
Licensing Act 2003 and Gambling Act 2005 Delegations

Committee considering report:	Governance and Ethics Committee
Date of Committee:	Governance and Ethics (27 September 2021) Licensing Committee (08 November 2021)
Portfolio Member:	Councillor Hilary Cole
Date Portfolio Member agreed report:	TBC
Report Author:	Sean Murphy
Forward Plan Ref:	LC4141

1 Purpose of the Report

- 1.1 To set out and seek approval for updated delegations under the Licensing Act 2003 and Gambling Act 2005

2 Recommendation

- 2.1 To **APPROVE** the delegations to the Licensing Sub-Committee and Officers set out at **Appendix A** and **Appendix B** to this report.
- 2.2 To **DELEGATE** authority to the Monitoring Officer to make any changes to the Constitution arising from this report.

3 Implications and Impact Assessment

Implication	Commentary
Financial:	There are no financial implications associated with production of this report
Human Resource:	There are no HR implication associated with this report.
Legal:	The Licensing Act 2003 established that West Berkshire District Council, as a unitary authority, would be the Licensing Authority for the District of West Berkshire.

	<p>The Gambling Act 2005 established that West Berkshire Council, as a unitary authority, would be the Licensing Authority for the purpose of the local authority licensing functions under the Act</p> <p>Section 7 of the Licensing Act 2003 requires the Council to establish a Committee for the purpose of the Act and to oversee the implementation of the Act in the District. The Committee must by law consist of between twelve and fifteen Members of Council and any Sub-Committee must consist of three members of the Committee. In accordance with the Constitution the Committee must appoint a Chairman and Vice Chairman and each Sub-Committee must appoint a Chairman.</p> <p>Section 10 of the Licensing Act 2003 permits the Licensing Authority to delegate functions under the Act to either a Sub-Committee or to an Officer of the Licensing Committee.</p> <p>Section 154 of the Gambling Act 2005 applies various provisions of the Licensing Act 2003 for the purpose of the Gambling Act 2005. This includes the power of the Committee to delegate functions to a Sub-Committee or an Officer of the Licensing Authority.</p> <p>James Button & Co, Solicitors, Beth Varcoe and Patricia Brown have been consulted</p>
<p>Risk Management:</p>	<p>The only significant risk identified is not delegating functions in accordance with law. The legislation and thus the route to the Committee being able to consider / grant these delegations is set out in the legal implications section above.</p> <p>Both proposed delegation schemes have be drafted to reflect the prevailing legal framework as well as local policy considerations as set out in local policies adopted in a accordance with statute.</p>
<p>Property:</p>	<p>There are no property issues associated with this report</p>
<p>Policy:</p>	<p>Both proposed delegation schemes have be drafted to reflect the prevailing legal framework as well as local policy considerations as set out in local policies adopted in a accordance with statute.</p>

	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		Equalities issues are considered as part of the formulation of the Licensing and Gambling Policies. This report is seeking to ensure the appropriate governance arrangements are in place.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		Equalities issues are considered as part of the formulation of the Licensing and Gambling Policies. This report is seeking to ensure the appropriate governance arrangements are in place.
Environmental Impact:		X		It is not envisaged that the governance arrangements will have either a positive or negative impact on the environment.
Health Impact:		X		It is not envisaged that the governance arrangements will have either a positive or negative impact on health and wellbeing. These issues are considered during the formulation of the licensing and gambling policies.
ICT Impact:		X		Meetings will be conducted in accordance with Council Policies and the prevailing law which includes face to face and hybrid meetings.
Digital Services Impact:		X		All meetings are broadcast live.
Council Strategy Priorities:		X		Business as Usual

Core Business:		X		Business as Usual
Data Impact:		X		None
Consultation and Engagement:	None			

