

**To the Chair and Members of the
LICENSING COMMITTEE**

TERMS OF REFERENCE, PROCEDURE AND DELEGATIONS

EXECUTIVE SUMMARY

1. The purpose of this report is to recommend to the Licensing Committee the adoption of the Terms of Reference for the discharge of licensing functions under the Licensing Act 2003 and the Gambling Act 2005, to note the procedure and delegation of functions under the Act, and to agree the appointment of Members to the Licensing Sub-Committee Divisions. Also to note the proposed change to the Terms of Reference that will be put to Council later in the year.

RECOMMENDATIONS

2.
 - a) It is recommended that Members note:-
 - (i) the Terms of Reference for the Licensing Committee as detailed in Appendix A to this report;
 - (ii) the Terms of Reference for the Licensing Sub-Committees as detailed in Appendix A;
 - (iii) the procedure set out in Appendix B is continued as the procedure for hearings under the Licensing Act 2003 before the Licensing Committee and Sub-Committees;
 - (iv) the delegation set out in Appendix C;
 - (v) the procedure for dealing with settling appeals after the Sub-Committee hearing but before the appeal hearing in the magistrates court is decided.
 - b) Agree the appointment of Members to the Licensing Sub-Committee Divisions as set out in Appendix D.
 - c) Note the proposed change in Terms of Reference.

BACKGROUND

3. The Licensing Act 2003 requires the Licensing Committee to set its own Terms of Reference. The proposed Terms of Reference for the Licensing Committee detailed in Appendix A were noted by the Full Council at their Annual Meeting on 20th May 2011.
4. The Licensing Act 2003 also enables the Licensing Committee to determine its own procedure and those of its Sub-Committees subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005. The procedure is set out in Appendix B.
5. It is the Sub-Committees which determine licensing applications. The Licensing Authority has received an application for determination to be heard on Monday 23rd May 2011 at 2.00pm, which is the last day that this application can be heard. The Licensing Committee must therefore determine the Sub-Committees before that application can be heard.
6. The Licensing Act 2003 provides that the functions of the Council as the Licensing Authority shall be carried out by its Licensing Committee, with the exception of the Statement of Licensing Policy. The Licensing Committee may delegate those functions to Sub-Committees or to officers.
7. In the case of an appeal of a Sub-Committee decision there is no reason why mediation or other discussions should not be held between the Licensing Authority and the appellant once an appeal has been lodged to either settle the matter entirely or to resolve those issues that can be resolved or indeed to identify issues in dispute. The question is how these may be dealt with. The options are:-
 - 1) **Refer back to the Sub-Committee**

This is only possible where there is ample time between the offer to settle and the appeal hearing. The views of interested parties and responsible authorities will also need to be canvassed.
 - 2) **Give the Licensing Officer discretion to settle**

The Licensing Officer must understand the scope of any discretion. It may be that the discretion is only within guidelines/limits from the Licensing Committee or perhaps a decision made by the Licensing Officer in conjunction with the Chair of the Sub-Committee.
8. There is a proposal to add an additional delegated function to the Licensing Committee when the Council considers all the Terms and Conditions later in the year. This is likely to state:

To exercise the Council's functions under Part 3 of the Constitution which relate to those licensing and registration functions specified in the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended), except where the function has been delegated to Officers of the Council.

OPTIONS CONSIDERED

9. No other option was considered.

REASONS FOR RECOMMENDED OPTION

10. The Committee must adopt the Terms of Reference, Procedure and determine the delegation of functions under the Licensing Act 2003.
11. Guidance issued by the Secretary of State recommends that functions, so far as possible, should be delegated in the interests of speed, efficiency and cost effectiveness.
12. The Council's Statement of Licensing Policy sets out the delegation of functions which are the same as those contained in Appendix C.

IMPACT ON THE COUNCIL'S KEY PRIORITIES

- 13.

