



WORTHING BOROUGH
C O U N C I L

17 June 2022

Worthing Licensing & Control Committee A

Date:	27 June 2022
Time:	6.30 pm
Venue:	Council Chamber, Worthing Town Hall

Committee Membership: Councillors Sally Smith (Chair), Rosey Whorlow (Vice-Chairman), Roy Barraclough, Mike Barrett, Russ Cochran, Cathy Glynn-Davies, Lionel Harman, Richard Mulholland, Kevin Jenkins, Richard Nowak, Jon Roser, Dawn Smith, Samuel Theodoridi, Hazel Thorpe and Andy Whight

Agenda

Part A

1. Declarations of Interest / Substitute Members

Members and officers must declare any disclosable pecuniary interests in relation to any business on the agenda. Declarations should also be made at any stage such an interest becomes apparent during the meeting.

If in doubt contact the Legal or Democratic Services representative for this meeting.

2. Confirmation of Minutes

To approve the minutes of the Licensing and Control Committee A meeting of held on the 14 February 2022, copies of which have been previously circulated.

3. Public Question Time

To receive any questions from Members of the public in accordance with Standing Order 11.2

(Note: Public Question Time will operate for a maximum of 30 minutes.)

4. Constitutional Provisions relating to the Councils' Licensing Function
(Pages 3 - 16)

To consider a report by the Interim Director of Communities, a copy of which is attached as item 4

For Democratic Services enquiries relating to this meeting please contact:	For Legal Services enquiries relating to this meeting please contact:
Chris Cadman-Dando Democratic Services Officer 01903 221073 chris.cadman-dando@adur-worthing.gov.uk	Shelley-Ann Flanagan Lawyer Shelley-ann.flanagan@adur-worthing.gov.uk

Duration of the Meeting: Four hours after the commencement of the meeting the Chairperson will adjourn the meeting to consider if it wishes to continue. A vote will be taken and a simple majority in favour will be necessary for the meeting to continue.



Constitutional Provisions relating to the Councils' Licensing Function

Report by Public Health & Regulation Manager and the Head of Legal

Services and Monitoring Officer

1.0 Summary

- 1.1 Licensing functions, being regulatory in nature, fall outside the Joint Committee Agreement, and the partnership working between Adur District Council and Worthing Borough Council. Consequently, each Council retains its own responsibility for licensing functions and operates its own Licensing Committees.
- 1.2 Constitutional and procedural arrangements relating to Licensing at Adur District Council and Worthing Borough Council vary and this report provides an opportunity for governance arrangements and procedure rules to be reviewed. It reviews how governance arrangements and procedures could operate for licensing committees and sub-committees and provides an opportunity to refer to national best practice, produce efficiency savings, streamline procedures, align processes and provide a more effective service to both businesses and lone applicants.

2.0 Background

Worthing Borough Council Licensing Committees

- 2.1 Worthing Borough Council currently has two Licensing Committees, known as 'Licensing Control Committee A' and 'Licensing Control Committee B'. Committee A deals with all licensing matters other than those under the Licensing Act 2003 and the Gambling Act 2005; in reality much of the work of Committee A surrounds hackney carriages and private hire vehicles. Committee B deals with licensing matters under the Licensing Act 2003 and the Gambling Act 2005 and in reality its work concerns premises license applications, temporary event notices, and gaming club or machine permits.
- 2.2 Licensing Committee A sits as a full Committee of 15 appointed Members; it does not have the power to convene a sub-committee. The quorum for Licensing Committee A is 4 Members; substitutes to the Committee are permitted, provided they have had appropriate training within the preceding two years.