4 Executive Summary

- 4.1 The purpose of this report is to allow the Committee to consider updated delegation schemes for the purposes of the Licensing Act 2003 (LA03) and Gambling Act 2005 (GA05).
- 4.2 The proposed scheme for the Licensing Act 2003 can be found at Appendix A to this report and the proposed Scheme for the Gambling Act 2005 can be found at Appendix B to this report.
- 4.3 These delegation schemes have been drafted taking account of the relevant legislation, statutory guidance, the Councils Licensing Act 2003 Policy approved by Council on 06 December 2018 and the proposed Statement of Policy under the Gambling Act 2005 considered by this Committee on 21 June 2021 the final version of which is due for consideration by Council on 02 December 2021.
- 4.4 While the Committee does not have authority to delegate decisions up to Council it should be noted that delegations to Council referred to in Appendix A including the creation of the Licensing Committee and the agreement of the Licensing Policy and its content are already delegated to Council. It is proposed to include them in the document for completeness.
- 4.5 Similarly in Appendix B the signing off of the Gambling Policy is already included in the Policy Framework (paragraph 2.5.2 of the Constitution) for Council to sign off. This policy will include the 'no casino resolution'. In addition all fees, including licensing fees, are signed off by Full Council usually at the Annual Budget meeting.
- 4.6 Should the Committee approve these schemes they will be published on the Councils website and be made available in other forms on request.

5 Supporting Information

Statutory Basis for the Delegations

- 5.1 The legal position regarding the delegation of licensing functions can be summarised as follows
 - Section 101(1) of the LGA provides that (subject to any express statutory provision) a local authority may arrange for the discharge of any of its functions by a committee, sub-committee or one of its officers.

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- Section 101(15), inserted by the LA03, states that section 101 does not apply to any function of a licensing authority under the LA03. This means that the usual mechanisms for delegation do not, and cannot apply to the Licensing Act, and by extension the Gambling Act.
- Under section 7 of the LA03, the functions of the licensing authority (Council) are expressly delegated to, and must and can only be discharged by, the licensing committee which must be established by the authority, subject to the exceptions contained in subsection (2) and the circumstances described in subsection (9).
- The exceptions contained in subsection (2) and the circumstances described in subsection (9) are the only functions that can be discharged by the licensing authority (full Council).
- Section 10 of the LA03 allows a licensing committee to sub-delegate any functions to sub-committees and some functions to officers.
- Section 154 of the GA05 applies the scheme of delegations contained in the LA03 to the discharge of functions by a licensing authority created under the GA05, subject to three exceptions and amendment of the functions capable of delegation to officers.
- Subject to the three exceptions and the amendment, the functions of the licensing authority (Council) under the GA05 are also expressly delegated to, and must and can only be discharged by, the licensing committee,

The Structure of the Delegations

- 5.2 The proposed delegation Schemes identify in table form those matters that are matters for the Licensing Committee along with those that are matters for the Licensing Sub-Committee and those which are delegated to Officers.
- 5.3 Primarily the delegations to Officers are the administrative functions under both Acts and include the authority to approve full applications, variations, minor variations for premise licences as well as personal licences and temporary event notices (under the Licensing Act 2003). In some cases these matters would automatically come before a sub-committee if objections are raised that cannot be mediated by Officers. The occasions when matters will go before the Sub-Committee are set out in the relevant scheme and reflect both the law and adopted local policy framework.
- 5.4 The activity of both Officers and Licensing Sub-Committee are reported annually to the Licensing Committee and the minutes of the Committee are referenced at the next meeting of Full Council.
- 5.5 It is important for both applicants, licence holders, responsible authorities and residents that the any scheme of delegation approved by this Committee is clear in its intent. These new proposed delegation schemes, laid out in table form, contain significantly more detail than previous scheme's and provide absolute clarity about who is making decisions and on what legal basis. External specialist legal advice has been sought in the development of these delegations.
- 5.6 Once the Licensing and Gambling Schemes of Delegation are agreed they will be located in the Constitution, alongside the Scheme of Delegation (Part 3) as Schemes of Delegation approved by the Licensing Committee.

Appendices

6.1 Appendix A – Licensing Act 2003– Proposed Scheme of Delegation

Appendix B – Gambling Act 2005 – Proposed Scheme of Delegation

Background Papers:

Licensing Act 2003 Policy dated 06 December 2018

Draft Gambling Act 2005 Statement of Policy 21 June 2021

Subject to Call-In:

Yes: No:

Wards affected: All

Officer details:

Name: Sean Murphy
Job Title: Public Protection Manager
Tel No: 01635 519840
E-mail: Sean.Murphy@westberks.gov.uk

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