

SANDWELL METROPOLITAN BOROUGH COUNCIL

LICENSING COMMITTEE
17TH JANUARY 2008

GAMBLING ACT 2005 PROCEDURE and
LICENSING ACT 2003 – REVISED PROCEDURE

1. **Summary Statement**

- 1.1 Under the provisions of the Licensing Act 2003 the Licensing Committee may establish one or more Licensing Sub-Committees (referred to by the Council as Panels) to assist in the discharge of the licensing functions under the Licensing Act 2003. Further, such functions as the Gambling Act, 2005 may be discharged by those Panels. The Panels were set up by this Committee at its meeting on the 25th May 2007.
- 1.2 The Council at its meeting on the 6th March 2007 approved revised terms of reference for the Licensing Committee as set out in Appendix 1.
- 1.3 On 18th May 2007 this Committee approved the terms of reference for the Licensing Panels as set out in Appendix 2.
- 1.4 In accordance with Section 9 of the Licensing Act 2003, subject to any regulations each Licensing Committee may regulate its own proceedings and that of Sub-Committees (Panels). This also is clearly stated in the Committee's Terms of Reference.
- 1.5 The Committee procedure for use in Gambling Act 2005 Panels is set out in Appendix 3, for consideration and approval.
- 1.6 The Committee procedure for use in Licensing Act 2003 Panels has been revised slightly and is set out in Appendix 4, for consideration and approval.

Further details are attached for your information.

1. Recommendations

- 2.1 That Members note and approve the procedure as set out in Appendix 3 to this Report.
- 2.2 That Members note and approve the procedure as set out in Appendix 4 to this Report.

**Neeraj Sharma
Head of Legal Services**

**Paul Wright
Interim Head of
Environmental Health &
Trading**

Contact Officers:

Stewart Wright
Legal Services Manager
0121 569 3267

Rishi Bawa
Principal Environmental
Health Officer
0121 569 6511

Procedure for Licensing Panels

3. Strategic Resource Implications

- 3.1 The costs arising from the administration and servicing of the Licensing Panels will be met from existing budgets.

4. Legal and Statutory Implications

- 4.1 Section 3 of the Licensing Act 2003 provides that the Council is a Licensing Authority and as such the Council must carry out its functions under the Licensing Act, 2003.
- 4.2 Under Section 6 of the Licensing Act, 2003 each Licensing Authority must establish a licensing committee consisting of at least ten, but not more than fifteen members of the authority.
- 4.3 Section 9 of the Licensing Act, 2003 states that a licensing committee may establish one or more sub-committees consisting of three members of the committee, and Section 10 provides that the committee may arrange for the discharge of any functions exercisable by it by a sub-committee established by it, or an officer of the licensing authority.
- 4.4 Regulation 21 of the Licensing Act 2003 (Hearings) Regulations 2005 states that the Authority shall determine the procedure to be followed at the hearing and Regulation 22 states that the Authority shall explain to the parties the procedure which it proposes to follow at the hearing. "Authority" is defined in Regulation 2 as meaning to include the Licensing Committee or Licensing Sub Committees (Panels) discharging the function of holding the hearing.
- 4.5 Section 2 of the Gambling Act 2005 further states that the Council is a licensing authority. The Gambling Act 2005 places a duty on the Council to undertake the licensing functions specified in the Act.
- 4.6 Section 154 of the Gambling Act 2005 provides that all decisions, subject to exceptions, 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.

- 4.7 Section 154(3) of the Gambling Act, 2005 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.
- 4.8 Regulation 3 of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 states that subject to the provisions of these Regulations, it is for the relevant committee to determine the procedure to be followed in relation to the functions specified in Regulation 3. These functions relate to applications and review. Relevant committee means a licensing committee to which functions are delegated by virtue of section 154 (1) of the Gambling Act 2005, or a licensing sub-committee empowered to discharge such functions by arrangement under section 10(1) of the Licensing Act 2003.
- 4.9 The 2003 Act and the 2005 Act allow the Licensing Committee to arrange for the discharge of any of its functions by a Sub-Committee or by an Officer of the Licensing Authority. Arrangements may provide for more than one sub-committee or officer to discharge the same functions concurrently.
- 4.10 The Licensing Committee has already delegated the majority of its licensing functions to the Licensing Panels and/or officers.
- 4.11 The Licensing Committee reviews the membership of the Panels each year following the appointment of members to the Licensing Committee at the Annual Council meeting.

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

- 5.1 The Licensing Act 2003 has four licensing objectives which are highly pertinent to the Council's corporate priorities, these being:
 - (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance;
 - (d) the protection of children from harm.

5.2 Similarly, the Gambling Act 2005 has three licensing objectives, as follows:

- (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.

