

CHESHIRE EAST COUNCIL

GOVERNANCE AND CONSTITUTION COMMITTEE

Date of meeting: 1st December 2008
Report of: Julie Openshaw, Interim Monitoring Officer
Title: Licensing Committee – Structures, Membership and Delegations

1.0 Purpose of Report

- 1.1 The purpose of the report is to set out proposals in relation to the formation of the Licensing Committee of Cheshire East Council, both as a shadow committee prior to 1 April 2009 and as a fully operational Committee thereafter.
- 1.2 The proposals relating to the structure of the Licensing Committee are based on the requirements of the Licensing Act 2003 and Gambling Act 2005. In addition, consideration has been given to the current practices in operation in the existing district authorities. The proposals are recommended to the Governance Committee by the Cheshire East Licensing Group.
- 1.3 The report highlights that Council will be asked to appoint members to the Licensing Committee at its meeting on 9th December 2008.

2.0 Decision Required

- 2.1 The Committee is requested to recommend to Council the creation of a Licensing Committee on the following terms:
 - 2.1.1 A full Licensing Committee of fifteen Members (with a quorum of eight) on a politically proportional basis, i.e. Conservatives 11; Liberal Democrats 2; Labour 1; Independent Group 1.
 - 2.1.2 And that the Licensing Committee then establishes:
 - (a) Sub-Committees of three Members drawn from the full Committee to deal with matters under the Licensing Act 2003 and the Gambling Act 2003; and
 - (b) Sub-Committees of three Members drawn from the full Committee to deal with 'general' licensing matters on a politically proportional basis.
- 2.2 The Committee is requested to note that on 9th December 2009 Council will be asked to appoint Members to the Licensing Committee.
- 2.3 The Committee is requested to delegate to the Licensing Committee those licensing functions which are the responsibility of Council set out in Appendix 1,

subject to the proviso that before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee.

- 2.4 The Committee is requested to recommend to Council that the Interim Monitoring Officer be authorised to make such consequential changes to the Constitution as she considers appropriate to give effect to the decision of Council in relation to 2.1 to 2.3 above.

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 Cheshire East will be unable to perform its statutory function as the licensing authority if a Licensing Committee is not in place by 1 April 2009. The creation of a shadow Licensing Committee enables consideration to be given to policies which are to be in place by 1 April 2009.

6.0 Risk Assessment

- 6.1 If the Licensing Committee is not established correctly any decisions it makes would be open to challenge. In addition, there is a risk of legal challenge to decisions taken by the licensing authority if the scheme of delegation is not clear.

7.0 Background and Options

Background

- 7.1 The Licensing Act 2003 requires each licensing authority to establish a Licensing Committee of no less than ten and no more than fifteen Members to deal with the authority's licensing functions under the 2003 Act. The Committee may be politically proportional but is not statutorily required to be so.
- 7.2 With the exception of (i) the determination of the Statement of Licensing Policy, which is a matter for full Council and (ii) functions which relate to both to licensing and non-licensing functions, which may be dealt with either by the Licensing Committee or another Committee, the Act provides that all matters relating to the discharge by a licensing authority of its licensing functions are referred to its licensing committee.

- 7.3 The Act further provides that the Licensing Committee may establish one or more sub-committees consisting of three members of the full Committee.
- 7.4 The Gambling Act 2005 also specifically delegates the licensing functions in Part 8 of the Gambling Act to the licensing committee established under the Licensing Act.
- 7.5 In addition to the licensing functions within the Licensing Act 2003 and Gambling Act 2005, the Council is required to carry out additional 'general' licensing functions, including the licensing of hackney carriages and private hire vehicles and drivers (a list of these functions is set out in information at Appendix 4). The Committee which determines such matters is required to be politically proportional.

