

<b>Licensing Committee</b>	<b>Agenda Item: 7</b>
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<b>Meeting Date</b>	16 March 2010
<b>Report Title</b>	Establishment of a Licensing Act 2003 Committee
<b>Portfolio Holder</b>	Councillor John Morris
<b>SMT Lead</b>	Mark Radford
<b>Head of Service</b>	Monica Blades-Chase
<b>Lead Officer</b>	Mike Hawkins
<b>Key Decision</b>	No
<b>Classification</b>	Open
<b>Forward Plan</b>	Reference number: N/A

<b>Recommendations</b>	1. That members note the statutory requirement to establish a separate committee to deal with functions under the licensing Act 2003.
	2. That Council has to either amend the current terms of reference of the Licensing Committee or create a Licensing Act 2003 Committee
	3. To note the proposed terms of reference for the Committee dealing with Licensing Act 2003 functions.

## **1 Purpose of Report and Executive Summary**

- 1.1 This report explains why the Council's Licensing functions should be administered by two committees rather than one.

## **2 Background**

- 1.2 The Council has always had Licensing functions (eg; for Hackney and Private Hire Vehicles) administered by committee. Over recent years further licensing functions have been removed from magistrates courts and assigned to councils. These new functions include:

- Preparing and recommending Licensing Policy to the full council in three year periods
- Administering a statutory system of personal and premises licences under the Licensing Act 2003 (by sub committee).
- Preparing and recommending Gambling Policy to the full council in three year periods the.
- Administering a statutory system of premises licences under the Gambling Act 2005 (by sub committee)

- 2.2 A local authority normally discharges its functions through an 'ordinary committee' or sub committee or an officer of that authority under section 101 of the Local Government Act 1972 ('the 1972 Act'). The current position in Swale is that the licensing functions of the authority (such as the issue of premises licences) are discharged by the Licensing Committee which also discharges other functions such as street trading and sex establishments. Schedule 6 (Minor and Consequential Amendments) of the Licensing Act 2003 amends section 101. The effect of this amendment is that nothing in section 101 applies in relation to any function under the licensing Act 2003 of a Licensing Authority.
- 2.3 The wording of the Licensing Act 2003 indicates that the committee discharging those functions should only deal with those functions and related matters. This is supported by views expressed by the DCMS and LACORS.

### **3 Proposal**

- 3.1 It is proposed that the authority has a Licensing Act 2003 Committee and ad hoc licensing sub-committees to carry out licensing functions as set out by the 2003 Act (ie: sale of alcohol, late night refreshment etc etc) The new Committee should only carry licensing functions under the Licensing Act (unless they are 'related' – see s7(3) of the 2003 Act) Another committee will have to deal with matters such as street trading, sex establishments etc. This could be a new committee or the terms of reference of an existing committee could be extended to include these functions- eg; Hackney Carriage and Private Hire Vehicles Committee.
- 3.2 Important consequences to note are that the committee set up to discharge the Licensing Act 2003 functions should agree its own procedures and appoint its own members. The requirement for the committee to be politically balanced does not apply, but is recommended. The legislation provides for the Statement of Licensing Policy to be approved by full council.
- 3.2 Some Councils have already established separate committees, others have yet to do so. Different Councils have different names for the committees, although many use "General Licensing Committee" and "Licensing 2003 Committee" (on the basis that it had to be established under the Licensing Act 2003. As already stated, the Gambling Act 2005 functions were subsequently assigned to the same committee.)
- 3.3 The constitution and proceedings of the "2003" committee would be governed by the Licensing Act 2003 and the Gambling Act 2005 and regulations made under those Acts, eg. it must have between 10 and 15 members (although practical business considerations dictate that it should have 15, since it can be difficult for it to operate even with that number); members must have training; it transacts most business by sitting in sub-committees of three.

3.4 The following Terms of Reference would be appropriate for the committee dealing with Licensing Act 2003 matters:

1. To review and make recommendations to Council upon policies in relation to licensing matters under the Licensing Act 2003 and the statement of licensing policy.

2. To discharge the Councils functions as a Licensing Authority under the Licensing Act 2003, within agreed policy.

3. To review and make recommendations to Council upon policies in relation to licensing matters under the Gambling Act 2005 and the statement principles.

4. To discharge the Councils functions as a Licensing Authority under the Gambling Act 2005, within agreed policy.

5. To arrange for the discharge of any of the licensing functions exercisable by the committee to an officer of the licensing authority subject to the limitations set out in section 10(4) of the Licensing Act 2003 and section 154 of the Gambling Act 2005.

6. To discharge any other council function which relates to a matter which is a licensing function under the Licensing Act 2003 or the Gambling Act 2005, but which is not a licensing function (ie: Street Trading) after consideration of a report from the Licensing Section.

3.5 Please see at Appendix I, extracts of the Constitutions from Manchester City Council and Thurrock Council, examples on how the various licensing functions can be allocated across committees

## **4 Alternative Options**

4.1 Changes have to be made to the allocation of responsibilities for the reasons outlined above.

4.2 The council can have either two licensing committees with the same members and designate one of those committees as the 'Licensing Act 2003 Committee' or it can amend the existing terms of reference of the Licensing Committee and extend the terms of reference of another committee to take non-licensing matters

## **5 Consultation Undertaken or Proposed**

5.1 N/A

## 6 Implications

Issue	Implications
Corporate Plan	To comply with legal requirements.
Financial, Resource and Property	The establishment and servicing of an extra committee will be required, although should members choose to have same membership on both committees, the cost may be reduced.
Legal and Statutory	This decision is necessary to ensure compliance with legal requirements.
Crime and Disorder	None identified.
Risk Management and Health and Safety	None identified.
Equality and Diversity	None identified.
Sustainability	None identified.

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report

- Example of constitutions from Manchester City Council & Thurrock Council

## 8 Background Papers

8.1 None