Priority Theme	Mayor's top 10 Priorities	Implications of this initiative
1. Creating a strong, connected and inclusive economy	<ul style="list-style-type: none"> • Improve Doncaster's economy • Regenerate Doncaster's Town Centres • Give people choice in transport 	Licensing impacts on the economy.
2. Developing stronger communities		
3. Increasing and improving housing	<ul style="list-style-type: none"> • Increase affordable housing and build Council houses 	
4. Protecting and improving all our children's lives	<ul style="list-style-type: none"> • Improve services for children and young people • Improve education and skills across the Borough 	
5. Improving health and support for independent lives	<ul style="list-style-type: none"> • Ensure people in need of adult social care receive a timely and appropriate service 	
6. Tackling crime and anti-social behaviour (ASB)	<ul style="list-style-type: none"> • Reduce crime and end all forms of ASB 	Alcohol is often a factor in anti social behaviour and the licensing function can impact on this.
7. Creating a cleaner and better environment	<ul style="list-style-type: none"> • Protect the environment from inappropriate development, decay and architectural vandalism 	
8. Internal Transformation (Including the Council's Recovery Programme)	<ul style="list-style-type: none"> • Ensure local people get value for money from Council services 	

RISKS AND ASSUMPTIONS

14. It is a requirement of the Licensing Act 2003 to adopt Terms of Reference, the procedure for hearings and approve the delegation of functions.

LEGAL IMPLICATIONS

15. Sections 101 and 102 of the Local Government Act 1972 empower the Council to arrange for the discharge of any of its functions by a Committee or Sub-Committee.

Sections 101 and 102 of the Local Government Act 1972 do not apply to the Licensing Committee or Licensing Sub-Committees. The Council is obliged by law to appoint a Licensing Committee under the Licensing Act 2003.

The Licensing Committee is responsible for agreeing its own Terms of Reference, procedure and delegation.

If a matter is listed for determination by a Sub-Committee, but it is not heard within the requisite timescales, then it is deemed granted.

FINANCIAL IMPLICATIONS

16. There are no specific financial implications associated with this report.

CONSULTATION

17. Consultation has taken place between Democratic Services, Legal Services and the Licensing Officer.

This report has significant implications in terms of the following:

Procurement		Crime & Disorder	
Human Resources		Human Rights & Equalities	
Buildings, Land and Occupiers		Environment & Sustainability	
ICT		Capital Programme	

BACKGROUND PAPERS

18. Report to Annual Council, Terms of Reference Report,
Gambling Act 2005
Licensing Act 2003
Licensing Act 2003 (Hearings) Regulations 2005
Statement of Licensing Policy
Statement of Gambling Policy

REPORT AUTHOR & CONTRIBUTORS

Hilary Caunt Regulation and Enforcement Manager
Tel: (01302) 737557 E: mail: hilary.caunt@doncaster.gov.uk

Peter Dale
Director of Regeneration and Environment

LICENSING COMMITTEE - TERMS OF REFERENCE

LICENSING COMMITTEE

This Committee is a Committee of the Council constituted:

- (1) In relation to its functions under the Licensing Act 2003, under Section 6 of that Act.
- (2) In relation to its functions under the Gambling Act 2005

Licensing Act 2003 and Gambling Act 2005

1. To discharge the functions of the Council that are licensing functions within the meaning of the Licensing Act 2003.
2. To discharge the functions of the Local Authority as set out in the Gambling Act 2005.
3. The appointment of Licensing Sub-Committees under Section 10 of the Licensing Act 2003.
4. In respect of each three year period to consider the Council's policy with respect to the exercise of its licensing functions and recommend to Council the adoption of each three yearly Statement of Licensing and Gambling Policy.
5. During each three year period to keep the Statement of Licensing and Gambling Policy under review, and to recommend any revisions to it, to Full Council.

LICENSING SUB-COMMITTEES

These Sub-Committees are Sub-Committees of the Licensing Committee appointed by that Committee under Section 10 of the Licensing Act 2003.

To determine applications under the Licensing Act 2003 and Gambling Act 2005, where relevant representations are received.

