

Meeting:	Licensing and General Purpose Committee
Date:	5 March 2007
Subject:	Delegation of Function to Licensing Panels & Officers
Responsible Officer:	Andrew Trehern, Executive Director, Urban Living
Contact Officer:	P Sivashankar, Licensing Service Manager, ext 6237
Portfolio Holder:	Councillor Susan Hall – Public Realm and Community Safety
Key Decision:	Yes
Status:	Part 1

Section 1: Summary and Recommendations

Decision Required

1. That Licensing Panels comprised of members of the Committee may discharge the functions delegated to this Committee by the Gambling Act 2005.
2. That the Director of Community and Environment or the Chief Environmental Health Officer may discharge the power in the Gambling Act 2005 for the Licensing Authority (as a responsible authority) to make representations to itself.
3. That the Chief Environmental Health Officer or delegate may discharge the functions ascribed to officers in the matrix in section 2.2 of the report (with the exception of fee setting which is not a function delegated to this Committee).

REASON: To discharge the new statutory duties under the Gambling Act 2005 this Authority is required to delegate licensing authority functions as per s154 of the Gambling Act 2005 and the Gaming Commission's guidance. This report brings members attention to the proposed delegations to licensing panel and to officers as suggested by the Gambling Commission's guidance.

Section 2: Report

2.1 Brief History

2.1.1 The Licensing Authority functions under the Gambling Act 2005 are delegated to the licensing committee of the authority established under section 6 of the Licensing Act 2003. However, the functions under s 166, casino resolution, s212, Fees and s349, Gambling Policy are not delegated by the authority.

2.1.2 To discharge the new statutory duties under the Gambling Act 2005 this Authority is required to delegate the licensing authority functions under Section 154 of the Gambling Act 2005. If the recommendations are rejected the council will not fulfil its statutory obligation and will be subject to challenge.

2.1.3 In exercising their functions, a licensing authority shall aim to permit the use of premises for Gambling in so far as the authority think fit;

In accordance with any relevant code of practice issued by the gambling Commission

In accordance with any relevant guidance issued by the Commission

Reasonably consistent with the licensing objectives, and

In accordance with the statement published by the authority

In determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide, subject to any resolution made regarding casinos.

2.1.4 The proposal provides opportunity to hear opposed applications in public, and allows the grant of unopposed applications by officers, in most cases, reducing the cost and time to applicants and the Council in administering the system.

2.2 The Guidance provided by the Gambling Commission under the Gambling Act 2005 includes a suggested matrix of responsibilities in accordance with the allocations made under the Act. The matrix is set out below.

Matter to be dealt with	Full Council	Sub-committee of licensing committee	Officers
Final approval of three year licensing policy	X		
Policy not to permit casinos	X		
Fee setting (when appropriate)			X
Applications for premises licences		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation of a licence		Where representations	Where no representations

		have been received and not withdrawn	received/representations have been withdrawn
Application for a transfer of a licence		Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
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 permit		X	
Application for other permits			X
Application for licensed premises gaming permits			X
Consideration of temporary use notice			X
Decision to give a counter notice to a temporary use notice		X	

2.3 Discharge of functions by Licensing Panels

2.3.1 The Council as Licensing Authority has a number of powers under the Gambling Act 2005. These include the powers set out in the matrix in section 2.2: determination of applications for premises licences; determination of applications for variation of a premises licence; determination of applications to transfer licences; applications for provisional statements; conduct of reviews; applications for club gaming/club machine permits; cancellations of club gaming/club machine permits; and decisions to give a counter notice to a temporary use notice.

2.3.2 The Gambling Act delegates most of the Council's powers as Licensing Authority to the Licensing and General Purposes Committee (with the exception of section 166 (no casino resolution), section 212 (fees) and 349 (statement of licensing policy)).

2.3.3 The Gambling Act permits the Licensing and General Purposes Committee to arrange for the discharge of its functions by a sub-

committee, or by an officer of the licensing authority (although there are some specified matters that may not be delegated to officers).

2.3.4 The Licensing and General Purposes Committee meets approximately quarterly and has a large number of members. It is likely to prove difficult to make decisions, such as the determination of applications for premises licences, within statutory time frames if the Authority's powers were to be exercised by the full committee. Under the Licensing Act 2003 the Authority has for some time operated a system in which such matters are determined by Licensing Panels comprised of members of the Committee. It is proposed that the Council continue to operate such a system under the Gambling Act 2005.

2.3.5 It is proposed that the Committee determine that Licensing Panels comprised of members of the Committee may discharge the functions delegated to the Committee under the Gambling Act 2005.

