

Sandwell Metropolitan Borough Council

Licensing Committee

23rd March 2007

Gambling Act 2005

1. Summary Statement

1.1 Further to the report submitted to this Committee on 23rd February, 2007, the Council at its meeting on 6th March, 2007:

- (a) approved revised terms of reference for the Licensing Committee to give effect to Section 154 of the Gambling Act 2005 [the 2005 Act] as set out in Appendix 1A;
- (b) reserved to itself functions relating to Section 166 (Casino Resolution) and Section 349 (Statement of Principles);
- (c) decided to delegate responsibility for setting fees and charges under the 2005 Act to the Licensing Committee, subject to consultation with the appropriate Cabinet Member on the budgetary implications;
- (d) revised the terms of reference for the Licensing Policy Review Group;
- (e) delegated enforcement and authorisation functions under the 2005 Act to the Head of Environmental Health and Trading Standards.

The Licensing Committee now needs to consider a number of matters in consequence of the decisions of the Council.

1.2 The key implementation dates for the provisions of the 2005 Act are 21st May 2007, when the Council as the Licensing Authority will need to be in a position to start processing applications, and 1st September 2007 when the transition period ends, and new licences take effect.

1.3 Section 154 of the 2005 Act delegates certain matters to the Licensing Committee. The Licensing Committee may arrange for the discharge of certain of its functions by a Panel established by it, or by an officer of the Licensing Authority. The Licensing Committee has already established sub-committees, that is, Panels, consisting of three members of the Committee. The Licensing Committee is responsible for regulating the procedures of the Licensing Panels. The terms of reference for the Licensing Panels need to be revised to take into account the provisions of the 2005 Act. Proposed delegations from the Licensing Committee to the

Licensing Panels are set out in Appendix 1B for the Committee's consideration.

- 1.4 It is also necessary to amend the Council's scheme of delegation to officers to reflect the 2005 Act. Section 154 of the 2005 Act delegates certain matters to the Licensing Committee, which may in turn delegate to the Licensing Panels or an officer. Appendix 2 sets out, for the Committee's consideration, proposed delegations to the Head of Environmental Health and Trading Standards to allow officers to carry out their operational duties under the 2005 Act.

2. **Recommendations**

- 2.1 That the revised terms of reference for the Licensing Panels as set out in Appendix 1B to this report be approved;
- 2.2 That the scheme of delegations to officers set out in Part 3 of the Council's Constitution (Responsibility for Functions) be amended by the addition of the following:

'To authorise the Head of Environmental Health and Trading Standards to determine the following applications in the circumstances indicated:

Nature of Application	Prevailing Circumstance.
Application for premises licence	No representations received or where representations have been withdrawn.
Application for a variation to a licence	No representations received or where representations have been withdrawn.
Application for a transfer of a licence	No representations received from the Gambling Commission
Application for a provisional statement	No representations received or where representations have been withdrawn
Application for club gaming/club machine permits	No objections made or where objections have been withdrawn.
Applications for other permits	
Cancellation of licensed premises gaming machine permits	
Consideration of temporary use notice	

2.3 That the Head of Legal Services, in consultation with the Head of Governance Services, be authorised to make the necessary changes to the Council's Constitution, in accordance with Article 15 of the Constitution, in order to reflect the decisions of the Council on recommendations 2.1 and 2.2 above;

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Gambling Act 2005

3. Strategic Resource Implications

- 3.1 It is anticipated that any resource costs are likely to be largely legal and administrative, with minimal enforcement being required or undertaken by the Licensing Team itself, involving the appointment of one Licensing Officer at scale 4/5 equating to approximately £25,000, with some additional costs of £5,000 for equipment. Gambling licence income should, for the most part, offset these resource costs, although it may be necessary to bring a further report, should the enforcement element be greater than anticipated.

4. Legal and Statutory Implications

- 4.1 Section 2 of the Act provides that the Council is a Licensing Authority. The Gambling Act 2005 places a duty on local authorities to undertake the licensing functions specified in the Act.
- 4.2 Section 154 of the 2005 Act 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 except:
- Under section 166 of the 2005 Act, a resolution not to issue casino licences , which must be taken by the whole authority;
 - Under Section 349 of the 2005 Act, functions in relation to the three year Statement of Principles, which must be taken by the whole authority; and
 - Under Section 212 of the 2005 Act, setting fees. The Licensing Authority may delegate decisions to the Licensing Committee, but there is no automatic delegation.
- 4.3 Section 154(3) of the 2005 Act states that Section 10 of the Licensing Act 2003 shall apply in relation to a function delegated to a Licensing Committee as they apply in relation to a function delegated under that Act. Section 10 of the 2003 Act states that a Licensing Committee may arrange for the discharge of any functions exercisable by it by a sub-committee established by it, or subject to certain restrictions by an Officer of the Licensing Authority. This is clearly set out in the appendices.
- 4.4 The Licensing Committee established by Section 6 of the Licensing Act 2003 has established sub-committees that are referred to by this Council as Licensing Panels. Subject to any regulations each Licensing Committee may regulate its own proceedings and that of sub-committees.

