

**SUBJECT: LICENSING ACT 2003 AND GAMBLING ACT 2015 HEARINGS PROCEDURE**

**DIRECTORATE: COMMUNITIES AND ENVIRONMENT**

**REPORT AUTHOR: KEVIN BARRON, LICENSING MANAGER**

## **1. Purpose of Report**

- 1.1 The Licensing Committee to consider a review of its existing Hearing Procedures for hearings held under the Licensing Act 2003 and the Gambling Act 2005 and make recommendations to Council regarding amendment to its Constitution.

## **2. Executive Summary**

- 2.1 The Licensing Act 2003 (the 2003 Act) and the Gambling Act 2005 (the 2005 Act) share the same Licensing Committee which is distinct from Licensing Committee set up under the Local Government Act 1972 (LGA).
- 2.2 The 2003 Act and the 2005 Act have similar Hearing and Procedures Regulations made under their own respective Acts.
- 2.3 These regulations and procedures are separate and distinct for the rules and procedures governing LGA hearings.
- 2.4 The Constitution does not specifically cater for the distinctions.
- 2.5 The 2003 and 2005 Acts require that “a record is to be taken of the hearings in a permanent and intelligible form...”
- 2.6 It is suggested that this requirement does not require the minutes to be typed up, only that the record be made in a permanent and intelligible form. It merely requires that the notes can be easily read and kept on a permanent basis i.e. in ink, on paper and as a back-up, scanned and in a digital form.
- 2.7 The report seeks to clarify the procedures.

## **3. Background**

- 3.1 The Licensing Act 2003 (Hearings) Regulations 2005 and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007, must be complied with when arranging and carrying out the relevant hearings.
- 3.2 The respective Regulations define the time limits, to whom notice of a hearing should be given and the information supplied with that notice, the procedures for the hearings and those to be notified on the decisions made.
- 3.3 The Constitution states in Article 8.2(iii), “*The Licensing Committee and Licensing*

*-Sub Committee when acting in accordance with the Licensing Act 2003 shall conduct the proceedings in accordance with their own hearing procedure."*

- 3.4 This should be amended to include reference to the Gambling Act 2005.
- 3.5 In section A Part 1: Summary and Explanation of the Constitution, Access to Information, the Constitution states, *"Except where confidential matters are to be discussed, citizens will be able to inspect agendas and reports five days before meetings of the Council, its Committees, and the Executive, and to attend those meetings if they wish.*  
*Full details of all meetings are available from Democratic Services, City of Lincoln Council, Beaumont Fee, Lincoln. Telephone 01522 873387.*  
*Democratic Services will also help you if you wish to inspect agendas and reports, or if you wish to inspect or obtain a copy of the Constitution.*  
*Copies of all agendas, reports and minutes are also available on:*  
[www.lincoln.gov.uk](http://www.lincoln.gov.uk)".
- 3.6 It has been noted that neither the 2003 nor the 2005 Act requires the Council to publish agendas or reports either within a timeframe or make them available and therefore this requires amending.
- 3.7 The respective Regulations made under both Acts specify what and to whom information is to be given and both Acts are silent on providing material to members of the public not being parties to the proceedings under the Acts.
- 3.8 However, Regulation 14 of the 2003 Act states,
- "(1) Subject to paragraph (2), the hearing shall take place in public.*
- (2) The licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.*
- (3) For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public."*
- and Regulation 8 of the 2005 Act states,
- "(1) Subject to paragraph (2), the hearing must take place in public.*
- (2) A relevant committee may direct that all or part of a hearing must be in private if it is satisfied that it is necessary in all the circumstances of the case, having regard to—*
- (a) any unfairness to a party that is likely to result from a hearing in public; and*
- (b) the need to protect as far as possible, the commercial or other legitimate interests of a party."*
- 3.9 Currently the hearings agenda and officer's report are published as though covered by the LGA Regulations and in accordance with the Constitution. This

causes many issues including Data Protection and unnecessary work and expense in publishing and printing.

- 3.10 It is therefore suggested that the Licensing Committee recommend that the Council's Constitution be amended to make it clear in the 'Access to Information' section that the 2003 and 2005 Act hearings are exempt from any requirements under that section save for publishing the Agenda. And to be clear, agenda means a list of items to be discussed at the hearing and not the officer's report etc.
- 3.11 It is further suggested that the 2003 and 2005 Procedure for Hearings that it includes the fact that officer reports and accompanying documents will not be provided to members of the public attending that are not party to the proceedings, but they will be provided with the Agenda and the Procedure of Hearings document if they request it in order to assist them in understanding the nature of the hearing and the process.
- 3.12 the Committee is also asked to agree an amendment that the minutes of the meeting do not need to be typed up as this .

#### **4. Organisational Impacts**

- 4.1 Legal Implications
- 4.2 As outlined in the report.
- 4.3 Financial Implications
- 4.4 The time taken to produce a record of the hearings shall be reduced and hence less resources are required.

#### **5. Recommendation**

- 5.1 The Licensing Committee is asked to consider the following paragraphs:
- 3.4 – include the Gambling Act in Article 8.2(iii) of the Constitution;
- 3.10 – Recommend to Council to change the Constitution;
- 3.11 – Amend the Constitution to make it clear that in the 2003 and 2005 hearings that officers reports will not be available or published on line, only the agenda and procedure notes; and
- 3.12 - And agree that minutes need not be typed provided they are in a legible form and kept on a permanent medium.

**How many appendices does the report contain?** None

**List of Background Papers:** None

**Lead Officer:** Kevin Barron, Licensing Manager  
01522 873564