Licensing Committee Structure and Membership

- 7.6 It is suggested that, for the sake of both clarity and expediency, the Licensing Committee is established in such a way that it may deal with matters under both the Licensing and Gambling Acts and the 'general' licensing functions. For this reason it is suggested that the Licensing Committee be politically proportional.
- 7.7 As Members will be aware, the political make up of the Council is as follows:

	No. of seats	% of seats
Conservative	59	72.84
Liberal Democrat	12	14.81
Labour	6	7.41
Independent Group	4	4.94

- 7.8 In order to achieve the political balance and to ensure that there is a sufficient pool of Members from which sub-committees may be drawn, it is suggested that the Licensing Committee be established with a membership of fifteen.
- 7.9 In order to comply with section 15 of the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990, the Interim Monitoring Officer recommends that the seats on the Licensing Committee should be allocated as follows:

Conservative	11
Liberal Democrat	2
Labour	1
Independent Group	1
Total	15

- 7.10 The licensing function encompasses a number of policy matters, including a Statement of Licensing Policy under the Licensing Act 2003 and the adoption of conditions in relation to licensed vehicles, drivers and operators. Whilst the adoption of the final Statement of Licensing Policy is a Council function it is proposed that the Licensing Committee consider any consultation responses

received and make a recommendation to Council on the final drafting. It is therefore proposed that the Licensing Committee be established as a shadow committee to deal with policy matters prior to 1 April 2009 and as a fully operational Committee which may consider applications thereafter. The creation of a shadow Committee also allows relevant training to be provided to those Members who are appointed to the Committee prior to 1 April.

- 7.11 In order that a shadow Licensing Committee may be in operation to consider policy matters prior to 1 April, on 9th December 2008 Council will be requested to appoint members to the Committee. The Council is under a duty to make the appointments in a manner to give effect to the wishes of the various political groups who have been allocated seats on the Licensing Committee. The appointments recommended to Council will therefore be those put forward by the respective group leaders.
- 7.12 Council will also be requested to set the date for the first meeting of the shadow Licensing Committee. It suggested that the dates for subsequent meetings of the shadow Committee be approved by the Chairman of the Committee.

Licensing Sub-Committees

- 7.13 From 1 April 2009, whilst there will be matters which require consideration by the full Committee, such consideration of policy or individual applications which raise policy matters, due to the volume of applications which will require determination, it is suggested that it would not be practicable for the full Licensing Committee to consider all applications. For this reason it is suggested that the Licensing Committee establish sub-committees of three to deal with both the Licensing and Gambling Act matters (which need not be politically proportional) and the 'general' licensing matters (which will need to be politically proportional).
- 7.14 As set out above, the Licensing Act 2003 prescribes that sub-committees are made up of three Members of the full Committee. Whilst there is no statutory requirement in relation to the size of the 'general' sub-committee, as the sub-committee will normally be dealing with unrepresented individuals, it is suggested that it be made up of three Members in order to avoid intimidation. An alternative option would be to create a sub-committee of six members which would allow for additional representation in terms of the political balance. The membership of the sub-committee may be determined either on a rotational basis, or if business requires it, on an ad hoc basis.

Delegation of Licensing Functions

- 7.15 On 9th December Council will be asked to delegate those licensing functions which are the responsibility of Council set out at Appendix 1 to the Licensing Committee. It is suggested that the Licensing Committee may then determine those functions which are to be the responsibility of officers and which are to be reserved to the full Committee or sub-committees.

- 7.16 Attached for information are the suggested delegations under the Licensing Act and the Gambling Act (at appendices 2 and 3 respectively). This scheme reflects those included in the draft Statement of Licensing Policy (under the 2003 Act) and the Statement of Principles (under the 2005 Act). In addition a proposed scheme of delegation in relation to the 'general' licensing functions is attached as Appendix 4. If Council determines to delegate the 'Council' licensing functions as requested the Licensing Committee will be requested to consider the schemes of delegation at its first meeting.
- 7.17 It should be noted that each of the schemes would be subject to the proviso that officers would have discretion to refer any issue to the Licensing Committee or Sub-Committee if the matter was significant or controversial in nature. In addition Sub-Committees would have discretion to refer matters to the full Licensing Committee in similar circumstances.

8.0 Overview of Day One, Year One and Term One Issues

- 8.1 The requirement to have a Licensing Committee in place is a Day One requirement.