APPENDIX B

DONCASTER METROPOLITAN BOROUGH COUNCIL

LICENSING ACT 2003

LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

1. **Meaning of Expressions used in this Document**

- “the Act”* - Licensing Act 2003
- “the Regulations” or any particular reference to a “Regulation”* - The Licensing Act 2003 (Hearings) Regulations 2005
- “the Authority”* - Doncaster Metropolitan Borough Council, in its capacity as the relevant licensing authority under the Act, or where the context so admits the Committee
- “the Committee”* - the Sub-Committee of the Authority’s Licensing Committee constituted under the Act to determine the matter before it
- “the Chair”* - the member of the Committee appointed to act as Chairperson of the Committee
- “the Applicant”* - the party making the application e.g. the licence/certificate holder or prospective holder, or the party seeking a review
- “interested parties”* - those living or working in the vicinity of the premises and who have made representations, or bodies representing them
- “responsible authorities”* - the public or other bodies described in the Act as “responsible authorities” and who have made representations

2. Rights of attendance, assistance and representation at hearings

- (a) A party may attend the hearing and may be assisted or represented by any other person. There is no requirement that a party's representative is legally or otherwise professionally qualified.
- (b) The hearing shall take place in public, unless the Authority decides to exclude the public from all or part of the hearing because it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public. A party and any person assisting or representing a party, may be treated as a member of the public.
- (c) The Authority may exclude from a public hearing any person attending who acts in a disruptive manner, and refuse to re-admit that person, or impose conditions on his/her re-admission. Any such excluded person may, before the end of the hearing, submit to the Authority in writing any such information that he/she would have been entitled to give orally.
- (d) The Authority may dispense with a hearing if all of the persons required by the Act agree that a hearing is unnecessary, have given notice to the Authority that they consider a hearing to be unnecessary, and the Authority have given notice to all parties that the hearing has been dispensed with.

3. Non-attendance of a party at the hearing

- (a) If a party has informed the Authority that he/she does not intend to attend the hearing, or be represented at the hearing, the hearing may proceed in his/her absence.
- (b) If a party who has not so notified the Authority does not attend either in person or by his/her representative, the Authority shall adjourn the hearing to a specified date if it considers it in the public interest to do so, but it shall otherwise proceed with the hearing in that party's absence.
- (c) Where the hearing proceeds in the absence of a party, the Authority shall consider the application, representations or notice made by that party.
- (d) Where the hearing is adjourned, the Authority shall forthwith, notify the parties of the date, time and place to which the hearing has been adjourned.

4. Procedure at the Hearing

The hearing shall take the form of a discussion led by the Authority. The following procedure is intended to give form to such a discussion to ensure that all parties are able to put their case. Each party shall have equal maximum time in which to address the Committee. The Committee may take into account documentary or other information provided by a party before the hearing, or with the consent of all other parties at the hearing. The Committee may change the procedure in individual cases, upon the application of a party, or upon its own motion, if it considers it necessary to properly determine the business before it.

- (a) At the commencement of the hearing, the Chair will make introductions and establish that all parties understand the procedure to be followed. The Committee will then receive and determine any application that a party may wish to make to permit another person to appear at the hearing, and any application that any party wishes to make to vary the following order of addresses.
- (b) The Applicant may then address the Committee and provide any further information that the Authority have requested. At the conclusion of the Applicant's address, members of the Committee may ask the Applicant questions. Following questions by Committee members, any other party that wishes to question the Applicant may request permission to do so. If granted, the party or parties receiving permission may question the Applicant.
- (c) Other parties entitled to address the Committee or given permission to do so under paragraph (a) above, may then do so; and also provide to the Committee any information that the Authority have requested. Following the address, the members of the Committee may question the party addressing the Committee. Following any Committee questions, any other party wishing to question the party that has addressed the Committee may seek the Committee's permission to do so. If granted, the party or parties receiving permission may question the Applicant.

Order of Addresses under paragraph (c)

Subject to any direction given by the Committee under paragraph (a) above, the order of addresses by other parties, under paragraph (c) above, shall be:-

- [1] Any representative of a "responsible authority" (as defined in the Act)
- [2] Any other party opposing the Applicant
- [3] Any other party not falling within category [1] or [2] above, or category [4] below

[4] Any other party supporting the Application

Permission to question or cross-examine the Applicant or other party

A party may question any other party appearing if given permission by the Authority.