- 4.5 Section 157 of the 2005 Act, unlike the Licensing Act 2003, states that a Licensing Authority in whose area the premises are wholly or partly situated is one of a number of responsible authorities. Responsible authorities are public bodies that must be notified of applications and that are entitled to make representations to the Licensing Authority in relation to applications for, and in relation to, premises licences.
- 4.6 Part 15 of the 2005 Act allows an authorised officer to undertake activities for the purpose of assessing compliance with provisions made by or by virtue of the Act and whether an offence is being committed. Section 304 of the 2005 Act states an Officer of the Licensing Authority is an authorised person for a purpose relating to premises if the premises are wholly or partly situated in the Authority's area and the Officer is designated by an Authority as an authorised person for the purposes of Section 304.
- 4.7 Section 358 of the 2005 Act states that the provisions of the Act shall come into force in accordance with provisions made by the Secretary of State by order. Sections 166 and 349 came into force on 31 March 2006. Section 154(1) and 154 (2)(b), but only for the purpose of enabling a licensing authority to delegate their functions under section 212 of the Act, came into force on 13 November 2006. The Regulations enabling the Authority to set the fees have recently come into force. A number of provisions remain to come into force by order, however, the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006 will bring into force the remaining provisions of section 154 and sections 157, 212 and 304 on 30 April 2007.

5. **Implications for the Council's Corporate Priorities**

- 5.1 The Gambling Act 2005 has three licensing objectives, which are highly pertinent to the Council's corporate priorities, these being:
- 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 that gambling is conducted in a fair and open way;
 - c. Protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 5.2 The proposals contained within the report would have implications on the following corporate priorities:-

- (i) Safer, Cleaner, Stronger Communities - The Licensing function under the Gambling Act 2005 is key to the partnership working with “responsible Authorities” such as the police, fire, child protection, planning, and other agencies dealing with issues of safety, crime or disorder, anti-social behaviour, protecting the young and vulnerable in the community, as relating to the licensable activities associated with gambling. Whilst the legislation and duties relate to the whole of Sandwell, members of all local communities will benefit from the additional controls that the Act will place on gambling activities associated with premises in the community.
- (ii) Strengthening the protection and support for vulnerable children - There is always the potential for children to gain access to gambling establishments, which this new legislation will help to control further.

6. **Background Details**

Decisions of the Council 6th March, 2007

- 6.1 Further to the report submitted to this Committee on 23rd February, 2007, the Council at its meeting on 6th March, 2007 approved revised terms of reference for the Licensing Committee to give effect to Section 154 of the 2005 Act, which delegates functions relating to the issue of various licences, permits and notices for the use of premises for gambling activities to the Licensing Committee established under Section 6 of the Licensing Act, 2003. The revised terms of reference are set out as Appendix 1A.
- 6.2 The Committee is reminded that two functions are reserved to the Licensing Authority by Section 166 (Casino Resolution) and Section 349 (Statement of Principles).
- 6.3 With regard to Section 212 of the 2005 Act (Fees), the Government has decided that the premises licence fees will be set via a series of bands, with a prescribed maximum. Licensing Authorities will be able to select precise fees from within the bands, limited to cost recovery. This will allow Authorities flexibility, and the industry a degree of certainty. The 2005 Act provides that, should the Licensing Authority decide to delegate the determination of fees and charges, it may only delegate this function to a Committee or to an officer. The Council decided to delegate responsibility for setting fees and charges under the 2005 Act to the Licensing Committee, subject to consultation with the appropriate Cabinet Member on the budgetary implications and this is reflected in the terms of reference in Appendix 1A. A further report will be submitted to the Committee in due course to set the fees.

- 6.4 The Council also decided to revise the terms of reference for the Licensing Policy Review Group. This Group is a member/officer working group whose purpose is to assist the Council as the Licensing Authority with the statutory triennial review and periodic revisions of the statement of licensing policy under the Licensing Act, 2003. The 2005 Act requires a similar triennial review of the Statement of Principles and the terms of reference of this Group have been extended to include reference to the 2005 Act, as set out in Appendix 1C.
- 6.5 The Council decided to delegate enforcement and authorisation functions under the 2005 Act to the Head of Environmental Health and Trading Standards as indicated in Appendix 3.