- 2.3 Licensing Committee B sits as a full Committee of 15 Members but also has the power to convene sub-committees of 3 Members to discharge its functions. Individual applications for premises or gambling licenses are heard by a sub-committee of Committee B, with any review hearings being heard by the full Committee B. The quorum for Licensing Committee B is 4 Members, whilst the quorum for a sub-committee is 3 Members. Substitutes on Committee B are not permitted, but substitutes are permitted onto sub-committees of Committee B, from the full Committee.
- 2.4 The current arrangement of the full Committee hearing applications and reviews can lead to the same Members reviewing their earlier decisions and a risk that potentially all Members may be conflicted when sitting to hear a review matter. If the applications and reviews were dealt with by Sub-Committees it could be ensured that the composition of the Sub-Committees differed reducing potential for conflict. The Sub-Committee could be more agile when determining applications and reviews with a smaller membership.

Political Balance

- 2.8 Licensing Committees are required to be politically balanced in accordance with s.101(1) of the Local Government Act 1972, when dealing with non Licensing Act 2003 and Gambling Act 2005 matters (e.g. when dealing with hackney carriage and private hire vehicle matters). They are not required to be politically balanced when dealing with Premises Licence applications and Gambling applications under the 2003 and 2005 Acts, although it is considered good practice to maintain political impartiality. Both Councils' Licensing Committees are politically balanced, (the Membership of Committees A and B at Worthing Borough Council are the same) and compliant with statutory requirements.
- 2.9 There is no requirement for Sub-Committees of the Licensing Committees to be politically balanced, although generally, where possible, Officers ensure that they are.

Executive Members

- 2.10 The Council's constitutions do not specify whether or not an Executive Member may sit on a Licensing Committee. Whilst there is no legal restriction on appointing Executive Members to Licensing Committees, it is clear that licensing cannot be an Executive function. Worthing Borough Council currently has 2 Executive Members on its Licensing Committees, although it is noted this may have changed after the May Elections. There is no legal restriction on appointing Executive Members to licensing committees.

Licensing Procedure Rules

- 2.12 Both Councils have a set of Licensing Procedure Rules which differ significantly, and neither forms part of the Councils' constitutions.
- 2.13 In Worthing, those individuals who have made representations relating to an

application may speak first at a hearing and are questioned, following which the applicant may make representations and is questioned. At the end of the hearing, the applicant sums up, followed by those who have made representations. It could be argued that this procedure is contrary to the principles of natural justice, which should provide for the applicant to have the opportunity of speaking first on their application and also of having the last word of summing up.

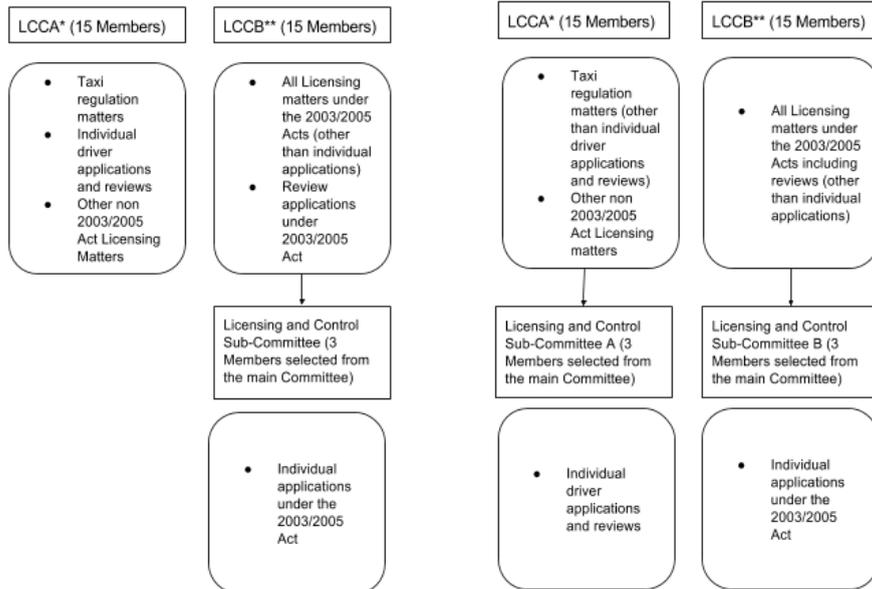
- 2.15 The Council allows discretion within the procedure rules for the Chair to amend the rules for a particular hearing, provided that the principles of natural justice continue to be complied with.

