



**City of Westminster**

# General Purposes Committee

<b>Meeting:</b>	<b>General Purposes Committee</b>
<b>Date:</b>	<b>26 April 2017</b>
<b>Classification:</b>	<b>For General Release</b>
<b>Title:</b>	<b>Constitutional Issues</b>
<b>Wards Involved:</b>	<b>Not Applicable</b>
<b>Financial Summary:</b>	<b>There are no financial implications</b>
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## **1. Executive Summary**

- 1.1 This report seeks the Committee's approval to a change in the Constitution to allow a further Licensing Sub-Committee to be established. The reasons for this are set out in the body of the report. The report also changes the Planning Application Committees to Planning Applications Sub-Committees of the Planning and City Development Committee.

## **2. Recommendations**

- 2.1 That for the reasons set out below approval be given for the establishment of a further Licensing Sub-Committee (No. 6) with the terms of reference set out in Appendix A.
- 2.2 That for the reasons set out below approval be given to amend the terms of reference of Licensing Sub-Committees 1 to 5 as set out in Appendix B.
- 2.3 That, for the reasons set out below the Committee approve the revised arrangements for calculating the proportionality of seats on Committees.
- 2.4 That the Council be recommended to approve that Standing Order 28(1) be amended as set out in paragraph 4.9 of this report .
- 2.5 That it be noted that subject to the approval of the Planning and City Development Committee the Planning Applications Committees Nos 1 to 4 be renamed Planning Applications Sub-Committees Nos 1-4.

## **3. Reasons for Decision**

- 3.1 To ensure strict legal compliance with the political balance requirements whenever the Licensing Committee or one of its Sub-Committees considers any applications

and related matters that are not made pursuant to either the Licensing Act 2003 or the Gambling Act 2005.

#### **4. Background, including Policy Context**

##### **The need for a new Licensing Sub-Committee and the terms of reference of the Licensing Sub-Committees**

- 4.1 The Licensing Committee was established in accordance with the provisions of the Licensing Act 2003. Included in the provision is the requirement to have Sub-Committees drawn from the membership of the Licensing Committee, which has a maximum of 15 members.
- 4.2 The Licensing Committee established 5 Sub-Committees of 3 members each. Each Sub-Committee conducts the same type of business which also includes the Gambling Act applications. None of the Licensing Sub-Committees have to comply with the political balance rules contained within the Local Government and Housing Act 1989 and the Local Government (Committee and Political Groups) Regulations 1990. This is because the Licensing Committee and the Licensing Sub-Committees are appointed under the Licensing Act 2003 and not under the general powers contained in the Local Government Act 1972.
- 4.3 On occasions The Licensing Sub-Committees also consider applications which are outside the scope of the Licensing Act 2003 (or the Gambling Act 2005). In these circumstances different governance rules apply and, in particular, the Licensing Sub-Committees are then conducting business during which they should arguably comply with the political balance rules. Whilst Officers always ensure these are followed it is proposed that for complete transparency and overall better governance a separate Sub-Committee, also of the existing Licensing Committee be established, with the constitution and terms of reference as set out in Appendix A.
- 4.4 The proposed new Sub-Committee will be called Licensing Sub-Committee No. 6 and will be the only Licensing Sub-Committee that can determine applications that do not fall under either the Licensing Act 2003 or the Gambling Act 2005. However, it will have terms of reference that allow it to deal with all licensing applications. On any date when non-Licensing Act and non-Gambling Act matters are listed for consideration, the Licensing Sub-Committee sitting that day will be re-constituted as the Licensing Sub-Committee No. 6, the membership of which will be required to be constituted in accordance with the political balance requirements contained in the 1989 Act and the 1990 Regulations. In the event that 3 members of the majority party are due to sit on that date, the membership of the re-constituted Sub-Committee will include one member of the minority party. The Chairman of the Sub-Committee will not change. Officers will ensure that the different governance processes which apply are fully complied with. The Licensing Committee will be asked to approve the establishment of the new Sub-Committee on 17 May 2017 after the sitting of the Full Council as part of the meeting of Standing Committees.
- 4.5 For the reasons set out above, it is proposed that the terms of reference of Licensing Sub-Committees 1 to 5 are also amended so as to exclude all functions other than those under the Licensing Act 2003 and the Gambling Act 2005. The proposed amended terms of reference for those Sub-Committees are set out in Appendix B. As the political balance rules do not apply to those Sub-Committees, it is proposed that the arrangement of having 3 Members of the Majority party sit on very rare occasions as a result of availability be continued, though the default position will still be to achieve a political balance whenever possible. The business conducted on such

occasions will be limited to applications under the Licensing Act 2003 and the Gambling Act 2005. However, in the case of the proposed Licensing Sub-Committee No. 6, a strict proportionality of 2 Majority Party members and one Minority Party Member will be applied.

