

Licensing Committee

31 May 2019

Establishment of Licensing Sub Committees

1. Summary Statement

- 1.1 At its annual meeting on 21 May 2019, the Council appointed a statutory Licensing Committee which the Council also declared would also sit as the Council Committee to carry out other licensing functions.
- 1.2 Under the provisions of the Licensing Act 2003, the Licensing Committee may establish one or more Licensing Sub Committees to assist in the discharge of the licensing functions under the Licensing Act, 2003. Further such functions of the Gambling Act, 2005 may also be discharged by those Sub Committees.
- 1.3 The Committee is invited to establish Licensing Sub Committees for the municipal year 2019/2020.
- 1.4 The Licensing Act 2003 specifies that each Sub Committee shall consist of three members of the Licensing Committee. The Council at its meeting on 21 May 2019 appointed a Licensing Committee comprising 15 members, including one Chair and two Vice Chairs.
- 1.5 It is proposed that three Sub Committees, consisting of five/six members, with a Chair/Vice Chair each sitting on a Sub Committee, be appointed for 2019/20. However, in accordance with the provisions of the Act, Sub Committees sitting to consider Licensing Act 2003/Gambling Act 2005 functions must consist of only three members.
- 1.6 It is recommended that the Director of Law and Governance and Monitoring Officer, in consultation with the Chair of the Licensing Committee, be authorised to select members from the Licensing Committee to serve on Sub Committees as necessary and to ensure a quorum should a named member not be available for a meeting or unable to consider a particular case due to a conflict of interest.
- 1.7 Approval is also sought to the terms of reference for the Sub Committees, as set out in Appendix 1.

Further details are attached for your information.

2. **Recommendations**

- 2.1 That the Terms of Reference for the Licensing Sub Committees, as set out in Appendix 1, be approved.
- 2.2 That three Sub Committees be established, to undertake those functions set out in the terms of reference referred to in 2.1 above, each comprising three members of the Licensing Committee when considering matters in relation to the Licensing Act 2003/Gambling Act 2005 and five/six members of the Licensing Committee when considering matters affecting applications for licences and licences previously granted under the terms of the Local Government (Miscellaneous Provisions) Act 1976, and that the Committee make appointments to those Sub Committees.
- 2.3 That the Director of Law and Governance and Monitoring Officer, in consultation with the Chair of the Licensing Committee, be authorised to select members from the Licensing Committee as necessary to serve on Licensing Sub Committees to ensure a quorum should a named member not be available for a meeting or unable to consider a particular case due to a conflict of interest.
- 2.4 That the Head of Governance be authorised to make the necessary changes to the Council's Constitution in order to reflect the decisions of the Committee on the above recommendations.

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3. **Strategic Resource Implications**

The costs arising from the administration and servicing of the Licensing Sub Committees will be met from existing budgets.

4. Legal and Statutory Implications

- 4.1 In order for the same members to make all licensing decisions, the Council may appoint a statutory licensing committee and then declare that that committee may also sit as a Council committee to carry out other licensing functions.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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 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.
- 4.9 Article 6 of the Human Rights Act 1998 state that in determination of a persons civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

- 4.10 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.
- 4.11 Part II, Article 1 of the Act states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles on international law.
- 4.12 The Licensing Committee will review the membership of the Sub Committees each year following the appointment of members to the Licensing Committee at the Annual Council meeting.
- 4.13 Parliament has given the Council various licensing functions but legislation does not always allow choice in how a Council may operate those functions, for example, Scrap Metal Dealers licensing regime is a matter for the Leader and Cabinet to operate and the Licensing Act 2003 requires the Council to establish a statutory licensing committee to undertake licensing functions, as set out in the Act. Otherwise, the Council has general discretion to create Council committees under the Local Government Act 1972 to make licensing related decisions.

5. Implications for Sandwell's Vision 2030

- 5.1 The Licensing process contributes to the Sandwell's Vision 2030 – Ambition 3 our workforce and young people are skilled and talented geared up to respond to changing business needs to win rewarding jobs in a growing economy locally.
- 5.2 The Licensing Act 2003 has four licensing objectives which are highly pertinent to Ambition 5 of Sandwell's Vision 2030 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.
- 5.3 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.
- 5.4 Trading Standards and Licensing is a member of the Sandwell Drug and Alcohol Policy group, which reports to the Safer Sandwell Partnership.

6. **Background Details**

The Licensing Sub Committees are appointed under the provisions of the Licensing Act, 2003 and are therefore not subject to the proportionality requirements of the Local Government and Housing Act 1989. However, other licensing functions will be subject to proportionality.

For 2019/20, the proportionality provisions will apply, when considering licensing functions other than those under the provisions of the Licensing Act 2003, and seats have been allocated to the Sub Committees accordingly.

Source Documents

Licensing Act 2003

Gambling Act 2005