

Committee: Licensing Committee	Date: 3 June 2008	Classification: Unrestricted	Report No:	Agenda Item: 5.2
Report of: Head of Democratic Renewal and Engagement Originating officer(s) Amanda Thompson		Title: Establishment of Licensing Sub Committees Wards Affected: All		

1. **SUMMARY**

- 1.1 The purpose of this report is to establish Licensing Sub Committees, appoint their membership and also to note the proposed Terms of Reference and Rules of Procedure.

2. **RECOMMENDATIONS**

- 2.1 Members are asked to consider the contents of the report and
- i) determine how many Sub Committees to establish
 - ii) determine, if so wished, how many Sub Committee Chairs to appoint
 - iii) determine whether to appoint membership of the Sub Committees
- 2.2 Note the Terms of Reference attached as Appendix A and Rules of Procedure attached as Appendix B.

Local Government Act, 2000 (Section 97) List of "Background Papers" used in the preparation of this report

Brief description of "back ground papers"

Report of Head of Democratic Renewal and Engagement, "Licensing Act 2003", to

Council on 8th March 2007

Name and telephone number of holder and address where open to inspection.

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3. Background

- 3.1 In accordance with the Licensing Act 2003, full Council at its meeting held on 8th March 2007 agreed that the Licensing Committee would consist of 15 Members and noted that the Committee would exercise its powers to appoint Sub Committees with the power to consider and determine Licensing applications. It was also noted that proportionality rules did not apply to Licensing Sub Committees.
- 3.2 The Licensing Act 2003 allows a Sub Committee to consist of three Members with the quorum also being three; it is not therefore possible to consider increasing the membership beyond that number. This also means that it is imperative that Members attend meetings as arranged and that the Committee needs to give careful consideration to the number of Sub Committees to establish so as to allow the greatest degree of Member participation, whilst sharing the workload.
- 3.3 It is entirely within the remit of the Licensing Committee to determine the number and operation of its Sub Committees. The previous Licensing Committee decided that all Members of the Licensing Committee would serve on its Sub Committees and elected to appoint five Members of the Committee to act as Sub Committee Chairs: the Chair, Vice Chair and three other Members.
- 3.4 As stated above, proportionality rules do not apply to the Sub Committees and this, together with what is proposed, means that a Sub Committee could be formed with one named Chair and any other two Members. This would allow considerable flexibility and ensure that workloads could be distributed amongst the membership. Where possible, and in line with Licensing Guidance, Members would not be asked to consider applications for premises within their Ward, thus ensuring an open and transparent decision making process. Alternatively, the Committee may wish to consider making fixed appointments to an agreed number of Sub Committees.
- 3.9 Members should also be aware that the 2003 Act provides that where it is not possible to determine an application within one hearing, hearings must continue on consecutive days. Whilst it is unlikely that this scenario will occur with any frequency, officers will ensure that the possibility of this occurring will be taken into account when establishing Member availability. In addition, Members will be asked to indicate if they are available for daytime meetings as it may be possible to hold a number of meetings not involving residents during the day and thus reducing the number of meetings that would need to be scheduled during the evening.
- 3.10 Council has approved a schedule of dates for Licensing Sub Committees, and whilst it will be necessary to look to these dates in the first instance, whether or not they can be utilised will depend on member availability and the period of time within which an application will have to be considered. Officers will advise as to the current position regarding the number of applications received and the likely impact of this, at the meeting.

3.11 Members are also asked to adopt the proposed Terms of Reference attached as Appendix A and the Rules of Procedure attached as Appendix B, to this report.

4. COMMENTS OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

4.1 The overwhelming majority of contested licence applications will be heard by Licensing Sub Committees. Pursuant to section 9 of the Licensing Act 2003, a Licensing Committee may arrange for its functions relating to contested hearings to be delegated to Sub Committees of three Members all of whom must be members of the Licensing Committee. In order that the Council can deal with the potential large number of contested applications it will be preferable if the Licensing Committee does delegate this function. Further due to the nature of the hearing Regulations, Sub Committees will be better able to consider applications much more quickly than the main Licensing Committee.

