

Title of Report: **Changes to the Constitution**

Item 6

Report to be considered by: Licensing Committee

Purpose of Report:

To consider proposed changes to the Council's Constitution relating to dealing with Licensing Applications and the Code of Conduct for Licensing.

Recommended Action:

The Licensing Committee agree:

- (1) To recommend to Council that the Changes to the Constitution (as set out in Appendix 6(a) and 6(b)) be formally adopted subject to any amendments or changes required by the Licensing Committee;
- (2) That wherever possible Sub-Committee meetings are held during the day; and
- (3) That four Members will be called to sit on a Sub-Committee meeting for the reasons outlined in paragraph 2.2.

List of other options considered:

None

Key background documentation:

- Council's Constitution

Contact Officer Details

Name: Liz Howlett
Job Title: Legal Services Manager
Tel. No.: 01635 519420
E-mail Address: ehowlett@westberks.gov.uk

Contact Officer Details

Name: Anne Hunter
Job Title: Policy Executive
Tel. No.: 01635 519241
E-mail Address: ahunter@westberks.gov.uk

Supporting Information

1. Background

- 1.1 The Constitution Task Group, at its meeting on 15th November 2004, delegated authority to the Licensing Committee to propose revisions to the Constitution resulting from changes brought about by the Licensing Act 2003. Revisions put forward by the Licensing Committee would then need to be agreed by Council on 14th December 2004.
- 1.2 There is a need to articulate the procedure for dealing with Licensing Applications at Licensing Sub-Committee meetings. Therefore attached as Appendix 6(a) is a proposed form of words to be included in Part 7 (Regulatory and Other Committees Rules of Procedure) of the Council's Constitution.
- 1.3 Appendix 6(b) is a proposed Code of Conduct for Licensing which it is intended to include in Part 14 (Codes and Protocols) of the Council's Constitution as Appendix H. The Code of Conduct for Licensing has been sent to the Chair of the Standards Committee for information and comments. Any comments received will be reported to the Licensing Committee at the meeting.

2. Timing of and Attendance at Sub-Committee Meetings

- 2.1 The Licensing Committee needs to consider the timing of Sub-Committee meetings in order to carry out licensing application hearings. The Licensing Trade has strongly indicated that they wish hearings to be held during the day as they are currently. If the Council decided against daytime meetings this could possibly lead to legal challenge.
- 2.2 It is suggested that four Members are called to attend all Sub-Committee meetings. If only three Members are called the Council runs the risk of not being quorate, which would occur if a Member was unavoidably detained or taken ill. Not being quorate could potentially lead to the Council having to pay abortive costs. A further risk of only calling three Members was if a prejudicial interest came to light during a hearing this would invalidate the proceedings and again could lead to the Council having to pay abortive costs.

Appendices

Appendix 6(a) – Rule 7.14 Licensing Applications

Appendix 6(b) – Appendix H to Part 14 - West Berkshire Code of Conduct for Licensing

Implications

- Policy:** There are no policy implications associated with this proposal.
- Financial:** The Government indicated in the draft regulations that fee income should cover the cost of the hearings however it is not yet clear whether this will be the case.
- Personnel:** There are resource implications in servicing both the Licensing Committee and the Sub-Committee meetings dealing with the licensing hearings.

- Legal:** As this is a new area of law amendments to the procedure will be brought forward when necessary as both regulations from the Government are issued and case law develops.
- Environmental:** There are no environmental implications associated with this proposal.
- Equalities:** The Council is ensuring that all parties have a fair and equal hearing.
- Property:** There are no property implications associated with this proposal.
- Risk Management:** The Council is ensuring that all parties have a fair and equal hearing thereby ensuring that challenges can be defended.
- Community Safety:** There are no community safety implications associated with this proposal.

Consultation Responses

- Local Stakeholders:** None
- Officers Consulted:** Andy Day, John Priest, Brian Leahy
- Trade Union:** N/A