3.0 Proposals

- 3.1 It is proposed that the current arrangements are changed to a more cost effective streamlined model and aligned, for both authorities. The current model used at Worthing results in individual applications being heard by a full Committee. An individual who submits an application for a hackney carriage/private hire drivers licence can find it very intimidating to have to face a full Committee to make their application and receive representations. The current arrangements can be disproportionate, unnecessary, contrary to the principles of natural justice and may in themselves lead to grounds for an appeal or challenge. They may also be contrary to Article 6 of the Human Rights Act relating to the right to a fair trial.
- 3.2 A review of other local authorities in Sussex has shown that the vast majority use the Licensing Committee with Sub-Committee model. It is therefore proposed that each authority should have its own Full Committee and the ability to appoint a Sub Committee.
- 3.3 The Full Licensing Committee would cover all areas of licensing including gambling, premises licences, private hire and hackney carriages, street trading and make decisions about all licensing activity and in particular policy changes. A Sub-Committee can be more agile when determining individual applications with a smaller membership and is more practical.
- 3.4 It is proposed at Worthing there are Licensing and Control Committee A and B (LCCA and LCCB) both made up of 15 members that have the power to set up Sub-Committees of 3 Members of the main Committee for the purpose of hearing individual applications and reviews from gambling/premises and hackney carriage and private hire licence holders. LCCA would deal with Taxi regulation matters and all other non-2003/05 Act Licensing matters. LCCB would deal with all Licensing matters under 2003/2005 Acts.

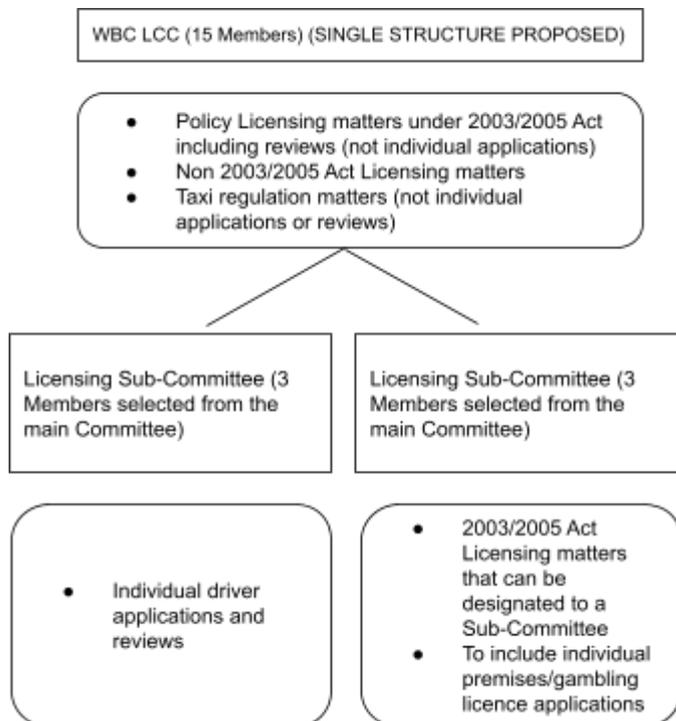
WBC LICENSING COMMITTEE CURRENT

WBC LICENSING COMMITTEE PROPOSED



*Licensing and Control Committee A **Licensing and Control Committee B

3.5 This could be streamlined further by just having a single Licensing Committee that would deal with all Licensing matters and have the ability to appoint a sub committee for all individual licensing matters.