**Revised arrangements for calculating the proportionality of seats on Committees.**

- 4.6 In accordance with legal advice and a practice adopted by several authorities the Council has not included the Licensing Committee within the scope of the proportionality rules. As explained above, this is because the Licensing Committee is appointed under the Licensing Act 2003 and not under the general powers contained in the Local Government Act 1972. . In practice, the Licensing Committee does have a membership which does accord with the political balance rules in any event.
- 4.7 The Licensing Committee also has very wide terms of reference that include functions other than those under the Licensing Act 2003 and the Gambling Act 2005. Rather than transfer those functions to a different Committee, it is considered that most appropriate way of proceeding is to require that Committee to comply with the political balance rules contained within the Local Government and Housing Act 1989 and the Local Government (Committee and Political Groups) Regulations 1990 even though it is not regarded as an ordinary committee of the authority. If the Committee accepts recommendation 2.3, based on legal advice, to include the Licensing Committee within the scope of the proportionality rules the review report will be produced accordingly and submitted to the Annual Council Meeting on 17 May.

**Amendment of Standing Order 28**

- 4.8 The membership of the Licensing Committee has previously been appointed only by the full Council. Members of the Licensing Sub-Committees have been drawn on a rota basis from amongst the 15 members of the Licensing Committee. It is now recognised that appointments can potentially be made to the Licensing Committee using the delegation to the Chief Executive as set out in Standing Order 28(1). This is the Standing Order relied upon for appointing to all other formal Committees and Sub-Committees. However, it is considered that the Standing Order requires amendment for that purpose.
- 4.9 Standing Order 28 currently provides as follows:

Members of Committees and Sub-Committees shall be appointed by the Chief Executive in accordance with the wishes of the Political Groups subject to any limitations imposed by legislation or Standing Orders notified to him in accordance with the Local Government (Committees and Political Groups) Regulations 1990 provided that where a Political Group has failed to express its wishes in relation to an appointment in accordance with the Regulations the Council in the case of a seat on a Committee or the parent Committee in the case of a seat on a Sub-Committee may make such appointment as it thinks fit. Any change in the membership of a Committee or Sub-Committee shall be reported at the commencement of the next meeting of the Committee or Sub-Committee. (NB: This Standing Order does not apply to the Licensing Committee, the Cabinet or Committees/Sub-Committees thereof).

It is proposed to remove the reference to the Licensing Committee and its Sub-Committees in the final sentence so that the Standing Order will apply to appointments to that Committee and its Sub-Committees. It is also proposed to add a

sentence to confirm that appointments to the Licensing Sub-Committees 1 to 5 do not need to comply with the political balance requirements set out in the Local Government (Committees and Political Groups) Regulations 1990. The proposed amendment will read as follows:

Members of Committees and Sub-Committees shall be appointed by the Chief Executive in accordance with the wishes of the Political Groups subject to any limitations imposed by legislation or Standing Orders notified to him in accordance with the Local Government (Committees and Political Groups) Regulations 1990 provided that where a Political Group has failed to express its wishes in relation to an appointment in accordance with the Regulations the Council in the case of a seat on a Committee or the parent Committee in the case of a seat on a Sub-Committee may make such appointment as it thinks fit. Any change in the membership of a Committee or Sub-Committee shall be reported at the commencement of the next meeting of the Committee or Sub-Committee. (NB: This Standing Order does not apply to the Cabinet or Committees/Sub-Committees thereof and any appointments to the Licensing Sub-Committees 1 to 5 do not have to comply with the political balance requirements set out in the Local Government (Committees and Political Groups) Regulations 1990).

#### **Compliance with Access to Information requirements**

- 4.10 The proposed Licensing Sub-Committee No. 6 will effectively serve a dual function, being appointed to deal with matters under the Licensing Act 2003 and the Gambling Act 2005 but also other licensing matters as explained in the report. To the extent that it is dealing with other licensing matters it will be operating as an ordinary sub-committee of the authority for the purposes of the Local Government and Housing Act 1989. In addition to having to comply with the political balance requirements as set out in the Local Government (Committee and Political Groups) Regulations 1990, the Sub-Committee will also have to meet the Access to Information requirements set out in part VA of the Local Government Act 1972. Subject to any information being exempt from disclosure, this will require a copy of the agenda for the meeting and a copy of any report to be available for public inspection at least 5 clear days before the meeting. This is not a requirement that applies when the Licensing Committee or one of its Sub-Committees is carrying on business pursuant to the Licensing Act 2003 or the Gambling Act 2005, though copies of the agenda and reports for those meetings are nevertheless made available on the Council's website as soon as they are published and that is usually three clear days before the meeting.

