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Meeting	Licensing Committee
Date	21 February 2005
Subject	Licensing Hearings Procedure
Report of	Head of Committee, and Borough Solicitor
Summary	Hearings Regulations under the Licensing Act 2003 require Authorities to agree a procedure which they will follow in conducting Licensing Hearings. This report recommends a procedure based on the Regulations.

Officer Contributors	John Marr, Democratic Services Manager; Sarah Meyer, Principal Solicitor (Litigation).
Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix A – Hearings Regulations
For decision by	Licensing Committee
Function of	Council, acting as Licensing Authority
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: John Marr – Democratic Services Manager on 020 8359 2031

1. RECOMMENDATIONS

- 1.1 That the Committee note the Hearings Regulations published by the Secretary of State detailed at Appendix A;**
- 1.2 That the Committee approve and adopt the draft Hearings Procedure, detailed in the supplementary paper to this report, as the procedure to be used by this Licensing Authority for the conduct of Hearings under the Licensing Act 2003;**
- 1.3 That the Procedure be reviewed periodically and amended as required to reflect legislative changes and developing best practice; and**
- 1.4 That the Head of Committee be authorised, in consultation and agreement with the Chairman and Vice-Chairman, to make any minor or consequential amendments to the Procedure as might be required.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Council, 26 October 2004 (Minute 86) noting the position on the Draft Regulations; Council, 14 December 2004 (Minute 110) approving the Licensing Policy; Licensing Committee, 19 January 2005 (Minute 4) noting the requirements of the finalised Regulations and instructing officers to develop an appropriate Hearings Procedure for approval by the Committee.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Hearings Procedure will directly support the delivery of the Council's approved Licensing Policy and will enable the Council to discharge its obligations under the Licensing Act 2003.

4. RISK MANAGEMENT ISSUES

- 4.1 Agreement of a procedure to be followed at Licensing Hearings is a requirement of the Legislation. Failure to have a procedure in place by the time the Licensing Hearings begin would breach statutory requirements.
- 4.2 As with all of the Council's activities, over-arching principles of Common Law, Natural Justice and Human Rights apply.
- 4.3 In respect of the Licensing Act 2003 Hearings, the requirements of the Regulations made under that Act to provide on the one hand a hearing in the form of a discussion and, on the other, a maximum period of time for parties to make their case gives rise to a potential risk of challenge.
- 4.4 If the Procedure is too prescriptive in setting rigid time limits, parties may argue that Natural Justice had not been allowed to prevail and that a fair hearing had not taken place. If, however, the Procedure does not specify a time limit, then there would be a technical breach of the Regulations.
- 4.5 The risk which requires to be managed is to develop a procedure which balances the strict letter and spirit of the Regulations with Natural Justice and Human Rights requirements.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

5.1 None within the context of this report.

6. LEGAL ISSUES

6.1 None, other than those already addressed in the report.

7. CONSTITUTIONAL POWERS

7.1 Constitution Part 3 – 2 – Responsibility for Council Functions.

8 BACKGROUND INFORMATION

8.1 The Licensing Act 2003 (Hearings) Regulations 2005 came into force on 7 February 2005. The Regulations had been published for consultation in September last year, with the consultation period ending on 10 November.

8.2 The Regulations require Licensing Authorities to determine the procedure to be followed at their Licensing Hearings.

8.3 On 19 January, the Committee considered a proposed Hearings Procedure based on the draft Regulations which had, at the time, still not been finalised.

8.4 Changes to the finalised Regulations meant that the Hearings Procedure proposed in January had to be re-worked in order to reflect the new requirement for Hearings to be discursive rather than adversarial. New Regulation 23 states that “A Hearing shall take the form of a discussion led by the Authority...”.

8.5 The Regulations also state that parties to the Hearing must be allowed an equal maximum period of time in which to make their representations.

8.6 The Hearings procedure to be adopted must strike a balance which allows parties equal opportunity to put their case within the context of a discussion. As referred to in Section 4, above, the risk is that the Procedure must balance the technical requirements and the spirit of the Regulations and Act with the wider principles of Natural Justice and Human Rights.

8.7 Officers have developed a Hearings Procedure which balances these requirements, is in accordance with the Regulations, and which takes account of current guidance and thinking in this area.

8.8 The Procedure is detailed in the supplementary paper to this report.

9 LIST OF BACKGROUND PAPERS

9.1 Hearings Regulations (appended).

BS: SAM; BT: CM