Next Steps

- 6.6 The following matters relating to the implementation of the 2005 Act remain outstanding and will be the subject of further reports to the Council or the Licensing Committee as appropriate:
- The Council will need to consider consequential amendments to the terms of reference for the Licensing Miscellaneous Committee once the 2005 Act is fully in force, to avoid any duplication of functions with regard to matters now included in the 2005 Act. The existing terms of reference for the Committee are attached for information as Appendix 1D
 - A number of regulations relating to the 2005 Act are still in draft form. Guidance on delegations generally is in the process of being produced by the advisory body LACORS (Local Authorities Co-ordinators of Regulatory Services). It is likely that Small Society Lottery Registration will fall to the full Council. A further report will be submitted to the Council at its meeting on 24th April, 2007 to deal with any outstanding issues which require the authority of the full Council, in particular, small lotteries registration.
 - The 2005 Act also provides that the Council as Licensing Authority is designated a “Responsible Authority”, with the right to object to the grant of licences, or to ask for a review. The Licensing Committee at a future meeting will be asked to authorise the Head of Environmental Health and Trading Standards to carry out this function.

Source Documents

- A/ Gambling Act 2005
- B/ Guidance to Licensing Authorities April 2006 (Gambling Commission)

C/ Report to Cabinet Member for Community Safety and Partnerships [22nd September 2006] “Gambling Act 2005 Implementation – Approval of Statement of Principles”

Licensing Committee

The Licensing Committee shall:-

1. deal with all matters relating to the discharge of the functions of the Licensing Authority under the Licensing Act 2003 (referred to as “the 2003 Act”) and any regulations made under that Act, together with any related functions, with the exception of any function conferred on the Licensing Authority by Section 5 of the Licensing Act 2003 (Statement of Licensing Policy) and any function discharged under Section 7(5)(a) of that Act by a committee other than the Licensing Committee;
2. deal with all matters relating to the discharge of the functions of the Licensing Authority under the Gambling Act 2005 (referred to as the “2005 Act” and any regulations made under the 2005 Act, together with any related functions, with the exception of any function conferred on the Licensing Authority by Section 166 of the 2005 Act (Casino Resolution) and Section 349 of the 2005 Act (Statement of Principles).
3. deal with the determination of fees as they relate to gambling as provided for by Section 212 of the 2005 Act and any regulations made thereunder, subject to consultation with the appropriate Cabinet Member on the budgetary implications.
4. regulate its own procedure and that of the Licensing Panels, subject to any relevant regulations which may be issued under the 2003 Act and the 2005 Act.

Licensing Panel

The Licensing Panel shall:-

1. exercise those functions of the Licensing Committee under the Licensing Act 2003 and any regulations made under that Act, together with any related functions, with the exception of:-
 - a) any function conferred on the Licensing Authority by Section 5 of the Licensing Act 2003 (Statement of Licensing Policy);
 - b) any function discharged under Section 7(5)(a) of that Act by a committee other than the Licensing Committee;
 - c) any function specifically reserved to the Licensing Committee;

and in particular, deal with the following matters in the circumstances indicated:-

Application for personal licence	If a police objection has been made
Application for personal licence with unspent convictions	All cases
Application for premises licence / club premises certificate	If a relevant representation is made
Application for provisional statement	If a relevant representation is made
Application to vary premises licence / club premises certificate	If a relevant representation is made
Application to vary designated premises supervisor	If a police objection has been made
Application for transfer of premises licence	If a police objection has been made
Applications for interim authorities	If a police objection has been made
Application to review premises licence / club premises certificate	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

(2) exercise those functions of the Licensing Committee under the Gambling Act 2005 and any regulations made under that Act, together with any related functions, with the exception of:-

- a) any function conferred on the Licensing Authority by Section 166 of the Licensing Act 2005 (Casino Resolution);
- b) any function conferred on the Licensing Authority by Section 212 of the Licensing Act 2005 (Fees);
- c) any function conferred on the Licensing Authority by Section 349 of the Licensing Act 2005 (Statement of Principles);
- d) any function specifically reserved to the Licensing Committee;

and in particular, deal with the following matters in the circumstances indicated:-