9.0 Reasons for Recommendation

- 9.1 The recommendations are made to ensure:
- 9.1.1 that a shadow Licensing Committee is in place in sufficient time to consider policy matters which require determination prior to 1 April 2009 and to ensure that members of the Committee receive the requisite training;
 - 9.1.2 that a fully operational Licensing Committee is in place prior to 1 April 2009 to consider applications and allow Cheshire East to carry out its licensing functions from that date onwards;
 - 9.1.3 that a clear and robust scheme of delegation is in place to ensure that an efficient licensing service can be provided from 1 April 2009 onwards.

For further information:

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Background Documents:

None

Licensing functions which are the responsibility of Council

(as set out within Schedule 1 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000)

Power to license hackney carriages and private hire vehicles (including the power to set fees);

Power to license drivers of hackney carriages and private hire vehicles (including the power to set fees);

Power to license operators of hackney carriages and private hire vehicles (including the power to set fees);

Functions in relation to licensing (under the Licensing Act 2003);

Duty to comply with requirement to provide information to the Gambling Commission;

Functions relating to exchange of information (under the Gambling Act 2005);

Functions relating to occasional use notices (under the Gambling Act 2005);

Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises;

Power to make order disapplying section 279 or 282(1) of the Gambling Act 2005 in relation to specified premises;

Power to institute criminal proceedings (under the Gambling Act 2005);

Power to exchange information (under the Gambling Act 2005);

Functions relating to the determination of fees for premises licences (under the Gambling Act 2005);

Functions relating to the registration and regulation of small society lotteries;

Power to license sex shops and sex cinemas (including the power to set fees);

Power to license performances of hypnotism;

Power to license pleasure boats and pleasure vessels;

Power to license market and street trading;

Power to issue, amend or replace safety certificates (whether general or special) for sports grounds;

Power to issue, cancel, amend or replace safety certificates for regulated stands at sports grounds;

Power to license persons to collect for charitable and other causes;

Power to sanction use of parts of buildings for storage of celluloid;

Power to make an order identifying a place as a designated public place for the purposes of police powers in relation to alcohol consumption;

Licensing Act 2003 - Delegation of functions

MATTER TO BE DEALT WITH	FULL COMMITTEE	SUB-COMMITTEE	OFFICERS
Application for Personal Licence		If a police objection	If no objections made
Application for Personal Licence with unspent convictions		All Cases.	
Application for premises Licence/Club Premises Certificate		If a relevant representation made.	If no relevant representation made.
Application for provisional statement		If a relevant representation is made.	If no relevant representation is made
Application to vary Premises Licence/Club Premises Certificate		If a relevant representation made.	If no relevant representation made.
Application to vary designated Personal Licence holder		If a police objection.	All other cases.
Request to be removed as designated Personal Licence Holder.			All cases.
Application of transfer of Premises Licence.		If a police objection.	All other cases.
Application for Interim Authorities		If a police objection	All other cases.
Application to review Premises Licence/Club Premises Certificate.		All cases.	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.			All cases.
Decision to object when Local Authority is a consultee and not a lead authority.		All cases.	
Determination of a police objection to a Temporary Event Notice.		All cases.	

Gambling Act 2005 - Delegation of functions

APPENDIX 3

MATTER TO BE DEALT WITH	FULL COUNCIL	FULL COMMITTEE	SUB-COMMITTEE	OFFICERS
Three year licensing policy	X			
Policy not to permit casinos	X			
Fee Setting - when appropriate		X		
Application for premises licences			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a variation to a licence			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a transfer of a licence			Where representations have been received from the Commission	Where no representations received from the Commission
Application for a provisional statement			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Review of a premises licence			X	
Application for club gaming /club machine permits			Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Cancellation of club gaming/ club machine permits			X	
Applications for other permits				X
Cancellation of licensed premises gaming machine permits				X
Consideration of temporary use notice				X
Decision to give a counter notice to a temporary use notice			X	
Functions in relation to Occasional Use Notices				X
Registration and regulation of Small Society Lotteries				X