

12 July 2006	ITEM 5
Licensing Committee	
TERMS OF REFERENCE Report of the Head of Legal and Democratic Services	
Purpose: To consider an amendment to the Terms of Reference for the Licensing Sub-Committee and a procedure for licensing hearings.	
Wards affected: None.	Key decision: Not Applicable
This report is public.	

1. RECOMMENDATIONS:

1.1 That Members the Terms of Reference for the Licensing Sub-Committee be amended to read:

“To hear appeals on matters delegated to the Licensing Committee and to grant, approve, review, refuse, suspend, revoke, renew, transfer or vary any licence, registration, certificate, consent, permit, approval or permission that the Licensing Committee may determine, except where the function has been delegated to an Officer unless the Officer refers the matter to the Committee for a decision.”

1.2 That the procedure set out in Appendix C be approved.

1.3 That the delegations to the Head of Strategy, Environment and Development Services be amended so that taxi and private hire licences may only be issued where the applicant meets all of the Authority’s criteria.

2. INTRODUCTION:

2.1 The Terms of Reference for the Licensing Committee, together with those for the Licensing Sub-Committee, were approved by Council at its meeting on 29th March 2006 (Minute No. 120 refers) and are attached at Appendices A and B for information. The list of statutory powers will need to be updated in light of the Gambling Act 2005 and other changes coming into force.

2.2 The Committee is requested to consider the arrangements to be made for appeals, particularly in respect of licences concerning hackney carriages, private hire etc.

3. BACKGROUND:

3.1 Decisions in respect of hackney carriage and private hire driver's licence applications are delegated to the Head of Strategy, Environment and Development Services. In the normal course of events, applicants who fulfill the suitability criteria would receive automatic approval by Licensing Officers and only those who fail in some respect, and who refuse to withdraw their applications, have their applications referred for determination the Head of Strategy, Environment and Development Services, in consultation with the Chair of the Committee and the Head of Legal and Democratic Services or her representative.

3.2 Decisions on hackney carriage and private hire driver's licence applications tend not to be technical or legal arguments; usually it comes down to an assessment of a person's character. As such, it is felt that such matters are best dealt with as Member decisions, rather than those of Officers.

4. ISSUES AND/OR OPTIONS:

4.1 It is considered that the full Committee, with 7 members, would be too large to sit as a panel for determining licence applications, where some degree of informality is advantageous and where it is important that applicants do not feel intimidated by the process.

4.2 Members are therefore recommended to amend the terms of reference for the Licensing Sub-Committee to allow three Members to consider applications for any licence, registration, certificate, consent, permit, approval or permission, where such a decision has been referred for consideration by the Head of Strategy, Environment and Development Services. In practice, the Licensing Sub-Committee would operate in much the same way as Licensing Act 2003 Sub-Committees when convened for the purpose of hearing applications.

4.3 The Environmental Health Team Leader has discussed this proposal with the Chair of the Licensing Committee, who concurs with the suggested approach outlined in this report.

4.4 It is anticipated that the most likely business of the Sub-Committee would be referrals of applications connected to the licensing of hackney carriages and private hire vehicles (as described in section 3 above). Hearings would have to be arranged on an ad-hoc basis, for instance, following the referral of an application for a taxi driver's licence by the Head of Service where the applicant has failed to meet all the standard suitability criteria for licensing. It is imperative that licence applications are determined expeditiously and without excessive delays. In some cases therefore, hearings will have to be convened at comparatively short notice. It is not anticipated that the Sub-

committee will have to meet very often; on past evidence, probably there would only be 2-3 hearings per year.

- 4.5** Appendix C is a suggested procedure for hearings.
- 4.6** The proposed amendment would apply to other types of licence application, as required.

RELEVANT POLICIES None	
FINANCIAL IMPLICATIONS There are no financial implications arising from this report.	
LEGAL IMPLICATIONS The Authority must act having regard to human rights and natural justice. This will be helped by the establishment of a formal mechanism at member level, following established procedures.	
OTHER IMPLICATIONS None.	
BACKGROUND PAPERS None.	Contact: Steve Jones Telephone: 01375 652205 E-mail: sjones@thurrock.gov.uk