Application for premises licence

If a relevant representation is made

Application for a variation to a licence

If a relevant representation is made

Application for a transfer of a licence

If a relevant representation is made

Application for provisional statement

If a relevant representation is made

Application for club gaming/club machine permits

If a relevant representation is made

Cancellation of club gaming/club machine permits

Review of premises licence

Decision to give a counter notice to a temporary use notice

Licensing Policy Review Group

The Licensing Policy Review Group shall:-

1. consider and make recommendations to the Council as the Licensing Authority, the Licensing Committee or other appropriate person or body on matters relating to the implementation of the provisions of the Licensing Act 2003 or regulations issued under those Acts;
2. review the Council's policy in respect of its licensing functions under the Licensing Act 2003 (Statement of Licensing Policy) every three years and make recommendations to the Licensing Authority on the outcome of that review;
3. review the Council's policy in respect of its licensing functions under the Gambling Act 2005 (Statement of Principles) every three years and make recommendations to the Licensing Authority on the outcome of that review;
4. during each three year period, keep licensing policies under review, and make recommendations to the Licensing Authority on such revisions to policy, at such times, as the Group considers appropriate;
5. undertake such consultation as may be required, under the Licensing Acts 2003 and 2005 or regulations issued under those Acts, on any revision which may be deemed appropriate as a consequence of a review of the policy.

Licensing (Miscellaneous) Committee

Within approved Council policy and in accordance with the overall aims and objectives of the Council, the Committee shall consider and determine all matters which fall within the following terms of reference which are delegated to it:-

- (1) the Council's powers and duties under the following Acts and Regulations:-

Betting, Gaming and Lotteries Act 1963
Gaming Act 1968;
Cinematograph Acts 1909 to 1982;
Cinemas Act 1985;
Town Police Clauses Act 1847;
Local Government (Miscellaneous Provisions) Act 1976;
House to House Collections Act 1939;
Late Night Refreshment Houses Act 1969;
Local Government (Miscellaneous Provisions) Act 1982;
Private Places of Entertainment (Licensing) Act 1967;
Scrap Metal Dealers Act 1964;
Lotteries and Amusements Act 1976;
Theatres Act 1968;
The Police, Factories etc. (Miscellaneous Provisions) Act 1916;
Consumer Credit Act 1974;
Safety of Sports Grounds Act 1975;
Part II of the Local Government (Miscellaneous Provisions) Act 1972
Vehicles (Crime) Act 2001 (Part 1) Motor Salvage Operators Regulations 2002;

- (2) the registration and licensing of matters under other existing or future miscellaneous statutes, government directives or directions not referred to or dealt with by any other Committee, including in particular, and where appropriate to this Council, those functions B 1 to B 68 inclusive set out in Appendix 1 (Functions not to be the responsibility of an Authority's Executive) to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000;

- (3) Functions under any of the “relevant statutory provisions” within the meaning of Part 1 (Health, safety and welfare in connection with work, and the control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority’s capacity as an employer;
- (4) to review and make recommendations to the Cabinet on the guidance for use in connection with applications for Private Hire and Hackney Carriage licences;
- (5) to consider and determine appeals against the decision of the Chief Executive to refuse, to attach local conditions to, or to revoke an approval of an application for the use of premises for the solemnisation of civil marriages.

**DELEGATION OF AUTHORITY AND FUNCTIONS TO THE HEAD
OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS
BY THE LICENSING COMMITTEE**

Delegation of functions under the Gambling Act 2005

To authorise the Head of Environmental Health and Trading Standards to determine the following applications in the circumstances indicated:

Nature of Application	Prevailing Circumstance.
Application for premises licence	No representations received or where representations have been withdrawn.
Application for a variation to a licence	No representations received or where representations have been withdrawn.
Application for a transfer of a licence	No representations received from the Gambling Commission
Application for a provisional statement	No representations received or where representations have been withdrawn
Application for club gaming/club machine permits	No objections made or where objections have been withdrawn.
Applications for other permits	
Cancellation of licensed premises gaming machine permits	
Consideration of temporary use notice	

Note:- The delegations are in accordance with those recommended in Gambling Commission Guidance to Licensing Authorities.

**DELEGATION OF AUTHORITY AND FUNCTIONS TO THE HEAD
OF ENVIRONMENTAL HEALTH AND TRADING STANDARDS BY
THE LICENSING AUTHORITY**

Delegated Authority under Gambling Act 2005

To authorise the Head of Environmental Health and Trading Standards to enforce the provisions of the Gambling Act, 2005, either generally or specifically, in accordance with the Act, relevant statutory guidance and / or codes of practice, and to authorise persons in accordance with Section 304 of the Act.