

# APPENDIX B

## LICENSING ACT 2003 SUB COMMITTEES

### RULES OF PROCEDURE

ADOPTED BY THE COUNCIL ON 19TH APRIL 2005

#### **1. General**

- 1.1 These rules of procedure are subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 (the 'regulations'). Where appropriate the provisions of the regulations have been incorporated into these rules.
- 1.2 Where in these procedure rules notice is required to be given to the Sub-Committee it may be given to Robin Pellow, Head of Democratic & Legal Services (01483 523222) in accordance with regulation 34.

#### **2. Composition of Sub-Committees**

- 2.1 Each Sub-Committee shall comprise 3 members appointed by the Licensing and Regulatory Committee, in accordance with section 9 of the Licensing Act 2003 (the 'Act'). The quorum shall be three. One member of each of the Sub-Committees shall act as Chairman.

#### **3. Notice of hearing**

- 3.1 The licensing authority shall give to the parties a notice stating the date and time and place at which the hearing is to be held (the 'notice of hearing') in accordance with the provisions of the regulations.
- 3.2 The notice of hearing shall be accompanied by information regarding the following: -
  - (a) the rights of a party provided for in paragraphs 4.1 & 8.5;
  - (b) the consequences if a party does not attend or is not represented at the hearing;
  - (c) the procedure to be followed at the hearing;
  - (d) any particular points on which the licensing authority considers that it will want clarification at the hearing from a party.

#### **4. Right of attendance, assistance and representation**

- 4.1 Subject to paragraphs 6.2 & 6.4, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

4.2 Upon receipt of the notice of hearing and within the period of time prescribed by the regulations\*, each party shall give to the licensing authority a notice stating:-

- (a) whether he/ she intends to attend or be represented at the hearing;
- (b) whether he/ she considers a hearing to be unnecessary.

\*the notice of hearing given by the licensing authority to the parties shall specify the relevant period of time within which each party must give the notice described in this paragraph

4.3 In a case where a party wishes any other person (other than the person he/ she intends to represent him/ her at the hearing) to appear at the hearing, the notice referred to in paragraph 4.2 above shall contain a request for permission for such other person to attend at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.

4.4 A party who wishes to withdraw any representations they have made may do so:

- by giving notice to Robin Pellow, Head of Democratic and Legal Services (01483 523222), no later than 24 hours before the day or first day on which the hearing is to be held; or
- orally at the hearing.

## **5. Right to dispense with hearing if all parties agree**

5.1 The licensing authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary, other than the licensing authority itself, have done so by giving notice to the authority that they consider a hearing to be unnecessary.

5.2 Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph 5.1, the licensing authority, if it agrees that a hearing is unnecessary, shall forthwith give notice to the parties that the hearing has been dispensed with.

## **6. Hearing to be in public**

6.1 Subject to paragraph 6.2 below, the hearing shall take place in public.

6.2 The Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the

public interest in the hearing, or that part of the hearing, taking place in public.

6.3 For the purposes of paragraph 6.2, a party and any person assisting or representing a party may be treated as a member of the public.

6.4 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may –

(a) refuse to permit that person to return, or

(b) permit him/ her to return only on such conditions as the Sub-Committee may specify,

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

## **7. Report**

7.1 A report will be put before the Sub-Committee, prepared by the Licensing Officer.

7.2 The Licensing Officer shall send a copy of the report to the parties in advance of the hearing.

## **8. Procedure at hearing**

8.1 The order of business shall be at the discretion of the Chairman, but will normally proceed in accordance with the following paragraphs.

8.2 The Chairman shall at the beginning of the hearing introduce the members of the Sub-Committee, invite the parties to identify themselves and then explain to the parties the procedure that the Sub-Committee intends to follow.

8.3 The Sub-Committee shall then proceed to consider any request made by a party under paragraph 4.3 (request for permission for another person to appear at the hearing). Permission shall not be unreasonably withheld.

8.4 The Chairman may ask the Licensing Officer to introduce the report, and outline the matter before the Sub-Committee. Alternatively, the Chairman may proceed directly to paragraph 8.5 below.

8.5 All parties shall be entitled to: -

- in response to a point upon which the licensing authority has given notice that it will want clarification under paragraph

3.2(d), give further information in support of their application, representations or notice (as applicable)

- if given permission by the Sub-Committee, question any other party. Cross examination shall not be permitted unless the Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require.
- address the Sub-Committee.
- questioning that is, in the opinion of the Chairman, unnecessarily protracted, repetitious, oppressive, irrelevant or unfair, shall be discontinued at the request of the Chairman.

