



# LICENSING

No Specific Ward Relevance

## Committee

17th May 2010

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### LICENSING ACT 2003 – GAMBLING ACT 2005 DELEGATION TO OFFICERS

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(Report of the Head of Legal Equalities & Democratic Services)

#### 1. Summary of Proposals

To appoint the Head of Regulatory Service, as an officer of the Council under s113 of the LG Act 1972, to discharge the functions as set out in the Council's scheme of delegation as currently delegated to the Head of Environmental Health / Manager Environmental Health / Licensing Manager and Licensing Officer, prior to 1 June 2010 when the Regulatory Service for Worcestershire under the Worcestershire Enhanced Two-Tier (WETT) programme, comes into being.

#### 2. Recommendations

The Committee is asked to **RESOLVE** that:

- 1) the functions under the Licensing Act 2003 and the Gambling Act 2005 currently delegated to the Head to Environment / Environmental Health Manager / Licensing Manager / Licensing Officer be delegated to the Head of Regulatory Service;
- 2) the Head of Regulatory Service be authorised to further delegate those functions, these further delegations to be recorded within the Constitution once made; and
- 3) the authorisation of prosecutions for offences under the Licensing Act 2003 and the Gambling Act 2005, be delegated to the Head of Regulatory Service.

#### 3. Financial, Legal, Policy, Risk and Climate Change / Carbon Management Implications

##### Financial

- 3.1 None identified.

### 3.2 Legal

Under the Licensing Act 2003 and the Gambling Act 2005, delegation to officers must be made by the Licensing Committee.

### 3.3 Policy

None identified.

### Risk

### 3.4 The Licensing Authority should be satisfied that the administration of licensing applications under the Licensing Act 2003 and Gambling Act 2005, can continue from 1 June 2010, when the new Regulatory Service becomes active.

The current Constitution's Scheme of Delegation to Officers refers only to the authorisation of prosecutions under the Gambling Act 2005 and the prosecution of offences under the Licensing Act 2003 is not currently included. This gap is a risk as we must be able to evidence the authority to prosecute.

### Climate Change / Carbon Management

### 3.5 None identified.

### Report

## 4. Background

4.1 As part of the Worcestershire Enhanced Two-Tier programme of Shared Services, Members have agreed to participate in the establishment of a Worcestershire-wide Regulatory Service, which is due to commence on 1 June 2001.

4.2 Prior to that date it is necessary for each Authority to ensure that its Constitutional arrangements accommodate the Head of the Regulatory Service. who will be an officer of the Authority by virtue of s 113 of the Local Government Act 1972.

## 5. Key Issues

5.1 Under the Licensing Act 2003 and the Gambling Act 2005, the Council is the "Licensing Authority" but other than matters of Policy, the discharge of the Licensing Authority's functions are referred to its

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Licensing Committee, which must discharge those functions on behalf of the Authority.

- 5.2 It is the Licensing Committee which then delegates to an Officer.
- 5.3 By virtue of s113 of the Local Government Act 1972, the Head of the Regulatory Service is an officer of the Council when discharging the duties of that post.
- 5.4 The Committee is asked to authorise the Head of Regulatory Service to further delegate within the service. There is a principle of constitutional law which states that “Delegatus non potest delegare”.  
  
(a delegate cannot delegate) unless the original delegation explicitly authorises it.
- 5.5 Recommendation 3 regarding authorisation of prosecutions for offences under the Licensing Act 2003 in addition to offences under the Gambling Act 2005, addresses a necessary addition to the existing scheme of Delegation to Officers, which only refers to offences under the Gambling Act 2005.

## 6. Other Implications

- |                                  |   |  |
|----------------------------------|---|--|
| Asset Management                 | - | None identified.   |
| Community Safety                 | - | Prosecution of offences under the Licensing Act 2003 and the Gambling Act 2005 will contribute to Community Safety within the Borough. |
| Health                           | - | None identified.   |
| Human Resources                  | - | None identified  |
| Social Exclusion                 | - | None identified.   |
| Environmental/<br>Sustainability | - | None identified.   |

## 7. Lessons Learnt

N/A

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**8. Background Papers**

The Licensing Act 2003.  
The Gambling Act 2004

**9. Consultation**

This report has been prepared in consultation with relevant Borough Council Officers.

**10. Author of Report**

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**11. Appendices**

None.