Hearings Procedure Note

### Series A: Licensing Act 2003

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*The order of business will be as follows, although the Chairman has discretionary power to vary it subject to all parties receiving a fair hearing*

1. **The Chairman** will introduce him/herself, and will invite the Sub Committee, officers, the applicant and other interested parties to introduce themselves.
2. **The Chairman** will ask the interested parties whether agreement has been reached on any of the issues which are in dispute.
3. **The Chairman** will ask the applicant (or their representative) to confirm who will be speaking at the hearing.
4. **The Chairman** will ask other interested parties to confirm who will be speaking at the hearing.

**Note:**

*Only those having made written representations (or their appointed representative) may speak at the hearing.*

*Details of all speakers should be provided to Democratic Services when returning the LAR1 notification form, at least three clear days before the hearing.*

*Any late request to speak will be at the discretion of the Chairman and subject to equal treatment of all parties.*

5. **The Chairman** will invite the **Licensing Officer** to present the report, giving a brief outline of the application and the issues for consideration by the Sub-Committee.
6. **The Chairman** will invite the parties to make their representations to the Sub-Committee, in the following order:
  - (a) Applicant (or representative)
  - (b) Responsible authorities
  - (c) Other interested parties either for or against the application.

7. **The Chairman** will invite questions to and from the parties in the following order:

- (a) from the Licensing Sub Committee members to:
  - i. the Licensing Officer
  - ii. the applicant (and/or their representative)
  - iii. the responsible authorities
  - iv. any other speaker
- (b) from the Licensing Officer to any other party;
- (c) from the applicant and/or representative to any other party;
- (d) from the responsible authorities to any other party;
- (e) from any other speaker to any other party

*Note: All questions must be put through the Chairman. There is to be no direct cross-examination between the parties, at any time, without the express permission of the Chairman.*

8. **The Chairman** will invite closing submissions from the parties in the following order:
  - (a) the licensing officer,
  - (b) the applicant (or their representative),
  - (c) the responsible authorities,
  - (d) any other speakers.

8. **The Chairman** will confirm that no one else has anything further to add and will then adjourn the meeting.
9. The Sub-Committee will deliberate in private, attended by the legal officer and the democratic services officer who may only give professional advice or guidance.
10. If it is necessary to recall any party to clarify points in issue, all parties will be invited to return.
11. When the Sub-Committee has reached its decision all parties will be advised and the Chairman will resume the meeting.
12. **A summary of the decision will be given**, which is to be considered as provisional and subject to amendment or correction in the detail, until the formal decision is issued in writing.

**HEARING FORMALLY CLOSED**



# Licensing & Regulatory Sub-Committee

## Hearings Procedure Note

### Series B: Local Authorities (Miscellaneous Provisions) Act 1976 and all other legislation

*(with the exception of Licensing Act 2003 and Gambling Act 2005)*

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*The order of business will be as follows, although the Chairman has discretionary power to vary it subject to all parties receiving a fair hearing*

1. **The Chairman** will introduce him/herself, the Committee and Officers present.
2. **The Chairman** will invite the applicant to introduce him/herself and any person accompanying him/her.
  - (a) **if the applicant is unaccompanied** the Chairman will remind him/her of the right to be represented or accompanied;
  - (b) **if the applicant is accompanied** the Chairman will ask who will be presenting the application before the Committee.
  - (c) **if the applicant has notified his intention to call witnesses** the Chairman will ask for confirmation of who is to be called.
3. The Chairman will invite the responsible Officer to summarise the application and to call any witnesses *(please see notes overleaf)*.
  - i. the applicant will be invited to put questions to the Officer or witnesses
  - ii. the Committee will be invited to put questions to the Officer or witnesses
4. The Chairman will invite the applicant *(or representative)* to make submissions and to call any witnesses\*.
  - i. The Officer will be invited to put questions to the applicant or witnesses
  - ii. the Committee will be invited to put questions to the applicant or witnesses
5. The Chairman will ask the Officer if he/she has anything further to add.
6. The Chairman will invite the applicant *[or representative]* to make a closing statement.

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7. The Chairman will adjourn the meeting and invite all parties, with the exception of the Democratic Services Officer and the Legal Adviser to the Committee, to withdraw whilst the Committee deliberates in private session.
  8. The Chairman will reconvene the meeting and give the Committee's decision, including any conditions if the licence is granted.
  9. In all cases the Chairman will give the reason(s) for the decision.

## **NOTES**

1. *The Chairman has discretion to vary the order of proceedings, if deemed necessary, to facilitate the smooth running of the hearing.*
2. *Witnesses may only be called where written notice has been sent to all parties five working days before the date of hearing.*
3. *Where a meeting is being held under part 2 (exempt information) meaning that the press and public are excluded, witnesses will be called into the hearing individually when it is their turn to speak and will be asked to leave the meeting as soon as they have made their statement.*
4. *The applicant will be advised of the decision in writing and this will be the definitive version. Where relevant, the applicant will be notified of any rights of appeal.*