4.2 As the Sub Committee is appointed pursuant to the powers in Section 9 of the Licensing Act 2003, then it is not classed as an advisory or an ordinary Committee/Sub Committee of the Council. Further, as the Sub Committee does not fall within one of the other named categories of bodies for the purposes of section 15 to and schedule 1 of the Local Government Act 1989 then the Sub Committees do not have to reflect the political make up of the Council and therefore the proportionality principles do not apply.

4.3 Finally as to the Licensing Committee, section 9(3) of the Licensing Act 2003 gives power to the Licensing Committee, subject to any Regulations made by Government, that the Committee may regulate its own procedure and that of its Sub Committees.

5. COMMENTS OF THE CHIEF FINANCE OFFICER

No material financial implications, such as additional Allowances, are proposed as a result of introducing Sub-Committees. Any minor incidental expenditure that may arise will be contained within the existing Chief Executive Directorate's budget.

6. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

There are no immediate SAGE implications arising from the report.

7. RISK ASSESSMENT

Failure to put in place arrangements to enable licensing applications to be heard is likely to result in an undue burden for local courts in terms of appeals. It may increase the pressure on officers (as appeals may be more demanding in terms of time than ordinary hearings), and is likely to reflect badly on the reputation of the Council.

8. ANTI POVERTY IMPLICATIONS

There are no immediate anti-poverty implications arising from the report.

LICENSING SUB COMMITTEE

Terms of Reference

1. Constitution

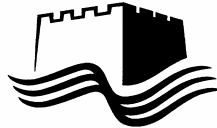
The Licensing Sub Committee will consist of 3 Members of the Licensing Committee and the quorum of the Sub Committee shall be 3 Members.

2. The Sub Committee(s) shall consider applications submitted in accordance with the requirements of the Licensing Act 2003, including:
 - i) Determination of applications for a premises licence (Section 18(3)(a) of the Licensing Act 2003)
 - ii) Determination of applications for provisional statements (Section 31(3)(a) of the Licensing Act 2003)
 - iii) Determination of applications to vary a premises licence (Section 35(3)(a) of the Licensing Act 2003)
 - iv) Determination of applications to vary a premises licence to specify an individual as premises supervisor (Section 39(3)(a) of the Licensing Act 2003)
 - v) Determination of applications for transfer of a premises licence (Section 44(5)(a) of the Licensing Act 2003)
 - vi) Determination of cancellation of an interim authority notice following police objection (Section 48(3)(a) of the Licensing Act 2003)
 - vii) Determination of applications for a review of a premises licence (Section 52(2) of the Licensing Act 2003)
 - viii) Determination of applications for club premises certificate (Section 72(3)(a) of the Licensing Act 2003)
 - ix) Determination of applications to vary a club premises certificate (Section 85(3) of the Licensing Act 2003)
 - x) Determination of applications for review of a club premises certificate (Section 88(3) of the Licensing Act 2003)
 - xi) Determination of counter notice following police objection to a temporary event notice (Section 105(2)(a) of the Licensing Act 2003)
 - xii) Determination of applications for grant of a personal licence (Section 120(7)(a) of the Licensing Act 2003)

- xiii) Determination of applications for the renewal of a personal licence (Section 121(6)(a) of the Licensing Act 2003)
- xiv) Determination of personal licence where convictions come to light after the grant or renewal of the personal licence (Section 124(4)(a) of the Licensing Act 2003)
- xv) Determination of the review of a premises licence following a closure order (Section 167(5)(a) of the Licensing Act 2003)
- xvi) Determination of application for grant of an application for the conversion of an existing licence (Paragraph 4(3)(a) of Schedule 8 to the Licensing Act 2003)
- xvii) Determination of application for grant of an application for the conversion of an existing club premises certificate (Paragraph 16(3)(a) of Schedule 8 to the Licensing Act 2003)
- xviii) Determination of application for grant of an application by holder of a Justices' licence for the grant of a personal licence (Paragraph 26(3)(a) of Schedule 8 to the Licensing Act 2003)

APPENDIX B

TOWER HAMLETS



LICENSING COMMITTEE

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
PREMISES LICENCES
AND OTHER PERMISSIONS
UNDER THE LICENSING ACT 2003**

