

**REPORT OF CORPORATE DIRECTOR CITY DEVELOPMENT
GAMBLING ACT 2005 – HEARINGS PROCEDURE**

1.0 SUMMARY

This report asks the Committee to formally adopt procedures for hearing Gambling Act applications so as to ensure, (so far as possible), the efficient and proper conduct of such hearings in accordance with the law.

2.0 RECOMMENDATIONS

2.1 IT IS RECOMMENDED that Committee approves and adopts the Guidance and procedure outlined in appendices 1 and 2

3.0 BACKGROUND

3.1 The Gambling act 2005 creates a number of opportunities for applications of different types to result in a hearing before the Licensing Committee.

3.2 Generally speaking the Committee may adopt its own procedure however for hearings relating to Premises Licences and Provisional Statements the Committee must also operate in accordance with the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007. A procedure has been devised taking into account these regulations and a separate, albeit similar procedure devised for those types of hearings which are not caught by these regulations.

3.3 Whilst the Committee has already adopted a procedure for hearing matters under the Licensing Act 2003 the hearings regulations under the 2003 and 2005 Acts are different. It is therefore necessary to adopt separate procedures under the Gambling Act.

4.0 PROPOSALS

4.1 That the hearing procedures outlined in appendices 1 and 2 be adopted.

5.0 FINANCIAL IMPLICATIONS

5.1 Fees levied under the Act are intended to cover the cost of hearings under these procedures.

6.0 LEGAL IMPLICATIONS

It is important to ensure that hearings held under the Gambling Act are held in accordance with relevant regulations and the general law in relation to natural justice and fair hearings.

7.0 EQUAL OPPORTUNITIES IMPLICATIONS

None.

8.0 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

None

9.0 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

10.0 COPYRIGHT ACKNOWLEDGEMENT

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Date: 28 March 2007

The Gambling Act 2005

Hearings relating to Premises Licence and Provisional Statements
(applications and reviews)

Guidance and Procedural Note

1. Upon notification of a hearing, the recipient shall, as soon as possible, but in any event no later than 5 working days before the hearing is due to commence, give notice to the Licensing Office in writing:-
 - i. stating whether they intend to be present and/or represented at the hearing, and in the latter case who by
 - ii. identifying any witnesses that they wish to appear at the hearing and giving a brief description of the point(s) upon which they may be asked to address the hearing,
 - iii. giving a time estimate for their presentation/representations to the hearing, or,
 - iv. indicating that they are willing to consent to the matter being determined without a hearing.
2. Where a large number of interested parties are involved they will be encouraged to appoint a spokesperson or spokespersons so as to avoid duplication of evidence in so far as is possible.
3. Any one invited to attend the Licensing Panel/Committee may bring legal or other professional representatives with them if they so wish. Advocates are, however, reminded that these are civil proceedings and inquisitorial rather than adversarial in nature. **Aggressive advocacy is not encouraged and will not be tolerated.**
4. Copies of the application and representations made by the parties will have been circulated to members prior to the hearing. **Plans can not be copied by the Authority.** Where plans need to be considered the applicant will be expected to supply a further 6 copies for use at the hearing.
5. The hearing will focus on those areas of the application which are in dispute. **Advocates and parties are therefore asked to be as succinct as possible.**
6. Whilst additional material in support of the application and representations may be taken into account by the authority such material should be produced and circulated by the producer to all parties concerned (including the Authority) as soon as possible, and no later than the working day before the hearing. Material produced on the day of the hearing can only be admitted with the consent of all other parties. The late production of material may lead to a hearing having to be adjourned and is to be discouraged. **Additional material may be disregarded where**

- i. **it is not relevant to the licensing objectives**
 - ii. **it reveals a new ground of representation**
 - iii. **it is not relevant to the application or representations**
7. Any party who intends to put additional written material before the Panel/Committee should provide at least **18 copies** of that material to the Licensing Office if the application is to go to the full Committee and **6 copies** if the matter is to go before the Panel. Applicants should note that changes to application plans during the application process should be notified to the Licensing Office as soon as possible and are likely to result in a new application having to be submitted.
8. All relevant documentation received by the Authority will be sent to members of the Panel/Committee before the hearing if at all possible. Any failure to adhere to requirements listed above may: -
 - result in a case having to be adjourned
 - result in delay
9. Where a party does not attend the hearing and is not represented the Authority may
 - continue with the hearing and consider any written material submitted by the party, or
 - adjourn the hearing if it is in the public interest to do so.