Quorum

- 3.7 It is proposed that the quorum of Worthing Borough Council's Licensing and Control Committees be set at 5 Members to reflect a third of the Committee membership rather than a quarter, to ensure fairness of process.
- 3.8 It is proposed that the quorum of Sub-Committees be kept at 3 Members. The full membership of each Sub-Committee is 3 Members and having a quorum of 3 does present practical difficulties if a Member should be absent or late, with little notice. This arrangement would necessitate a substitute being on 'standby' for every meeting, or risk meetings having to be aborted 'on the night'.

Licensing Procedure Rules

- 3.10 It is proposed that the Monitoring Officer be delegated authority to draft revised Licensing Procedure Rules in accordance with the provisions of this report, and incorporate them into each Council's constitution. The procedure rules would retain the discretion for the Chair to amend the rules for a particular case where appropriate to do so.

Scheduling of Meetings

- 3.11 As the Country has emerged from a pandemic which saw a number of lockdowns which severely affected all licensing regimes the Licensing service has seen a notable upturn in new applications, variations, enquiries and complaints. This has significantly impacted upon the workload of the Licensing section and in turn there has been an increase in the number of Committee meetings.
- 3.12 Currently meetings of the Committees are scheduled for evenings and if there was flexibility to hold meetings both during the day and evenings this would crucially increase the total available time and reduce the impact of a large volume of meetings in the evenings.
- 3.13 A mixture of daytime and evening meetings would also serve the licensing trade more proportionately as some businesses and individuals work during the daytime as do the responsible authorities.

4.0 Legal

- 4.1 Section 101 Local Government Act 1972 allows the Councils to establish Committees and Sub-Committees to consider private hire and hackney carriage matters. Such committees must be politically balanced.
- 4.2 Section 6(1) Licensing Act 2003 provides that a Licensing Authority must establish a Committee to deal with premises and gambling licences, amongst other matters, under the Licensing Act 2003 and the Gambling Act 2005, and that its membership must be between 10 and 15 Members. Section 9(1) Licensing Act 2003 states that a Licensing Committee may establish one or more Sub-Committees, consisting of 3 Members of the Committee.
- 4.3 The Councils' constitutions set out the terms of reference of the Council's Licensing

Committees and it is proposed they will also include Licensing Procedure Rules in due course. However a Council's constitution or standing orders cannot override the legislative provisions.

- 4.4 The Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2013 specify that any function of a Licensing Authority relating to the Licensing Act 2003 cannot be an Executive function.

5.0 Financial implications

- 5.1 Should individual Councils' licensing functions be dealt with by smaller Sub-Committees rather than full Committees, savings will be realised by more effective meetings, officer and member time and sundry costs relating to printing and postage.

6.0 Recommendation

- 6.1 That Worthing Borough Council Licensing and Control Committees A and B consider the proposals in this report and makes recommendations to the Joint Governance Committee for decision.

Local Government Act 1972

Background Papers:

The Councils' Constitutions

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Schedule of Other Matters

1.0 Council Priority

1.1 Matter considered and will have a positive impact on Council Priorities.

2.0 Specific Action Plans

2.1 Matter considered and no significant issues identified.

3.0 Sustainability Issues

3.1 The proposal will result in a reduction in use of natural resources.

4.0 Equality Issues

4.1 Matter considered and no significant issues identified.

5.0 Community Safety Issues (Section 17)

5.1 Matter considered and no significant issues identified.

6.0 Human Rights Issues

6.1 Matter considered within the body of the report.

7.0 Reputation

7.1 Matter considered within the body of the report.

8.0 Consultations

8.1 Matter considered and no consultation requirements identified

9.0 Risk Assessment

9.1 Matter considered and no significant issues identified]

10.0 Health & Safety Issues

10.1 Matter considered and no significant issues identified

11.0 Procurement Strategy

11.1 Matter considered and no significant issues identified

12.0 Partnership Working

12.1 Matter considered and no significant issues identified

Licensing and Control Committee 'A'

Constitution: 15 Members of Council - the same membership as the Licensing and Control Committee 'B' (jointly known as Licensing and Control Committee A&B)