2.4 Representations

2.4.1 Under the Gambling Act 2005, the Council as licensing authority is a responsible authority in respect of matters for which it is responsible as licensing authority. As such, the Council as licensing authority can itself make representations in relation to license applications that it determines and reviews of licences that it conducts under the Gambling Act.

2.4.2 The classification of the Council as licensing authority as a responsible authority in respect of matters for which it is responsible as licensing authority is an innovation over the Licensing Act 2003. The Licensing Act 2003 provides that the Council is a responsible authority for matters in respect of which it is the relevant licensing authority, but only in its capacity as the local planning authority, the local authority in respect of environment protection and so on. The Council as licensing authority is not a responsible authority under the Licensing Act 2003 for matters in respect of which it is the relevant licensing authority.

2.4.3 To illustrate the significance of the innovation in the Gambling Act 2005, consider the following possible scenario –

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| Step 1 | A person applies for a premises licence under Part 8 of the Gambling Act. |
| Step 2 | The Council's licensing team considers that the application does not comply with the statement of licensing policy and makes a representation to itself. |
| Step 3 | Having received its own representation, the Council's licensing team arranges a hearing before a Licensing Panel to determine the application. |
| Step 4 | The Licensing Panel holds a hearing and determines the application. |

2.4.4 The action in Step 2 is one that could not be taken under the Licensing Act 2003 in similar circumstances, but is available under the Gambling Act 2005.

2.4.5 Consideration needs to be given to how the Council as licensing authority will exercise the power to make representations to itself.

2.4.6 Under the Licensing Act 2003, when the Council as local planning authority (or in any other capacity) makes representations to itself, the function is discharged by officers. This system has been in place since commencement of the Licensing Act 2003 in 2005 and has not presented any difficulties. To the contrary, there are distinct advantages to having officers make representations. First, it enables representations to be made without the costs and potential delays of convening meetings of either the Committee or of Licensing Panels. Second, it means that the objectivity of members who must ultimately determine a matter the subject of representations is clearly maintained.

2.4.7 It is recommended that the Committee permit the function of making representations to be discharged by the Director of Community and Environment or the Chief Environmental Health Officer. Making such a delegation would not, of course, prevent the Committee from determining that representations should be made by the licensing authority in an appropriate case.

2.5 Discharge of other functions by officers

2.5.1 As set out above, the Gambling Act permits the Licensing and General Purposes Committee to arrange for the discharge of its functions by a sub-committee, or by an officer of the licensing authority (although there are some specified matters that may not be delegated to officers).

2.5.2 The Guidance issued by the Gambling Commission recommends that a number of the Council's functions as Licensing Authority be exercised by officers as set out in the matrix in section 2.2 of this report. They are uncontroversial matters and it is recommended that the Committee authorise the discharge of those functions by officers.

2.3 Consultation

The suggested delegations are in line with the Gambling Commissions Guidance to Local Authorities and were sited during the initial consultation of the Gambling Policy.

2.4 Financial Implications

The applications fee, according to the draft regulations, will not cover all of the costs of administering the Gambling enforcement and regulatory regimes.

There are costs associated with training of Members of L&GP and costs associated with the administration and holding of hearings, which can be maintained within the Licensing Services Budget

However, the budget is under extreme pressure and any steps to reduce the cost burden, as is the case with the proposed delegations, should be supported.

2.5 Legal Implications

The legal implications are as set out in the body of this Report

2.6 Equalities Impact

An Equalities Impact Assessment will be undertaken as part of the process of introduction of the legislation in line with the Corporate Equalities Policy.

2.7 Section 17, Crime and Disorder Act.

2.7.1 The key remit of the Gambling Policy will be the manner in which it and the decisions based on the policy address the need for partner agencies to work together to develop and implement strategies to tackle crime and disorder which may be related to the implementation of the Gambling Act and related controls and enforcement. Implementation of the Policy will serve to underpin the delivery

of crime reduction strategy priorities and as such directly support section 17 key objectives and the Crime and Disorder Reduction Strategy.

SECTION 3 - STATUTORY OFFICER CLEARA

For Chief Finance Officer	<input type="checkbox"/>	Name: Carol Maduka
		Date: 23 Feb 2007.
Monitoring Officer	<input type="checkbox"/>	Name: David Galpin
		Date: ...23 Feb 2007

Contact:

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Background Papers:

none

1.	Consultation	N/a
2.	Corporate Priorities	YES
3.	Community Safety (s17 Crime & Disorder Act 1998)	YES
4.	Manifesto Pledge Reference Number	B2;D4;F2