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under the Licensing Act 2003, as set out in the Licensing Act 2003 (Hearings) Regulations 2005 (as amended). The Procedures take into account the Licensing Act (Premises Licences and Club Premises Certificates) Regulations 2005. The Procedures also include the time limits within which a hearing must commence (see Appendix A) and will be used by the Licensing Committee and Licensing Sub-Committee when conducting hearings.
- 1.2 The Hearings Regulations provide (Regulation 21) that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.
- 1.3 These Procedures, therefore, set out the way in which Licensing Sub-Committee Meetings will be conducted under the Licensing Act 2003, following the requirements of the Hearings Regulations. Wherever appropriate they have included the procedures followed successfully when determining licence applications under previous legislation.
- 1.4 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations (Regulation 31).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will consist of no less than three members and no business shall be transacted unless at least three members of the Licensing Committee are present and able to form a properly constituted Licensing Sub-Committee. In such cases the Chair shall have a second or casting vote. The Councillor for the ward in which the applicant's premises are situated, or where either the applicant or the objector resides, shall not normally form part of the Sub-Committee for that item on the agenda.

3. Timescales

- 3.1 Most hearings must take place within 20 working days from the last date for representations to be made with the following exceptions:

Within 10 working days from the last date for the police to object to:

- conversion of an existing licence;
 - conversion of an existing club certificate;
 - an application for a personal licence by an existing justices licence holder;
- and

Within 10 working days from the date the Licensing Authority receives the notice for a review of the premises licence following a closure order.

Within 7 working days from the last date for the police to object to:

- a temporary event notice.

Within 5 working days from the last date for the police to object to:

- an interim authority notice (Note: the police must give notice of their objection within 48 hours of being given a copy of the notice).

Note: Where a hearing is likely to take longer than one day, the Authority must arrange for the hearing to take place on consecutive days.

3.2 **Timescale for notice of hearings to be given**

In most cases, the Authority shall give notice of a hearing no later than 10 working days before the first day on which the hearing is to be held. The following are exceptions to that rule:

At least five working days notice must be given to the parties of the date of a hearing for determination of:

- conversion of an existing licence
- conversion of an existing club certificate
- application for a personal licence by the holder of a justices licence
- review of a premises licence following a closure order

At least two days notice must be given to the parties to a hearing for determination of:

- police objection to an interim authority notice
- police objection to a temporary event notice

3.3 **Persons who must be notified of a hearing**

The persons who must be notified of a hearing are set out below as a summary:

- any applicant for any licence or certificate or a temporary event notice.
- any person who has made relevant representations about an application for a licence or for review of a licence (note for any representations deemed frivolous, vexatious or repetitious under Section 18(7)(c) or similar sections of the Licensing Act 2003 the objector must be notified of the Authority's decision as soon as possible and in any event before any hearing).
- Any police officer who has given notice of objection to:
 - a person specified as a Designated Premises Supervisor
 - an interim authority

- transfer of a premises licence
 - a temporary event notice
 - a personal licence
- Any holder of a premises licence or club premises certificate where:
- application is made for review

Note: Anyone given notice of a hearing is a party and that is how that expression is used in these Rules of Procedure.

3.4 Information to be provided in a notice of hearing

The information that must be included in a notice of hearing includes:

- The procedure to be followed at the hearing;
- The right of the party to attend and to be assisted or represented by any person whether legally qualified or not;
- The ability to give further information in support of their application where the Authority has sought clarification;
- The right to question any other party if given permission by the Authority;
- The right to address the Authority;
- Notice of any particular points on which the Authority will want clarification at the hearing;
- The consequences if a party does not attend or is not represented at the hearing;
- For certain hearings particular documents must accompany the notice which is sent to parties informing them of the hearing. Reference must be made to Schedule 3 of the Hearings Regulations for this purpose.

3.5 Failure of Parties to Attend the Hearing

If a party has informed the Authority that they will not be attending or be represented at the hearing, it may proceed in their absence.

If a party does not give notice that they will not be attending but fails to attend and is not represented, the Authority may either:

- a) adjourn the hearing if it considers it to be necessary in the public interest or
- b) hold the hearing in the party's absence

If the Authority holds the hearing in the absence of a party, it will consider at the hearing the application, representation or notice given by the party.

If the Authority adjourns the hearing to a specified date it must forthwith the parties of the date, time and place to which the hearing has been adjourned.

Note: Transition hearings cannot be adjourned to a date beyond the date that which causes an application to be deemed as determined by default.