Terms of Reference

General

- a) The Committee is a committee of the Council appointed under section 101(2) of the Local Government Act 1972;
- b) The Council has arranged under section 101(1) of that Act for the discharge by the Committee of the Council's functions as are within the terms of reference (set out below);
- c) Certain functions are delegated by this Committee to Officers, full details of which may be found in the Officer Scheme of Delegations in Part 4 of this Constitution;
- d) Where a function or matter within the Committee's competence has been delegated to an Officer, the Committee may exercise that function or matter concurrently with the Officer to whom it has been delegated;
- e) The exercise of any function or matter within the Committee's competence is subject to any relevant requirement of the Constitution;
- f) The Committee shall consist of 15 Members;
- g) The Committee shall be quorate with 4 or more Members.
- h) The Committee has a sub-committee named the Licensing and Control A Sub Committee.
- i) Substitutes are permitted on Licensing and Control Committee A, provided they have received appropriate training.

Except for matters of policy and for those matters reserved to Full Council, to undertake all licensing functions, powers and duties conferred on the Council (except under the Licensing Act 2003 and the Gambling Act 2005), including but not limited to the matters set out below:

No	Delegation	Legislation
1	Powers to license hackney carriages and private hire vehicles	a) as to hackney carriages: Town Police Clauses Act 1847, as extended by section 171 of the Public Health Act 1875, and section 15 of the Transport Act 1985; and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 b) as to private hire vehicles: sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
2	Powers to license drivers of hackney carriages and private hire vehicles	Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
3	Power to license operators of private hire vehicles	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
4	Power to fix fares for hackney carriages	Local Government (Miscellaneous Provisions) Act 1976
5	Power to license sex establishments	Section 2 and Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982

6	Power to license market and street trading	Part III of, and Schedule 4 to, the Local Government (Miscellaneous Provisions) Act 1982
7	Power to license and control scrap metal dealers	Scrap Metal Dealers Act 2013
8	Power to license persons to collect for charitable and other causes	Police, Factories etc. Act 1916 and House to House Collections Act 1939
9	Power to make an order to designate a public place under the Criminal Justice and Police Act 2001	Criminal Justice and Police Act 2001
10	Power to license premises for acupuncture, tattooing, semi-permanent skin colouring, cosmetic piercing and electrolysis	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982
11	Power to obtain particulars of persons interested in land, where relevant to the other functions of the Committee	Local Government (Miscellaneous Provisions) Act 1976
12	Power to license pleasure boats and pleasure vessels	Section 94 of the Public Health Act (as amended) 1907
13	Power to license premises for the breeding of dogs	Animal Welfare Act 2006
14	Power to authorise officers to inspect premises for the breeding of dogs	Animal Welfare Act 2006
15	Power to register and license premises for the preparation of food	Section 19 of the Food Safety Act 1990
16	Power to license land as a caravan site and attach and alter conditions to site licences	Section 3(3) of the Caravan Sites and Control of Development Act 1960
17	Power to license dangerous wild animals, power to inspect premises and power to seize and dispose of animals without compensation	Section 1 of the Dangerous Wild Animals Act 1976
18	Power to grant consent for the operation of a loudspeaker in streets or roads	Schedule 2 to the Noise Nuisance and Statutory Act 1993
19	Power to license and inspect thereafter, pet shops	Animal Welfare Act 2006
20	Power to license, and inspection of, riding establishments	Animal Welfare Act 2006
21	Power to control use of moveable dwellings	Section 269(1) of the Public Health Act 1936
22	Power to license zoos	Section 1 of the Zoo Licensing Act 1981
23	Animal welfare powers – entry and search under warrant in connection with offence and inspection of premises and documents	Animal Welfare Act 2006 (all functions insofar as they are Non-Executive functions)
24.	Power to issue entertainments licences.	Section 12 of the Children and Young Persons Act 1933, section 52 of, and Schedule 12 to, the London Government Act 1963, section 79 of the Licensing Act 1964, sections 1 to 5 and 7 of, and Parts I and II of the Schedule to, the Private Places of Entertainment (Licensing) Act 1967 and Part I of, and Schedules 1 and 2 to, the Local Government (Miscellaneous Provisions) Act 1982
25	For the avoidance of doubt Licensing and Control Committee 'A' shall not determine any matters arising from the Licensing Act 2003. All such matters shall be determined by Licensing and Control Committee 'B'.	