Hearing Procedure

10. The presumption will be that Parties may call witnesses in support of their case and that other parties will be entitled to ask questions of those witnesses. However the Committee/panel retains the power to refuse to permit witnesses to speak and to refuse to allow other parties to ask questions. These powers may be used where, for example, evidence may be duplicated, or where it appears irrelevant. The following procedure will ordinarily be followed at Panel/Committee hearings:
 - (i) The Chair will introduce the Committee/Panel and relevant officers. The Chair will also ask the applicant, interested parties and the responsible authorities to introduce themselves.
 - (ii) The Chair will indicate the procedure to be followed at the hearing as outlined in this note.
 - (iii) The applicant will be asked to present their case and call any witnesses they may wish to address the Panel/Committee. Where more than one witness is to be called it is usual for each witness to be questioned once they have concluded their evidence. The order for parties asking questions will normally be:
 - Responsible Authorities
 - Interested parties

- Panel / Committee members
 - Legal advisor to the Committee/Panel (where appropriate)
- (iv) Responsible authorities, and interested parties will then be given an opportunity to make their representations. Once again where witnesses are to be called there will be an opportunity for questions to be asked firstly, by the applicant and then by other responsible authorities and interested parties, members and the legal advisor to the Committee/Panel. Where there is more than one body making representations to an application the order for the hearing of representations will normally be the responsible authorities followed by interested parties.
- (v) Once all the evidence has been given responsible authorities, and interested parties will be given an opportunity to sum up their representations in the same order as they presented them. The applicant will then be given an opportunity to sum up and have the final word.
- (vi) Whilst Hearings will normally be conducted in Public the Committee/Panel does have powers of exclusion (which cover the public, the press, and even applicants, parties and their representatives) where it feels it is necessary to do so or where persons are behaving in a disruptive manner. The Committee/Panel will however always exclude the press and public whilst it discusses the application and makes its decision.
- (vii) The decision and reasons for it will normally be announced in public at the end of the hearing and transmitted in writing in accordance with the relevant Regulations.
11. If all parties agree and the Authority considers it appropriate, a hearing may be dispensed with and the Panel will then determine the matter on the basis of the written material which has been submitted.

12. Adjournments

- (i) Do not automatically assume that a request for an adjournment will be granted.
- (ii) Once a hearing has been set **it is for the parties to ensure that they attend or are represented or submit written material for consideration.** Hearings may proceed in the absence of a party and in such circumstances the party's original representations will be taken into account together with any further material in support of that representation which has been served on all parties before the day of the hearing.
- (iii) If it is not possible for a party or their witness to attend a hearing the Authority would normally expect justification to be given as to why the hearing should not proceed in their absence. If adjournments are sought for other reasons then an explanation should be given as to why an adjournment is felt to be necessary.
- (iv) If it is necessary to make an application for an adjournment the party seeking the adjournment should seek the consent of all other parties to the application and notify the Licensing Office as

soon as possible that an adjournment may be sought. If all parties agree the matter may be adjourned administratively.

- (v) If not agreed administratively the matter will remain listed before the committee/panel to hear the application and determine whether to agree the adjournment or proceed, if necessary in the absence of some or all of the parties.
- (vi) The Authority may adjourn proceedings where it considers that it is no longer reasonably practicable to hold the hearing on the original date, to enable the Authority to consider any information or documents which have been provided to it, or having regard to the ability of any person to attend the hearing.
- (vii) Where an adjournment is granted all parties will be given notice of the adjournment and the new hearing date.

The Gambling Act 2005

General Hearings (permits etc)

Guidance and Procedural Note

1. Upon notification of a hearing, the recipient shall, as soon as possible, but in any event no later than 5 working days before the hearing is due to commence, give notice to the Licensing Officer in writing:-
 - i. stating whether they intend to be present and/or represented at the hearing, and in the latter case who by
 - ii. identifying any witnesses that they wish to appear at the hearing and giving a brief description of the point(s) upon which they may be asked to address the hearing.
 - iii. giving a time estimate for their presentation/representations to the hearing,
2. Any one invited to attend the Licensing Panel may bring legal or other professional representatives with them if they so wish. Advocates are, however, reminded that these are civil proceedings and inquisitorial rather than adversarial in nature. **Aggressive advocacy is not encouraged and will not be tolerated.** The hearing will focus on those areas of the application which are in dispute. Advocates and parties are therefore asked to be as succinct as possible.
3. Copies of the application and any representations made will have been circulated to members prior to the hearing. **Plans can not be copied by the Authority.** Where plans need to be considered or you wish to rely on additional material at the hearing you should supply a further 6 copies to the Licensing Officer as soon as possible and in any event no later than the working day before the hearing.
4. Where a party does not attend the hearing and is not represented the Authority may
 - i. continue with the hearing and consider any written material submitted by the party, or
 - ii. adjourn the hearing.

Hearing Procedure

5. The following procedure will ordinarily be followed at Panel hearings:
 - (i) The Chair will introduce the Panel and relevant officers. The Chair will also ask others in attendance to introduce themselves.

- (ii) The Chair will indicate the procedure to be followed at the hearing as outlined in this note.
- (iii) The applicant will be asked to present their case and call any witnesses they may wish to address the Panel. Where more than one witness is to be called it is usual for each witness to be questioned by any other parties and the panel once they have concluded their evidence.
- (iv) Other parties (if there are any) will then be given an opportunity to make their representations. Should witnesses be called there will be an opportunity for questions to be asked firstly, by the applicant and then by members.
- (v) Once all the “evidence” has been given parties will be given an opportunity to sum up. The applicant will have the final word.
- (vi) The Panel will then exclude the press, public and parties whilst it discusses the application and makes its decision.
- (vii) The decision and reasons for it will normally be announced in public at the end of the hearing and transmitted to the parties in writing as soon as practicable thereafter.