4. Procedure at the Hearing

4.1 The usual order of proceedings will be as set out below. The Sub-Committee will allow the parties an equal maximum time period in which to give further information in support of their application, representation or response. Where the Authority has given notice that it will seek clarification on that point at the hearing or where permission has been given to call any further persons to give supporting evidence, the Sub-Committee may allow the parties to question any other party and to address the Licensing Sub-Committee. The Sub-Committee will seek, in all cases, to avoid repetition of points (whether included in written material or otherwise), irrelevancy, or any abuse of the procedure.

At the beginning of the hearing the procedure to be followed will be explained to the parties. The hearing will, so far as is possible, take the form of a discussion, led by the Sub-Committee. Cross-examination will not be permitted unless the Sub-Committee considers it necessary.

- i) The Chair will begin by explaining how the proceedings will be conducted, and indicate any time limits that may apply to the parties to the application.
- ii) The report will be briefly introduced by an Officer of the Licensing Section summarising the application.
- iii) The Sub-Committee will then consider any requests by a party for any other person to be heard at the hearing in accordance with the Regulations. Permission will not be unreasonably withheld provided proper notice has been given.
- iv) A summary of the nature and extent of the application by the applicant or their representative. This should be brief, avoid repetition of material already available to the Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Council's Licensing Policy, where appropriate. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence on behalf of the applicant.
- v) A summary of the reasons for making representations about the application by any interested party. This should be brief and avoid any repetition of information already made available to the Committee either in the Officer's report or otherwise. That will be followed by the evidence of any person who has been given permission by the Panel to give supporting evidence on behalf of the objectors.
- vi) A summary of the reasons for making representations by or on behalf of any Responsible Authority. This should be brief and avoid any repetition

of information already made available to the Licensing Sub-Committee either in the Officer's report or otherwise. That will be followed by the evidence of any person who has been given permission by the Panel to give supporting evidence on behalf of the Responsible Authority.

- vii) Members of the Sub-Committee may ask any questions of any party or other person appearing at the hearing.

4.2 The following requirements of the Hearing Regulations will also be followed by the Licensing Sub-Committee:

- a) The Sub-Committee will be guided by legal principles in determining whether evidence is relevant and fairly admissible. In particular, hearsay evidence may be admitted before the Sub-Committee but consideration will always be given to the degree of weight, if any, to be attached to such evidence in all the relevant circumstances.
- b) The Sub-Committee may impose a time limit on the oral representations to be made by any party. In considering whether to do so, and in considering the length of any such time limit, the Sub-Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay.
- c) In considering the time limits referred to in (b) above, regard must be had to the requirement to allow each party an equal amount of time.

4.3 When considering any representations or notice made by a party, the Authority may take into account documentary or other information produced by a party in support of their application, representation or notice, either:

- a) before the hearing, or
- b) with the consent of all other parties, by the Sub-Committee at the hearing

The Authority will disregard any information given by a party, or any other person appearing at the hearing, which is not relevant to:

- a) their application, representation or notice; and
- b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the police.

4.4 All hearings shall take place in public save that:

- a) The Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so.

- b) The parties and any person representing them may be excluded in the same way as another member of the public
- c) The Licensing Sub-Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may:
 - refuse to permit the person to return; or
 - allow them to return only on such conditions as the authority may specify.

4.5 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.

5. Determination of Application – Time Limits

5.1 The Licensing Sub-Committee must make its determination at the conclusion of the hearing where the application is for:

- a) Conversion or variation of an existing licence during transition
- b) Conversion or variation of an existing club certificate during transition
- c) A review of a premises licence following a closure order
- d) A personal licence by the holder of a justices licence
- e) A counter notice following police objection to a temporary event notice

5.2 In any other case the Authority must make its determination within the period of five working days, beginning with the day, or the last day, on which the hearing was held.

5.3 Where a hearing has been dispensed with because all of the parties have agreed that a hearing is unnecessary (and the Authority has agreed, giving notice to the parties in writing), then the Authority must make its determination within 10 working days beginning with the day the authority gives such notices to the parties. The Team Leader (Licensing) shall be authorised to make the determination on behalf of the Authority.

6. Record of Proceedings

6.1 The Authority must arrange for a record to be taken of the hearing in a permanent and intelligible form and for that record to be kept for six years from the date of determination. Where an appeal is brought against a determination by the Authority, the record must be kept for six years from the date of disposal of the appeal.

