

# CHESHIRE EAST COUNCIL

## Constitution Committee

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**Date of meeting:** 27<sup>th</sup> January 2010  
**Report of:** Borough Solicitor  
**Title:** Licensing Committee Terms of Reference and Delegations

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### 1.0 Report Summary

- 1.1 The report provides background information in relation to the licensing delegations and the Licensing Committee terms of reference. The report requests that the Constitution Committee makes recommendations to Council in relation to certain proposed amendments to the Constitution.

### 2.0 Recommendations

- 2.1 The Constitution Committee is requested to recommend to Council the approval of the amendments to the Constitution, in relation to licensing delegations, set out within paragraph 10.2 of this report; and
- 2.2 Subject to the decision of Council in relation to the adoption of the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 made by section 27 of the Policing and Crime Act 2009, the Constitution Committee is requested to recommend to Council the approval of amendments to the Constitution in relation to the Licensing Committee's terms of reference and officer delegations as set out within parts 1B and 2B of Appendix A (relating to the exercise of functions in relation to the licensing of sexual entertainment venues).

### 3.0 Reasons for Recommendations

- 3.1 On 10<sup>th</sup> January 2011 the Licensing Committee considered a report in relation to the amendment of the licensing delegations which referred to the need to clarify those functions which stand referred to the General Licensing Sub-Committee and those which stand referred to the Licensing Act Sub-Committee. The Committee resolved to recommend to Constitution Committee the amendments to the Constitution set out within paragraph 10.2 below.
- 3.2 On 10<sup>th</sup> January 2011 the Licensing Committee also considered a report in relation to the licensing of 'sexual entertainment venues.' Having considered the report, the Licensing Committee resolved, subject to the decision of Council on the principle of adoption of the relevant legislation, to recommend to Constitution Committee the amendments to the Constitution set out within parts 1B and 2A of Appendix A to this report.

#### **4.0 Wards Affected**

4.1 All

#### **5.0 Local Ward Members**

5.1 All

#### **6.0 Policy Implications including - Climate change - Health**

6.1 None.

#### **7.0 Financial Implications 2010/11 and beyond (Authorised by the Borough Treasurer)**

7.1 None.

#### **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 Section 9 of the Licensing Act 2003 provides that a Licensing Committee established under the 2003 Act may establish one or more sub-committees consisting of three members of the committee.

8.2 Section 101(1) of the Local Government Act 1972 provides that, subject to any express provision contained in the 1972 Act or any act passed after it, a local authority may arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority.

8.3 Section 27 of the Policing and Crime Act 2009, which came into force on 6<sup>th</sup> April 2010, amended Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in order to provide local authorities with the power to regulate 'sexual entertainment venues.' If a local authority wishes to exercise the 'new' powers within Schedule 3, it must formally resolve that the provisions are to have effect in its area. On 10<sup>th</sup> January 2011 the Licensing Committee resolved to recommend to Council that the amended Schedule 3 is adopted within the Borough of Cheshire East.

8.4 By virtue of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended), functions under Schedule 3 of the 1982 Act are not to be the responsibility of the Executive. Subject to Council's decision, the Licensing Committee has recommended the amendments to the Constitution as it relates to the Licensing Committee's terms of reference and officer delegations to take account of the licensing of sexual entertainment venues.

8.4 The implications in terms of the Constitution are set out within the report.

## **9.0 Risk Management**

- 9.1 There is a risk of legal challenge to decisions taken by the licensing authority if the individual/body taking such decisions does not have the correct delegation to do so. The decision requested seeks to ensure clarity in the scheme of delegation as it relates to decision-making by the Licensing Committee, Sub-Committees and officers.

## **10.0 Background and Options**

- 10.1 The Council's Constitution makes provision for the delegation of certain licensing functions to the Head of Safer and Stronger Communities. These delegations are subject to exceptions which, if applicable, require functions to be referred to a meeting of the Licensing Sub-Committee.

- 10.2 Two Sub-Committees have been established in order to deal with licensing functions, the General Licensing Sub-Committee and the Licensing Act Sub-Committee. The Constitution Committee is requested to recommend the following amendments to the Constitution to ensure that the scheme of delegation is clear as to the functions which stand referred to each of the Sub-Committees.

- 10.2.1 to amend references to the Licensing Sub-Committee within paragraph 25.3 of the Officer Management Arrangements within Part III of the Constitution to "the General Licensing Sub-Committee;" and

- 10.2.2 to amend references to the Licensing Sub-Committee within paragraph 25.4 of the Officer Management Arrangements within Part III of the Constitution to "the Licensing Act Sub-Committee."

- 10.2.3 to amend references to the Licensing Sub-Committee within sub-paragraphs (i) to (iii), (v) and (vi) in relation to the General Licensing Functions at pages 160 and 161 of the Constitution to "the General Licensing Sub-Committee;" and

- 10.2.4 to amend references to the Licensing Sub-Committee within sub-paragraphs (ii) to (xi) in relation to licensing functions under the Licensing Act 2003 and Gambling Act 2005 at page 161 of the Constitution to "the Licensing Act Sub-Committee."