5.3 The proposals contained within the report have implications on the following corporate priorities:-

- (i) Safer, Cleaner, Stronger Communities - The licensing function under the 2003 Act and the 2005 Act relating to activities associated with gambling, public entertainment and alcohol is key to 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. Whilst the legislation and duties relate to the whole of Sandwell, members of all local communities will benefit from the additional controls that these Acts will place on gambling activities and entertainment activities associated with premises in the community.
- (ii) Protection and support for vulnerable children - There is always the potential for children to gain access to inappropriate public entertainment, and for under-age sales from premises targeted by the Licensing Act 2003. The licensing function and associated test purchasing regarding under-age sales will strengthen the existing protection. The provisions of the Gambling Act 2005 will provide similar protection in respect of gambling for this vulnerable group.

5.4 The licensing function already feeds into the Crime and Disorder Action Plan, Anti-Social Behaviour Plan, and Violent Crime / Alcohol Group action plan, but will have a greater role to play as the new legislation is enacted.

6. **Background Details**

6.1 None.

Source Documents

Licensing Act 2003

Gambling Act 2005

Licensing Hearing Regulations 2005

Gambling Hearing Regulations 2007

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	All cases

certificate

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 representation is made and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded

Application for a variation to a licence If a representation is made and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded

Application for a transfer of a licence

If a representation is made and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded

Application for provisional statement

If a representation is made and/or where the Licensing Authority considers that a condition should be added to the Licence or a default condition should be excluded

Cancellation of club gaming/club machine permits

All Cases

Review of premises licence

All Cases

Decision to give a counter notice to a temporary use notice

All Cases

Application for club gaming/club machine permits, renewals and variations including those leading to a cancellation of permits under Schedule 12 paragraph 15

If objection is made or refusal of permit proposed on grounds listed in Schedule 12 paragraph 6(1)(a)-(d), or paragraph 10(3) as applicable

Application for unlicensed family entertainment centre permits

If representations from applicants

Applications for prize gaming permit

If representations from applicants

Applications for licensed premises gaming machines permits

If representations from applicants

Cancellation or variation of licensed premises gaming machine permits or variation of the number and/or category of machines

If representation made or the holder has requested a hearing

Consideration of temporary use notice

If objection is made

GAMBLING ACT 2005

PROCEDURE TO BE FOLLOWED AT LICENSING PANEL

The three licensing objectives, set out in the Gambling Act 2005 are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,
- ensuring that gambling is conducted in a fair and open way, and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

Each matter that comes before this Panel will be determined on its own merits. Sandwell MBC will make its decision based upon:

- Any relevant code of practice
- The provisions laid down in the Gambling Act 2005 ensuring the promotion of the three licensing objectives as outlined above.

The Gambling Act 2005 and Regulations issued thereunder

- Sandwell's Statement of Principles, a copy of which can be obtained from *the Licensing section or online at www.sandwell.gov.uk*
- The Gambling Commission Guidance

The procedure of the Panel is as follows:

1. Chair opens the meeting, introducing Members of the Panel and officers present. Chair explains the nature of the decision to be taken, and the procedure to be followed.

2. The Licensing Officer outlines the details of the application, any representations received with relevance to the guidance, the licensing objectives and/or the Statement of Principles, highlighting what the Panel should have regard to/take into consideration
3. Members (through the Chair) to ask any questions of the officer arising out of the report.
4. Parties asked if they agree that the report is accurate.

Where the Licensing Authority proposes to attach/exclude conditions steps 5 - 8 will be included

- 5 Licensing Officer to address the Panel
- 6 Licensing Officer to ask questions of applicant/licence holder
- 7 Applicant/licence holder/objectors ask questions of Officer
- 8 Members ask questions of Officer relating to the proposal
9. A party may call witnesses .
- 10 Party making representations ('objectors') to make representations if desired.
11. Applicant/licence holder/other objectors/officer to ask questions of objectors but not to 'cross examine' unless at the discretion of the Chair it is deemed to be necessary.
12. If there is more than one objector then representations and questioning to take place in an order to be directed by the Chair.
13. Members (through Chair) to ask questions of 'objectors'
14. Applicant/licence holder/ (or person representing) to address Panel (as in 10 above) and respond to representations
- 15 Objectors to ask questions of applicant/licence holder, (or representative) but not to cross-examine without permission of Chair.