7. Irregularities

7.1 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations.

7.2 Clerical mistakes in any document recording a determination of the Authority, or errors arising in such a document as the result of an accidental slip or omission, may be corrected by the Authority.

8. Notices

8.1 In accordance with the Regulations, any notices must be given in writing. Such a notice may be sent electronically, providing:

- a) it can be accessed by the recipient in a legible form;
- b) it is capable of being reproduced as a document for future reference;
- c) the recipient has agreed in advance to receive it in such form;
- d) a copy is sent in documentary form forthwith to the recipient.

9. Appeals

9.1 Either those who have made an application or those who have made representations on an application may appeal to the Magistrates Court.

Note: An appeal must be commenced within twenty one days beginning with the day on which the appellant was notified by the Licensing Authority of their decision.

Article II. APPENDIX A

Application Type	Period of Time within which Hearing to be Held (after reps have closed)	Notice Period of Hearing	Notice Sent To	Attendee Reply Form Back In
Section 18 (3)(a) (determination of application for premises licence)	20 working days	10 working days	Applicant; People who have made representations	5 working days
Section 35(3)(a) (determination of application to vary premises licence).	20 working days	10 working days	Applicant; People who have made representations	5 working days
Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor).	20 working days	10 working days	Applicant (premises holder); Chief Officer of Police who has given notice; The proposed premises supervisor	5 working days
Section 44(5)(a) (determination of application for transfer of premises licence).	20 working days	10 working days	Applicant; Chief Officer of Police who has given Notice; The present holder of the premises licence	5 working days
Section 52(2) (determination of application for review of premises licence).	20 working days	10 working days	The holder of the premises licence of where application applies; People who have made representations; Applicant	5 working days
Section 120(7)(a) (determination of application for grant of personal licence).	20 working days	10 working days	Applicant; Chief Officer of Police who has given Notice	5 working days
Section 121(6)(a) (determination	20 working days	10	Applicant;	5 working

of application for the renewal of personal licence).	working days	Chief Officer of Police who has given Notice	days
Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence).	20 working days	The holder of the licence; Chief Officer of Police who has given Notice	5 working days
Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence).	10 working days	Applicant; Chief Officer of Police who has given Notice	2 working days
Section 31(3)(a) (determination of application for a provisional statement).	20 working days	Applicant; People who have made representations	5 working days
Section 48(3)(a) (cancellation of interim authority notice following police objection).	5 working days	The person who has given Notice; Chief Officer of Police who has given Notice	1 working day
Section 72(3)(a) (determination of application for club premises certificate).	20 working days	Applicant (club); People who have made representations	5 working days
Section 85(3) (determination of application to vary club premises certificate).	20 working days	Applicant (club); People who have made representations	5 working days
Section 88(2) (determination of application for review of club premises certificate).	20 working days	Club that holds club premises certificate; People who have made representations; Applicant	5 working days
Section 105(2)(a) (counter notice following police objection to temporary event notice)	7 working days	The premises user; Chief Officer who has given Notice	1 working day

Section 167(5)(a) (review of premises licence following closure order).	10 working days	5 working days	The holder of the premises licence; People who have made representations	2 working days
Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence).	10 working days	5 working days	Applicant; Chief Officer of Police who has given Notice	2 working days
Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate).	10 working days	5 working days	Applicant (club) Chief Officer who has given Notice	2 working days

Article III. APPENDIX B

Article IV.

Article V.

Regulation 8

Action Following receipt of notice of hearing	
1.	A party shall give to the authority within the period of time provided for in the following provisions of this regulation a notice stating:
(a)	whether he intends to attend or be represented at the hearing;
.	
(b)	whether he considers a hearing to be unnecessary.
.	
2.	In a case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice referred to in paragraph (1) shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.
3.	In the case of a hearing under:
(a)	section 48(3)(a) (cancellation of interim authority notice following police objection), or
.	
(b)	section 105(2)(a) (counter notice following police objection to temporary event notice),
.	
	the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.
4.	In the case of a hearing under:
(a)	section 167(5)(a) (review of premises licence following closure order),
.	
(b)	paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),
.	
(c)	paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or
.	
(d)	paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices' licence for grant of personal licence),
.	
	the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.
5.	In any other case, the party shall give the notice no later than five working days before the day or the first day on which the hearing is to be held.