



## **Licensing and Safety Committee – 5 June 2019**

### **Establishment of a Licensing Sub-Committee - The Licensing Act, 2003 and the Gambling Act, 2005**

#### **1. Summary of report**

The purpose of the report is to seek the Committee's approval to establish a Licensing Sub-Committee for the 2019/20 Municipal Year to determine applications under the Licensing Act, 2003 and the Gambling Act, 2005.

#### **2. Recommendations**

- 2.1 That a Licensing Sub-Committee be established for the 2019/20 municipal year in accordance with Section 9 of the Licensing Act, 2003 to determine applications under that legislation in circumstances as set out in Appendix 1 attached to this report and under the Gambling Act 2005 in the circumstances detailed in appendix 2 attached to this report;
- 2.2 That membership of the Sub-Committee shall comprise three Members of the Licensing and Safety Committee on a rota basis, subject to availability.
- 2.3 That Committee notes that a Chairman shall be appointed at each meeting of the Licensing Sub Committee.
- 2.4 That the Director of Public Health be authorised to determine applications under the Licensing Act 2003, in the circumstances identified in appendix 2 attached to this report.

#### **3. Background information**

##### **The Licensing Act**

- 3.1 The Licensing Act, 2003 introduced a completely new licensing regime in England and Wales. In particular, it transferred authority to issue licences to sell or supply alcohol from the Magistrates Court to the Council. The Council is known under the new regime as the Licensing Authority.
- 3.2 The Act places a duty on the Licensing Authority to determine its policy with respect to the exercise of its licensing functions and publish that policy before it starts the exercise of those functions.

- 3.3 The Licensing Authority must consult various statutory bodies and representatives of local businesses and residents before determining its policy. This process was duly undertaken by officers and the Council's first statement of licensing policy was published by 7 January, 2005, as required by the Secretary of State.

### **The Gambling Act**

- 3.4 The Gambling Act 2005 received Royal Assent on 7th April 2005. It puts in place a comprehensive new framework for the regulation of gambling. The Act came into force in September 2007.
- 3.5 The Act places a duty on the Local Authority to determine its statement of principles with respect to the exercise of its functions, and publish that policy before it starts the exercise of those functions. The Council publicly consulted on the draft statement of principles between 26th July and 16th October 2006, and has incorporated some proposed amendments within the statement of principles. This statement has to be reviewed from time to time and be published at least every three years.

On 6th November 2006 Council received a report detailing the Draft Statement of Principles and resolved to:

- (1) Adopt the draft Statement of Principles
- (2) Delegate to the Licensing and Safety Committee the exercise of powers contained in the Gambling Act 2005.

The appendix to this report summarises the lowest level of delegation that is permitted under sections 154 and 155 of the Gambling Act 2005. These sections do not, however, apply to certain functions under the Act (for example, the removal of the automatic gaming exemption for alcohol-licensed premises under section 284). Licensing authorities will, in relation to those functions, need to ensure that they are familiar with any changes that have been made to the relevant legislation dealing with the allocation of responsibility for functions between the authority as a whole, and the executive.

- 3.6 Since the implementation of the legislation, a number of applications have been processed by the Council, none of which have had to be referred to a Licensing Sub-Committee for determination.

## **4. Resource considerations**

### **The Licensing Act**

- 4.1 **Financial:** The Secretary of State at the time gave an assurance that the fees proposed would fully cover all the costs of the Local Authority in implementing the new licensing regime. The calculations included the cost of start up, consultation and establishing the statement of licensing policy. However, it was agreed that after the regime had become fully operational, there will be an

independent review of the costs of the regime and fee levels, by the Audit Commission.

- 4.2.1 **Legal:** The 2003 Act provides that decisions and functions may be taken and carried out by Licensing Committees, Licensing Sub-Committees, or in appropriate cases, by officers supporting the Licensing Authority, under a scheme of delegations (see appendix to the report). The Licensing Authority will follow the scheme of delegations outlined in Paragraph 3.63 of the guidance issued under Section 182 of the Licensing Act, 2003. The purpose of the scheme of delegations is to assist with the speedy determination of applications in a cost effective and efficient manner. Section 9 of the Licensing Act, 2003 provides that the powers that have been delegated to the Licensing Committee may, in turn, be delegated to Sub-Committees of three Members from the Licensing Committee for all of its functions. The Sub-Committees of three need not be politically balanced under the legislation as long as the Licensing Committee itself is politically balanced.

### **The Gambling Act**

- 4.1 **Financial:** The Gambling (Premise Licence Fees) (England and Wales) Regulations came into force on 21st May 2007. These regulations provide for licensing authorities to determine fees, subject to prescribed maximum limits.

On the 2nd July 2006 Council received a report detailing fees and charges to be made under the Gambling Act 2005. It resolved to:

- (1) Determine the proposed fees to be charged in respect of the Gambling Act 2005.
- (2) Delegate the authority to determine future fees in respect of the Gambling Act 2005 to the Licensing and Safety Committee.

- 4.2 **Legal:** Section 154 of the Gambling Act 2005 provides that all decisions relating to premises licences are delegated to the licensing committee of the authority that has been established under section 6 of the Licensing Act 2003.

Decisions that are delegated to a licensing committee may be further delegated to a sub-committee of the licensing committee, which may arrange for them to be taken by an officer of the authority. However, the following decisions may not be made by an officer (i.e. they must be made by either the sub-committee or the licensing committee):

- determination of an application for a premises licence where representations have been made and not withdrawn;
- determination of an application for variation of a premises licence where representations have been made and not withdrawn;
- determination of an application for transfer, following representations by the Commission'
- determination of an application for a provisional statement where representations have been made and not withdrawn; and
- review of a premises licence.

**5. Staffing:** Nothing arising from this report.

**6. Citizen impact**

Nothing arising from this report.

**7. Community safety**

Nothing arising from this report.

**8. Environmental impact**

None.

**9. Performance and risk management issues**

Nothing arising from this report.

**10. Equality implications**

None.

**11. Consultation**

None.

**Background papers**

Guidance to Licensing Authorities, 2nd Edition, June 2007, Gambling Commission.

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**Appendix 1 – Delegation of powers to the Licensing Committee, Sub-Committees and officers of Walsall Council to determine licensing applications under the Licensing Act, 2003 and supporting legislation**

Matter to be dealt with	Full Committee	Sub-Committee (3 Elected Members of Licensing Committee)	Head of Economy and Environment
		Power to determine any application under the Licensing Act, 2003	
Application for personal licence		If a Police objection	If no Police objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant 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
Application 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	

## Appendix 2 - Summary of licensing authority delegations permitted under the Gambling Act

Matter to be dealt with	Full Council	Sub-Committee of Licensing Committee	Officers
Final approval of three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)		X (if delegated by full council)	
Application for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Applications for a transfer of a licence		Where representations have been received from the Commission or responsible authority	Where no representations received from the Commission or responsible authority
Application for a provisional statement		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises Licence		X	
Application for club gaming/club machine permits		Where objections have been made (and not withdrawn)	Where no objections made/objections have been withdrawn
Cancellation of club gaming/club machine permits		X	
Application for other Permits			X
Cancellation of licensing premises gaming machine permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	

X indicates the lowest level to which decision can be delegated