The Committee will determine any application by a party to question another party on its merits.

Cross examination shall not be permitted unless the Authority considers that cross examination is required for it to consider the representations, application or notice, as the case may require.

The Committee shall determine any application by one party to permit cross examination of another on its merits.

Normally, permission will be given to one party to question or cross-examine another, only where:-

- (i) a material fact put forward by one party is disputed by another party and the dispute can be properly determined, only if cross examination is permitted; or
- (ii) the question that one party wishes to put to the other is non contentious and is for the purpose of clarification only.

5. The Committee's Deliberations and Determination

- (a) The Authority considers that normally, it will be in the public interest that the deliberations of the Committee are conducted in private. Deliberations will take place in private unless an application is made by any party present for these to be conducted in public. If any such application is made, the Committee shall determine such application.
- (b) Subject to paragraph (a) above, the Chair shall formally exclude the public including, the parties and their representatives from the meeting under Regulation 14(2), to enable the Committee to deliberate in private. The Committee shall deliberate only in the company of its legal adviser. The function of the legal adviser shall be to advise the Committee on points of law and procedure only.
- (c) If during its deliberations, the Committee require any further information from any party in order to assist in its deliberations, the Chair shall reconvene the public hearing for the purpose of attempting to secure that further information.

- (d) Following the Committee's deliberations, the public shall be re-admitted to the hearing, whereupon the Chair shall announce the determination of the Authority, where the provisions of the Act or the Regulations require a determination to be made at the conclusion of the hearing, or otherwise where the Committee is able to announce its determination.
- (e) Following the announcement of any determination of the application, representations or notice before the Committee, the hearing shall conclude.

LICENSING ACT 2003 COMMITTEEDELEGATION OF FUNCTIONS TO LICENSING SUB COMMITTEES

To determine applications under the Licensing Act 2003 as set out below:-

Application for personal licence	If a Police objection
Application for personal licence with unspent convictions	All cases
Application for premises licence/club premises certificate	If a relevant representation made
Application for provisional statement	If a relevant representation made
Application to vary premises licence/club premises certificate	If a relevant representation made
Application to vary designated premises supervisor	If a Police objection
Application for transfer of premises licence	If a Police objection
Applications for interim authorities	If a Police objection
Application to review premises licence/club premises certificate	All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application	All cases
Determination of Police objection to temporary event notice	All cases

LICENSING ACT 2003

DELEGATIONS TO OFFICERS

To determine applications under the Licensing Act 2003 as set out below:-

Application for personal licence	If no Police objection made
Application for premises licence/club premises certificate	If no relevant representation made
Application for provisional statement	If no relevant representation made
Application to vary premises licence/club premises certificate	If no relevant representation made
Application to vary designated premises supervisor	In all cases where no Police objection
Request to be removed as designated premises supervisor	All cases
Application for transfer of premises licence	In all cases where no Police objection
Applications for interim authorities objection	In all cases where no Police objection
Decision on whether a complaint is irrelevant, frivolous, vexatious etc	All cases

LICENSING COMMITTEE

Chair: Cllr 1, Vice-Chair: Cllr 2

Members: Cllr 3, Cllr 4, Cllr 5, Cllr 6, Cllr 7, Cllr 8, Cllr 9, Cllr 10, Cllr 11, Cllr 12, Cllr 13, Cllr 14

SUB-COMMITTEES

Sub-Committee A

Chair: Cllr 1

Members: Cllr 3, Cllr 4, Cllr 5, Cllr 6, Cllr 7, Cllr 8

Sub-Committee B

Chair: Cllr 2

Members: Cllr 9, Cllr 10, Cllr 11, Cllr 12, Cllr 13, Cllr 14

Sub-Committee A should be first utilised for any Sub-Committee hearing. If this is not possible then Sub-Committee B should be utilised. If neither are possible an amalgamation of the two may be used.

Licensing Sub Committees

(Appointed under the Licensing Act 2003, section 10)