

BODY: Licensing Act Committee
DATE: Wednesday 26 January 2005
SUBJECT: Procedures for Licensing Committee
REPORT OF: Mark Reynard – Head of Legal Services

Ward(s): All

Purpose: To propose adoption of a model procedure for Licensing authority proceedings, to supplement current regulations and procedure guidance with a delegation to the Head of Legal Services to effect amendment to this procedure where evolving good practice requires.

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Recommendations: (1) That the model procedure guide be adopted as a good practice guide for committee chairmen conducting business under the Licensing Act 2003.

(2) That the Head of Legal Services be authorised to make any necessary amendments to the licensing authority's approved procedure so as to comply with legal requirements and statutory regulations and otherwise to ensure that the authority's procedures are in line with recognised good practice. Such delegation to be exercised following consultation with the Chairman of the Licensing Act Committee.

1.0 Introduction

1.1 Sub-Committees conducting proceedings under the Licensing Act 2003 will sit in a quasi judicial capacity and this makes it particularly important to establish fair and identifiable rules of procedure and conduct.

1.2 This report identifies the rules and regulations currently available to guide committee procedures and suggests adoption of a model procedure with a delegation to amend this as necessary.

2.0 Procedures for Hearings

2.1 Regulations have now been made under the Act effective 7 February 2005. These provide details for many of the more technical aspects of the hearings. However the regulations also make provision for the licensing authority to determine a procedure to be followed at hearings.

2.1 Further specialist guidance is also published by LACORS" (Local Authority Co-ordinators of Regulatory Services). However in many respects the guidance is speculative or offers a position which may alter as good practice and case law evolves.

2.2 Further guidance is likely to become available from time to time whose application will be subject throughout to rules of fairness and natural justice as applied to each case.

2.3 In relation to these matters it is recommended that the Committee adopt a basic model of good procedure. This is attached as Appendix 1. A similar model has been

used for some time in Planning and Licensing proceedings with acknowledged benefit. To allow ease of future amendment to the procedure a delegation is also requested for the Councils Head of Legal Services to be able to amend and supplement this procedure as appears appropriate.

3.0 Consultations

3.1 Internal consultation has taken place with relevant service staff from Environmental Health, Legal and Democratic Services.

4.0 Resource Implications

4.1 No specific extra resource implications arise from this item on the basis that expenditure will be offset by licensing income.

5.0 Other Implications

5.1 Procedures of the Committee are liable to challenge by means of Appeal to magistrates court as of right or to the High Court upon grounds of procedural impropriety or human rights.

6.0 Summary of Options

6.1 Councillors may choose to adopt the recommended model procedure and suggested delegation.

7.0 Conclusion

7.1 Councillors are asked to note available procedural guidance and adopt the suggested model procedure, together with the recommended delegation to further enable the proper and appropriate conduct of Licensing Authority Proceedings.

Edward White
Solicitor

Background Papers:

The Background Papers used in compiling this report were as follows:

The Licensing Act 2003 (Hearings) Regulations of 2005

LACORS Guidance of January 2005

To inspect or obtain copies of background papers please refer to the contact officer listed above.