Licensing and Control 'A' Sub Committee

Membership: 3 members selected on each occasion by the Director for Communities from the 15 members of the Licensing and Control Committee A, which shall normally include the Chair or Vice-Chair of that committee.

Terms of reference: Except for matters of policy, to undertake all licensing functions, powers and duties conferred on the Council (except under the Licensing Act 2003 and the Gambling Act 2005), including but not limited to the matters set out below:

1. The Council's licensing and enforcement functions relating to individual licences, consents or permits for:
 - a) hackney carriages and private hire drivers, vehicles, and private hire operators' licences (taxi licences)
 - b) caravan sites
 - c) animal welfare
 - d) street trading
 - e) public protection
 - f) sex establishments where the Director of Communities considers the matter merits the SubCommittee's attention.

2. In particular the Sub-Committees will consider and determine matters relating to licences, permits, approvals, orders, consents or similar authorisations under the above provisions where the Director of Communities considers that the matter merits the Sub-Committee's attention.

Licensing and Control Committee 'B'

General:

- a) This is a Committee of the Council appointed under section 6 of the Licensing Act 2003;
- b) The Council has arranged under section 9 of that Act for the discharge by the Committee of such of the Council's functions as are within the terms of reference set out below;
- c) The Committee may establish one or more sub-committees in accordance with the provisions of the Licensing Act 2003; any such sub-committees are authorised to discharge all relevant functions under the Licensing Act 2003 and the Gambling Act 2005. A sub-committee shall consist of 3 Members of the Licensing Committee;
- d) Certain functions are delegated by this Committee to Officers. Full details may be found in the Officer Scheme of Delegations;
- e) Where a function or matter within the Committee's competence has been delegated to an Officer, the Committee may exercise that function or matter concurrently with the Officer to whom it has been delegated;
- f) The exercise of any function or matter within the Committee's competence is subject to any relevant requirement of the Constitution;
- g) The Committee shall consist of 15 Members.
- h) Substitutes are not permitted on Licensing and Control Committee 'B' and substitutes on any sub-committee are only permissible from Licensing and Control Committee 'B';
- i) The quorum for Licensing and Control Committee 'B' shall be 4 or more Members.
- j) The quorum for any sub-committee shall be 3.
- k) Procedures adopted at hearings of Licensing and Control Committee 'B' and its sub-committees may be determined by that Committee subject to complying with all relevant regulations.
- l) Licensing and Control Committee 'B' and any of its sub-committees are authorised to make exceptions to any such procedure where appropriate, subject to complying with all relevant regulations.

Terms of Reference

Licensing Act 2003

Except for matters of policy, to undertake all functions, powers and duties conferred by the Licensing Act 2003, including but not limited to the matters set out below:

No	Delegation	Legislation
1.	Power to determine applications for personal licences.	Part 6 of the Licensing Act 2003.
2.	Power to determine applications for premises licences and club premises certificates.	Part 3 and 4 of the Licensing Act 2003
3.	Power to determine applications for variation of premises licences and club premises certificates.	
4.	Power to remove designated premises supervisors.	Licensing Act 2003
5.	Power to determine applications for transfer of premises licences.	
6.	Power to review premises licence and club premises certificates.	
7.	Power to determine pre-subjections to temporary event notices.	

Gambling Act 2005

Except for matters of policy, to undertake all functions, save for the determination as to whether or not to issue a casino premises licence, powers and duties conferred by the Gambling Act 2005, including but not limited to the matters set out below.

