

Sandwell Metropolitan Borough Council

Licensing Committee

20 June, 2014

Establishment of Licensing Panels

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 of the Gambling Act, 2005 may also be discharged by those Panels. The Committee is invited to establish Licensing Panels for the municipal year 2014/2015.
- 1.2 The Licensing Act 2003 specifies that each Sub-Committee (Panel) shall consist of three members of the Licensing Committee. The Annual Council at its meeting on 11 June, 2014 appointed a Licensing Committee comprising 12 members. It is proposed that four panels, of three members each, be appointed for 2014/15. It is also suggested that the Director - Legal and Governance Services, in consultation with the Chair of the Licensing Committee, be authorised to select replacement members from the Licensing Committee to serve on panels as necessary 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.
- 1.3 At the Annual Meeting of Council on 11 June 2014, the Licensing Authority established the terms of reference of the Licensing Committee and in addition to the discharge of its functions under the Licensing Act 2003 and Gambling Act 2005, it established that the Licensing Committee shall also exercise the Councils functions relating to the licensing of sex establishments in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Section 2 and Schedule 3.

- 1.4 Section 103 of the Police Reform and Social Responsibility Act 2011 amended Section 13 and Section 69 of the Licensing Act 2003 to extend the list of responsible authorities to include the relevant licensing authority and any other licensing authority in whose area part of the premises is situated. It is proposed to designate the Trading Standards Manager as the appropriate officer for the purpose of discharging the functions of the Council as the responsible authority under Sections 13 and 69 of the Licensing Act 2003.
 - 1.5 The revised terms of reference of the Licensing Panels for 2014/2015 are attached.
 - 1.6 The terms of reference have also been amended to enable Licensing Panels to determine applications for licensed premises gaming machine permits under the Gaming Act 2005 if a relevant representation is made. In the event that no representations are made or where representations have been withdrawn, it is proposed to delegate authority to the Area Director – Homes and Communities to determine the applications.
- Further details are attached for your information.

2. **Recommendations**

- 2.1 That four Licensing Panels be established, to undertake those functions set out in the terms of reference now submitted, each comprising three members of the Licensing Committee, and that the Committee make appointments to those panels;
- 2.2 That the Licensing Committee appoint a Chair to each of the four Panels;
- 2.3 That the Director - Legal and Governance Services, in consultation with the Chair of the Licensing Committee, be authorised to select replacement members from the Licensing Committee as necessary to serve on Licensing Panels 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 Trading Standards Manager be designated as the appropriate officer for the purpose of discharging the functions of the Council, as the responsible authority, under Sections 13 and 69 of the Licensing Act 2003.

- 2.5 That in the event that no representations are made or where representations have been withdrawn, the Area Director – Homes and Communities be authorised to determine applications for licensed premises gaming machine permits under the Gaming Act 2005.
- 2.6 That the Director - Legal and Governance Services and Monitoring Officer 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

- 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 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.
- 4.5 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.
- 4.6 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.
- 4.7 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.
- 4.8 The Licensing Committee has already delegated the majority of its licensing functions to the Licensing Panels and/or officers.
- 4.9 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.
- 4.10 The licensing of sex establishments is provided for by the Local Government (Miscellaneous Provisions) Act 1982 Section 2 and Schedule 3.
- 4.11 Section 103 of the Police Reform and Social Responsibility Act 2011 amended Section 13 and Section 69 of the Licensing Act 2003 extended the list of responsible authorities to include the relevant licensing authority and any other licensing authority in whose area part of the premises is situated.

5. Implications for the Council's Scorecard Priorities

- 5.1 The Licensing Act 2003 has four licensing objectives which are highly pertinent to the Council's Scorecard 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 Scorecard priorities:-
- (i) A safe and clean place to live - 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) Active and Well People - Support for vulnerable children as 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.

6. **Background Details**

- 6.1 The Licensing Panels 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, matters dealt with under the 1982 Act will be subject to proportionality. For 2014/15, as Sandwell is a single party authority, the proportionality provisions will not apply.

Source Documents
Licensing Act 2003
Gambling Act 2005

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:-

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| Application for personal licence. | If a police objection has been made. |
| Application for personal licence with unspent relevant convictions. | If a police objection is made |
| 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. |

Licensing Panel (Cont)

Decision to object when local authority is a consultee and not the relevant authority considering the application. All cases.

Determination of a police or environmental health 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 Gambling Act 2005 (Casino Resolution);
- b) any function conferred on the Licensing Authority by Section 212 of the Gambling Act 2005 (Fees);
- c) any function conferred on the Licensing Authority by Section 349 of the Gambling 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

Licensing Panel (Cont)

Application for club gaming/club machine permits.

If a relevant representation is made

Application for licensed premises gaming 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.

- (3). exercise those functions of the Licensing Committee relating to the exercise of the Council's functions for the licensing of sex establishments in accordance with the Local Government (Miscellaneous Provisions) Act 1982 Section 2 and Schedule 3, together with any regulations made under the Act.