- 10.3 As set out within the legal implications at paragraph 8.0 above, Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 makes provision for the regulation of 'sex establishments.' Prior to the enactment of the Policing and Crime Act 2009, the definition of 'sex establishments' was limited to sex shops and sex cinemas. Section 27 of the Policing and Crime Act 2009, which came into force on 6 April 2010, extends the definition of 'sex establishment' to include 'sexual entertainment venues. On 10<sup>th</sup> January 2010 the Licensing Committee resolved to recommend to Council the adoption of the amended Schedule 3.

- 10.4 The existing licensing delegations within the Council's Constitution make provision for applications in relation to sex shops and sex cinemas to be dealt with by the Licensing Committee, subject to certain delegations to the Head of Safer and Stronger Communities. The detail of the existing delegations is set out within paragraphs 1A and 2A of Appendix A
- 10.5 On 10<sup>th</sup> January 2010, the Licensing Committee resolved, without prejudice to the decision of Council in relation to the adoption of the legislation, to recommend to Constitution Committee amendments to the delegations to ensure that they deal with the power to deal with applications in relation to sexual entertainment venues. The proposed amendments are set out at paragraphs 1B and 2B of Appendix A.

## **11.0 Overview of Day One, Year One and Term One Issues**

11.1 N/A.

## **12.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

### ***For further information:***

*Officer:* Mrs K Khan, Legal Services  
*Tel No:* (01270) 685847  
*Email:* kate.khan@cheshireeast.gov.uk

### ***Background Documents:***

Appendix A – Terms of reference and delegations (current and proposed)

## APPENDIX A

### 1A. Current terms of reference

#### General Licensing Sub-Committee (page 95)

<b>Function</b>	<b>Full Committee</b>	<b>Sub-Committee</b>
Power to licence sex shops and sex cinemas (including first grant, renewal, transfer and variation of standard conditions)	<p>First grant: all cases before the licensing Committee.</p> <p>Renewal: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers</p> <p>Transfer: if there are objections which are not withdrawn and which cannot be dealt with under the authority delegated to officers</p> <p>Variation of standard conditions</p>	

#### Schedule of functions (page 97)

All Council (non-executive) functions relating to:

(a) licensing and registration functions in respect of:

(iii) sex shops and sex cinemas

### 1B. Proposed terms of reference

#### General Licensing Sub-Committee

<b>Function</b>	<b>Full Committee</b>	<b>Sub-Committee</b>
<i>Power to licence sex establishments (including first grant, renewal, transfer and variation of conditions)</i>		<p><i>First grant.</i></p> <p><i>Renewal: if objections are received and are not withdrawn</i></p> <p><i>Transfer: if objections are</i></p>

		<i>received and not withdrawn</i>  <i>Variation of conditions</i>
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### Schedule of functions

*All Council (non-executive) functions relating to:*

*(b) licensing and registration functions in respect of:*

*(iii) sex establishments*

## **2A. Current delegations in relation to sex establishments**

(pages 134/135)

25.2 Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-

25.2.5 Power to renew or transfer licences for sex shops and sex cinemas where:-

25.2.5.1 there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and

25.2.5.2 no objections have been received, or those that have been received should in the officer's opinion be set aside on the grounds that the Council could not lawfully take them into account.

25.3 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to the body set out below:-

25.3.4 The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

(page 159)

Subject to the exceptions listed below the Head of Safer and Stronger Communities is authorised to discharge the following Council (non-executive) functions.

(h)	<i>Power to renew or transfer licences for sex shops and sex cinemas</i>	Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.
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	[where (i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received or those that have been received should in the officer's opinion be set aside on the ground that the Council could not lawfully take them into account]	
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(iv) The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

## **2B. Proposed delegations in relation to sex establishments**

*25.2 Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following licensing functions:-*

*25.2.5 Power to renew or transfer licences for sex establishments where:-*

*25.2.5.1 there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and*

*25.2.5.2 no objections have been received, or those that have been received have been withdrawn.*

*25.3 In the following circumstances, the power delegated to the Head of Safer and Stronger Communities in respect of general licensing functions shall stand referred to the body set out below:-*

*25.3.4 The determination of applications for the renewal or transfer of licences for establishments where objections have been received and have not been withdrawn, shall be referred to the General Licensing Sub-Committee.*

*Subject to the exceptions listed below the Head of Safer and Stronger Communities is authorised to discharge the following Council (non-executive) functions.*

(h)	<p><i>Power to renew or transfer licences for sex establishments</i></p> <p><i>Where (i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received</i></p>	<p><i>Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.</i></p>
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*(iv) The determination of applications for the renewal or transfer of licences for sex establishments where objections are received and have not been withdrawn, shall be referred to the General Licensing Sub- Committee.*