No	Power/Function	Legislation
1.	Duty to comply with requirement to provide information to Gambling Commission	Section 29 of the Gambling Act 2005
2.	Functions relating to exchange of information	Section 30 of the Gambling Act 2005
3.	Functions relating to occasional use notices	Section 39 of the Gambling Act 2005
4.	Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises	Section 304 of the Gambling Act 2005
5.	Power to make order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises	Section 284 of the Gambling Act 2005
6.	Power to institute criminal proceedings	Section 346 of the Gambling Act 2005
7.	Power to exchange information	Section 350 of the Gambling Act 2005
8.	Where representations have been received and not withdrawn, to determine an application for a premises licence.	Gambling Act 2005
9.	Where representations have been received and not withdrawn, to determine an application for a variation to a premises licence.	Part 8, Gambling Act 2005
10.	Functions relating to the determination of fees for premises licences	Gambling (Premises Licence Fees) (England and Wales) Regulations 2007

11.	Where representations have been received and not withdrawn, to determine an application for a transfer to a premises licence.	Part 8, Gambling Act 2005
12.	Where representations have been received and not withdrawn, to determine an application for a provisional statement.	Gambling Act 2005
13.	Where representations have been received and not withdrawn, to determine an application for a club gaming or club machine permit.	
14.	Power to cancel a club gaming or club machine permit.	
15.	Power to determine to give a counter notice to a temporary use notice.	
16.	Power to take action after a review has been heard under Section 201	
17.	Power to issue premises licences and to receive temporary use notices.	
18.	Power to dis-apply Section 279 and 282(1) of the Act.	
19.	Power to revoke premises licences for non-payment of fee or dis-apply Section 193 of the Act.	
20.	Power to determine prize gaming permits.	
21.	Power to determine licensed premises gaming machine permits.	
22.	Functions relating to the registration and regulation of small society lotteries	Part 5 of Schedule 11 to the Gambling Act 2005

Licensing and Control 'B' Sub-Committee

Membership: To consist of 3 Members and substitute(s) selected on each occasion by the Director of Communities from the 15 members of the Licensing and Control Committee B

Terms of Reference

1. To determine the following under the Licensing Act 2003 including the imposition of appropriate conditions on Licences:

- a) Applications for personal licences – if a Police objection
- b) Applications for personal licences with unspent convictions – all cases
- c) Applications for Premises Licences/Club Premises Certificates – if an adverse relevant representation subsists*
- d) Applications for provisional statements – if an adverse relevant representation subsists*
- e) Applications to vary Premises Licences/Club Premises Certificates – if an adverse relevant representation subsists*
- f) Applications to vary Designated Premises Supervisors – if a Police objection
- g) Applications for transfer of Premises Licences – if a Police objection
- h) Applications for Interim Authorities – if a Police objection
- i) Applications to review Premises Licences/Club Premises Certificates – if an adverse relevant representation subsists*
- j) Decisions to object when Local Authority is a consultee and not the relevant authority considering the applications – all cases
- k) Determinations of an objection to a Temporary Event Notice – all cases

(*Most cases will be considered by a Sub Committee but the Director of Communities may refer the determination of a case to the Licensing and Control Committee A instead if he considers it merits their attention).

2. To determine the following under the Gambling Act 2005 including the imposition of appropriate conditions on licences:

- a) Applications for premises licences – where representations have been received and not withdrawn
- b) Application for a variation to a licence – where representations have been received and not withdrawn
- c) Applications for a transfer of a licence – where representations have been received and not withdrawn
- d) Application for a provisional Statement – where representations have been received and not withdrawn
- e) Review of a premises licence
- f) Application for club gaming/club machine permits – where objections have been made and not withdrawn
- g) Cancellation of club gaming/club machine permits
- h) Decision to give a counter notice to a temporary use notice