8.6 The parties will normally be invited to address the Sub-Committee in the following order: -

- Applicant
- Responsible Authorities
- Interested Parties

8.7 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.

8.8 Where there is more than one representation raising the same or similar matters or addressing the same or similar issues, the Sub-Committee will request that only one party address them on behalf of the parties who have made the representations in question.

8.9 In considering any representations or notice made by a party the Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing. [Note also the provisions of paragraph 12.1]

8.10 The Sub-Committee shall disregard any information given or evidence produced by a party (or any person to whom permission is given to appear at the hearing) which is not relevant to:

- (a) their application, representations or notice (as applicable) or in the case of another person, the application, representations or notice of the party requesting their appearance, and
- (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

- 8.11 The parties shall be entitled to make closing submissions in addition to their address. The closing submissions of any applicant shall follow the closing submissions of any interested party or responsible authority.
- 8.12 The Sub-Committee may place a time limit on the exercise of the rights set out in paragraphs 8.5 & 8.11 above. All parties shall be allowed an equal maximum period of time.
- 8.13 The Sub-Committee may, after hearing the representations of the parties, withdraw from the room to make their deliberations. The Committee Secretary will accompany the Sub-Committee when they retire to make their deliberations. Alternatively, the Sub-Committee may ask all parties and the public to leave the room.

## **9. Role of Legal Adviser**

- 9.1 The Sub-Committee may seek advice or clarification of any procedural or legal matter from the legal adviser at any time during the course of the hearing. The Sub-Committee may seek advice from the Licensing Officer on any technical matter during the course of the hearing, where necessary, in the opinion of the Licensing Officer. The Licensing Officer may procure the services or advice of a technical specialist(s) to advise the Sub-Committee as an expert.
- 9.2 The legal adviser shall not remain with members of the Sub-Committee when they retire to make their deliberations.
- 9.3 The legal adviser may join members during the course of their deliberations either when asked to do so or if he/ she realises there is a point of law on which they may need assistance but on which he/ she omitted to advise them in open session.
- 9.4 If the Sub-Committee require advice on a legal matter during their deliberations the Committee Secretary will so inform the legal adviser on behalf of the Sub-Committee and the legal adviser will join the Sub-Committee to give such advice as he/she considers necessary on the point raised or any other legal matter relevant in his/her opinion.
- 9.5 Any advice given by the legal adviser to members of the Sub-Committee shall be provisional until the substance of that advice has been repeated in open session and the parties have had an opportunity to comment on it. The legal adviser will then state in open session whether the advice is confirmed or varied (and if it is varied, in what way) before members act upon it.

## **10. Determination of applications**

- 10.1 The Sub-Committee shall make its determination at the conclusion of the hearing or otherwise as prescribed by the regulations.

10.2 Where a determination has to be made at the conclusion of the meeting it shall be announced by the Chairman in public before the closure of the meeting.

## **11. Failure of parties to attend the hearing**

11.1 If a party has informed the licensing authority that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

11.2 If a party who has not so indicated fails to attend or be represented at a hearing the Sub-Committee may:

- where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or
- hold the hearing in the party's absence

11.3 Where the Sub-Committee holds the hearing in the absence of a party, the Sub-Committee shall consider at the hearing the application, representations or notice made by that party.

## **12. Adjournments**

12.1 Subject to the provisions of the regulations, the Sub-Committee may

- (a) adjourn the hearing to a specified date
- (b) arrange for a hearing to be held on specified additional dates

where it considers it necessary for its consideration of any representations or notice made by a party.

12.2 Where the Sub-Committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

12.3 Similarly, when the Sub-Committee arranges for the hearing to be held on a specified additional date it shall forthwith notify the parties of the additional date on which, and the time and place at which, the continued hearing is to be held.

## **13. Record of proceedings**

13.1 A record of the hearing shall be kept for 6 years from the date of determination or, where an appeal is brought against the determination, the disposal of the appeal.

## **14. Waiver of rules**

Except where prescribed by the regulations, the Sub-Committee may in any particular case dispense with or modify these rules at its own discretion.

14.1 In particular, the licensing authority may extend a time limit provided for in the regulations for a specified period where it considers this to be necessary in the public interest.

14.2 Where the licensing authority has extended a time limit it shall forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.

## NOTES

### Human Rights

The Human Rights Act 1998 obliges the Council to comply with the provisions and protections of the European Convention on Human Rights. It is unlawful for a local authority to act in a way which interferes disproportionately with a convention right. The Sub-Committee will have regard to the rights protected by the European Convention on Human Rights when exercising its licensing functions.

<http://emperor2/sites/democratic/Licensing/Sub-Committees/30 August 2012/Appendix RulesOfProcedure.doc>