- 16 If more than one objector the order of questioning is to be as directed by the Chair.
17. Members (through Chair) to ask questions of applicant/licence holder.
- 18 Objectors asked if they wish to 'summarise' points made
19. Applicant/licence holder allowed opportunity to summarise
- 20 Chair asks all parties if they have said all they wish to say
- 21 Legal Representative outlines key factors to be considered by Panel when determining the application
22. The Panel retire to discuss and make their decision.
23. Decision and reasons outlined by the Chair
- 24 Chair informs all parties that decision will be formally notified in writing

Please Note

- Changes of Membership will be given at the beginning of the meeting.
- Decisions will generally be taken regardless of whether the applicant/licence holder is present. All notices and representations received from absent parties will be considered.
- Late representations and evidence will only be considered with agreement of all parties present.
- In cases where a decision cannot be given at the end of the hearing, the Chair will inform the parties when they will be notified of the decision within 5 working days.
- Parties have a right to appeal, to the Magistrates Court within 21 days of notification of the decision.
- The Panel may on occasion find it necessary to exclude members of the press and public based upon the reasons set-out in SI 2007 / 173 article 8 which are if any unfairness to a party is likely to

result from a public hearing, or there is a need to protect the commercial or other legitimate interests of a party.

- The hearing is intended to take the form of a discussion led by the Panel and cross-examination is not permitted unless the Panel considers that it is required for the application to be properly considered.
- The Panel has the right to exclude any parties disrupting the hearing or require him / her to meet certain conditions for him / her to continue to take part in the hearing. Any person excluded in this manner is able to submit information in writing to the committee before it finishes.
- Where a hearing is held to consider a matter other than for an application or review, this procedure will as far as possible be adopted by the Panel.

The Panel through the Chair reserve the right to request that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.

LICENSING ACT 2003



PROCEDURE TO BE FOLLOWED AT LICENSING PANEL

The four licensing objectives, set out in the Licensing Act 2003 are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm

Each application that comes before this Panel will be determined on its own merits. Sandwell MBC will make its decision based upon:

- The provisions laid down in the Licensing Act 2003 ensuring the promotion of the four licensing objectives as outlined above.
- The Licensing Act 2003 and Regulations issued thereunder
- Sandwell's Licensing Policy , a copy of which can be obtained from *the Licensing section or online at www.sandwell.gov.uk*
- The current guidance issued by the Secretary of State for Culture, Media and Sport under section 182 of the Licensing Act 2003.

The procedure of the Panel is as follows:

1. Chair opens the meeting, introducing Members of the Panel and officers present. Chair explains the nature of the decision to be taken, and the procedure to be followed.
2. Licensing Officer outlines the nature of the application to be determined/decision to be made and details of any relevant representations. Where Sandwell's policy and/or the guidance issued by the Secretary Of State has some particular relevance to the matter to be determined then attention will be drawn to this in the report.

3. Members (through the Chair) to ask any questions of the officer arising out of the report. Parties asked if they agree that the report is accurate.
4. Any party who wishes to call witnesses to seek permission to do so. Such consent will not be unreasonably withheld by the Panel.
5. Party making representations/ party making application for review ('objectors') to amplify (not repeat) written representations already made if desired.
6. Applicant/Licence Holder to ask questions of objectors but not to 'cross examine' unless at the discretion of the Chair it is deemed to be necessary to elicit a response to a particular question(s).
7. If there is more than one objector then amplification of written representations and questioning to take place in an order to be directed by the Chair.
8. Members (through Chair) to ask questions of 'objectors'
9. Applicant/Licence Holder (or person representing) to address Panel (as in 5 above) and respond to representations
10. Objectors to ask questions of applicant/Licence Holder, (or representative) but not to cross-examine without permission of Chair.
11. If more than one objector the order of questioning is to be as directed by the Chair.
12. Members (through Chair) to ask questions of applicant/Licence Holder.
13. Objectors asked if they wish to 'summarise' points made
14. Applicant/Licence Holder allowed opportunity to summarise
15. Chair asks all parties if they have said all they wish to say
16. Legal Representative outlines key factors to be considered by Panel when determining the application
17. The Panel retire to discuss and make their decision.
18. Chair relays decision including :-
 - a) reasons for decision
 - b) any conditions to be imposed
 - c) the licensing objectives to which the conditions relate

19. Chair informs all parties that decision will be formally notified in writing

Please Note

- Changes of Membership will be given at the beginning of the meeting.
- Decisions will generally be taken regardless of whether the applicant/Licence Holder is present. All notices and representations received from absent parties will be considered.
- Late representations and evidence will only be considered with agreement of all parties present.
- In cases where a decision cannot be given at the end of the hearing, the Chair will inform the Parties when they will be notified of the decision within 5 working days.
- Parties have a right to appeal, to the Magistrates' Court within 21 days of notification of the decision.
- The authority has the right to exclude any parties disrupting this hearing, at its discretion.
- The hearing is intended to take the form of a discussion led by the Panel and cross-examination is not permitted unless the Panel considers that it is required for the application to be properly considered

The Panel through the Chair reserve the right to request that all parties keep points pertinent and the discussion moving in the interests of cost and efficiency.