Appendix A

2	Name: LICENSING COMMITTEE	
Appointed by: The Council under 101 Local Government Act 1972		No. of Members: Seven
Chairman and Vice-Chairman appointed by: The Council		Political proportionality: The elected Members shall be appointed according to Political Proportionality as follows: Four Conservative Two Labour One non-aligned
Quorum: Three		Co-opted members: None
Codes: <ol style="list-style-type: none"> 1. The Procedure for Licensing Hearings contained in Appendix 2 to this part of this Constitution (following the Licensing Act 2003 Committee). 2. Code of Practice for Members and Officers set out in Part 4 of this Constitution. 		
Terms of reference: <ol style="list-style-type: none"> 1. To undertake all matters in relation to the Council's licensing, permit and registration function, including Part VI of the Essex Act 1987, other than: <ol style="list-style-type: none"> a) Functions under the Licensing Act 2003; b) functions specifically delegated to the Cabinet or another Committee; and c) the approval of byelaws; and d) the approval of policy guidelines for any other matter where the Committee considers they should be approved by the Council; 2. The grant, approval, review, refusal, revocation, renewal, transfer or variation of any licence registration, certificate, consent, permit, approval or permission, except where such function falls within the terms of reference of the Licensing Act 2003 Committee or any other Committee or Sub-Committee or where the function has been delegated to an Officer unless the Officer refers the matter to the Committee for a decision. <p>To exercise the Council's functions under any of the "relevant statutory provisions" within the meaning of Part 1 of the Health and Safety at Work etc Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as an employer;</p>		

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3. To advise the Council on its byelaws in relation to hackney carriage and private hire vehicles, operators and drivers;
4. To advise the Council on its powers to make an order identifying designated places for the purposes of police powers in relation to alcohol under S13 Criminal Justice and Police Act 2000.
5. To keep under review and make minor alterations to the Committee's procedures.

Without prejudice to the generality of the foregoing, this delegation includes the licensing and registration functions set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2001, Schedule 1, including the licensing and registration functions under the following legislation and any amendments or replacements thereof, and any orders, regulations, directions or bylaws made under it:

Acts of Parliament

Animal Boarding Establishments Act 1963, S 1
 Betting Gaming and Lotteries Act 1963, Schedules 2,3 and 5ZA
 Breeding of Dogs Act 1973, S 1
 Breeding and Sale of Dogs (Welfare) Act 1999, Ss 1 and 8
 Caravan Sites and Controls of Development Act 1960, S3(3)
 Celluloid and Cinematograph Film Act 1922, S1
 Children and Young Persons Act 1933, S12,Part II, S 52 and
 Schedule 12
 Children and Young Persons Act 1963, Part II
 Cinema Act 1985, S 1
 Customs and Inland Revenue Act 1883, S 4
 Dangerous Wild Animals Act 1976, S 1
 Fire Precautions Act 1971, S 5
 Fire Safety and Safety of Places of Sport Act 1987, Part III
 Food Safety Act 1990, S 19
 Game Act 1831, Ss 5,6,17,18 and 21 to 23
 Game Licensing Act 1860, Ss 2 to 16
 Gaming Act 1968, Schedule 9
 House to House Collections Act, 1939, S 2
 Late Night Refreshment Houses Act 1969, S 2
 Licensing Act 1964, S 79
 Local Government Act 1874, S 27,
 Local Government Act 1972, S 213
 Local Government (Miscellaneous Provisions) Act 1976, Ss 48,51, 53 to 62 and 79
 Local Government (Miscellaneous Provisions) Act 1982, Part I, Ss 2, 4,13 to 17, Part
 III and Schedules 1, 2, 3 and 4
 Lotteries and Amusements Act 1976, Schedules 1 and 3
 Marriage Act 1949, S46A
 Noise and Statutory Nuisance Act 1993, Schedule 2

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Nurses Agencies Act 1957
 Performing Animals (Regulation) Act 1925, S 1
 Pet Animals Act 1951, S 1
 Poisons Act 1972, Secretary of State 3(1)(b)(ii), 5, 6, and 11
 Police, Factories etc. (Miscellaneous Provisions) Act 1916, S5
 Private Places of Entertainment (Licensing) Act 1967, Ss 1 to 5,7 and Parts I and II of the Schedule
 Public Health Act 1936, S 269(1)
 Public Health Acts Amendment Act 1907, S 94
 Riding Establishments Acts 1964 and 1970
 Scrap Metal Dealers Act 196, S 1
 Sea Fisheries Regulation Act 1966, Secretary of State 1, 2, 10 and 19
 Slaughterhouses Act 1074, S 4
 Theatres Act 1968, Ss 12 to 14
 The Hypnotism Act 1952
 The Safety of Sports Grounds Act 1975
 Town Police Clauses Act 1847, as extended by S 171 Public Health Act 1875, S 15
 Transport Act 1985 and Ss 47,57,58,60 and 79, Local Government (Miscellaneous Provisions) Act 1976
 Vehicles (Crime) Act 2001
 Zoo Licensing Act 1981, S 1