#### **4.11 Planning Sub-Committees**

The establishment of the Planning and City Development Committee allows for this Committee to be the parent of the Planning Applications **Sub**-Committees. It is therefore proposed to rename these Planning Applications Sub-Committees Nos 1 to 4. This will remove the requirement for these Committees to be included in the calculation of proportionality of Committees. Sub-Committees are not included in the requirement. The Planning and City Development Committee will be asked to formally approve the establishment of the Sub-Committee as part of the meeting of Standing Committees held on the rising of the Annual meeting.

#### **5. Legal Implications**

These are set out in the report.

**6. Other Implications**

There are no other implications.

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## **APPENDIX A**

### **LICENSING SUB-COMMITTEE NO 6**

#### **1. CONSTITUTION**

3 Members of the Licensing Committee. Two Majority Party Members and one Minority Party Member.

#### **2. TERMS OF REFERENCE**

##### **LICENSING ACT 2003**

##### **Personal Licences**

1. To consider applications for a personal licence, where a representation has been made and the Cabinet Member for Public Protection and Licensing has asked that the application be referred to a Licensing Sub-Committee for determination.
2. To consider applications for a personal licence in cases where the applicant has unspent criminal convictions.

##### **PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

3. To consider applications for premises licences/club premises certificates where a representation has been made.
4. To consider applications for provisional statement where a representation has been made.
5. To consider applications for the transfer of a premises licence where a representation by the Police has been made.
6. To consider applications for interim authorities where a representation by the Police has been made.
7. To consider reviews to premises licences/club premises certificates where these have been requested by the relevant authority in accordance with the relevant regulations.

##### **GAMBLING ACT 2005**

To consider applications, submitted in accordance with the Gambling Act 2005.

##### **TEMPORARY EVENT NOTICES**

8. To determine a Police representation in respect of a temporary event notice.

## OTHER LICENSING FUNCTIONS

9. The grant, approval, review, refusal, revocation, renewal, transfer or variation of any licence, registration, certificate, consent, permit, approval or permission, except where such function is within the terms of reference of another committee or sub-committee; body;
10. Without prejudice to the powers delegated to officers, and to the Licensing Officers' Panels, to hear and determine applications and appeals where there is a right to be heard;
11. Procedures for the conduct of business at the Officer Panel and the Licensing Sub-Committee, including all matters in respect of processing applications.
12. Operational matters in respect of licensing functions within the terms of reference of the Sub-Committee;
13. The approval of commodity guidelines in markets;
14. The designation, de-designation and variations to designations of street trading pitches;
15. The amendment of rules of management and standard conditions;
16. To consider and hear representations in respect of fees and charges and to determine the amounts thereof;
17. The consideration of all matters applications in respect of the minor licensing functions eg Pedlars Act and Nurseries Act; which have not been the subject of delegations to Officers;
18. To authorise a later hour in substitution for 12 midnight in Bylaw 3(2) of the Pleasure Fairs (Amusement Premises) Bylaws.

## **APPENDIX B**

### **LICENSING SUB-COMMITTEE NOS 1 TO 5**

#### **1. CONSTITUTION**

3 Members of the Licensing Committee

#### **2. TERMS OF REFERENCE**

##### **LICENSING ACT 2003**

##### **Personal Licences**

1. To consider applications for a personal licence, where a representation has been made and the Cabinet Member for Public Protection and Licensing has asked that the application be referred to a Licensing Sub-Committee for determination.
2. To consider applications for a personal licence in cases where the applicant has unspent criminal convictions.

##### **PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

3. To consider applications for premises licences/club premises certificates where a representation has been made.
4. To consider applications for provisional statement where a representation has been made.
5. To consider applications for the transfer of a premises licence where a representation by the Police has been made.
6. To consider applications for interim authorities where a representation by the Police has been made.
7. To consider reviews to premises licences/club premises certificates where these have been requested by the relevant authority in accordance with the relevant regulations.

##### **GAMBLING ACT 2005**

To consider applications, submitted in accordance with the Gambling Act 2005.

##### **TEMPORARY EVENT NOTICES**

8. To determine a Police representation in respect of a temporary event notice.