Secondary Legislation

The Animal By-Products Order 1999
 Cattle Identification Regulations 1998
**Dairy Products (Hygiene) Regulations 1995, Regs. 6 and 7*
**Eggs Products Regulations 1993, Reg. 5*
**Food Premises (Registration) Regulations 1991, Regs. 5 and 9*
**Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, Regs. 11, 21, 24 and 26*
**Food Safety (General Food Hygiene) Regulations 1995, Schedule 1A*
 Marriages (Approved Premises) Regulations 1995
**Meat Products (Hygiene) Regulations 1994, Regs. 4 and 5*
**Minced Meat and Meat Preparations (Hygiene) Regulations 1995, Reg. 4*
 Pigs (Records, Identification and Movement) Order 1995, Articles 12 to 14

(Note: 1. see also the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended.)

2. *Regulations set out under the secondary legislation as been revoked by the Food Hygiene (England) Regulations 2005 (now 2006). Amendments to the Functions and Responsibilities Regulations are expected.

Appendix B

2A	Name: LICENSING SUB-COMMITTEE	
Appointed by: The Council under Section 101 Local Government Act 1972	No. of Members: Up to five, including at least one Member of the Licensing Committee if one is available.	
Chairman: Appointed by the Sub-committee at each Meeting	Political proportionality: The Members shall be appointed where practicable according to Political Proportionality.	
Quorum: Three	Co-opted members: None	
<p>Terms of Reference:</p> <p>To hear appeals on matters delegated to the Licensing Committee, including the power to grant, approve, review, refuse, revoke, renew, transfer or vary any, registration, certificate, consent, permit, approval or permission that the Licensing Committee may determine, except where the function has been delegated to an Officer unless the Officer refers the matter to the Committee for a decision.</p>		

Appendix C

LICENSING OF HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES etc.

LICENSING SUB-COMMITTEE HEARINGS NOTES ON PROCEDURE

1. In advance of any hearing, the Sub-Committee Members (a minimum of any 3 Members of the Licensing Committee) will be sent a report that will include, as appropriate, relevant correspondence, certificate(s) of conviction, driving record disclosures, and any written representations received from the applicant.
2. The Sub-Committee will be requested to appoint a Chairman from within their number.
3. The Chairman of the Sub-Committee should introduce those Members appointed to the Sub-Committee and identify those Officers present at the meeting. If the applicant is in attendance at the hearing, he/she should sit before the Sub-Committee and be asked to introduce themselves.

As necessary, the Chairman should clarify who is to speak on the applicant's behalf (e.g. his/her solicitor) and anyone else (e.g. character witnesses).

4. The Licensing Officer should summarise the reason for the hearing and outline the circumstances of the case and the procedure to be followed.
5. The Licensing Officer should formally present his/her report. Normally this will not be read out verbatim but the Officer will invite any questions on its content or matters that require clarification. A copy of the case report will have already been given to the applicant, though it is prudent at this point to confirm that he/she has received and read it.

The Licensing Officer will, if necessary, update the panel as to any developments that have occurred since the issue of the report and supply any supplementary documents, such as DVLA and CRB records. Often these will have been withheld until the meeting to try to as far as possible preserve confidentiality. Check that applicant has previously received or had sight of this material.

6. The Legal Adviser will specify any convictions that are considered relevant within the Council's policy. The applicant will be asked to verify the accuracy of this record and point out any factual errors in the Licensing Officer's report.
7. The Licensing Officer will answer any queries on the contents of the report put to him/her by the applicant (or his/her representative) or members of the Sub-Committee.

8. The applicant (or his/her representative) should be invited to make any statement in support of his/her case, i.e. to prove that the individual is fit to hold a licence. Any witnesses will be allowed to give their evidence.
9. Members of the Sub-Committee and Licensing Officer can ask any questions of the applicant for further clarification.
10. The applicant will be asked whether there is anything else that he/she wishes to add.
11. The Chairman will advise the applicant that he/she will be notified of the decision in writing i.e. within 7 days of hearing. If the Sub-Committee is confident of reaching a swift conclusion to their deliberations they may ask the applicant to wait outside pending their discussions in private and then invite all parties back into the room to hear the result.

NB: Reasons must be recorded if the application is refused.

NOTE: NORMAL RULES ON QUASI-JUDICIAL HEARINGS WILL APPLY.