

LGR - Constitution Documents for proposed new Licensing function

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1. Summary

- 1.1.** The Somerset (Structural Changes) Order 2022, signed by the Secretary of State for Levelling Up, Housing and Communities on the 17 March 2022 proposes a single tier of Local Government for Somerset with effect from 1 April 2023. On that date the four district Councils, Mendip, Sedgemoor, Somerset West and Taunton and South Somerset are to be wound up and abolished. Their functions are to be transferred to the new Council.
- 1.2.** Presently all four Districts and the County Council have licensing functions.

2. Issues for consideration / Recommendations

- 2.1.** The proposals detailed in this report, offer a structure that will bring the County and District licensing functions together in a single Committee format.

The Constitution and Governance Committee is asked to –

- (1) Approve the proposals set out in paragraphs 2.2 to 2.8 below, in relation to revision of the Council's Constitution.
- 2.2.** It is proposed that a new regulatory Committee be established to be known as the **Licensing and Regulatory Committee** for the discharge of the Council's licensing, certification and registration functions to include matters presently set out in paragraphs (d)-(m) of the terms of reference of the County Council's Regulation Committee.
- 2.3.** It is proposed that the new Licensing and Regulatory Committee will establish a standing Sub-Committee to be known as the **Regulatory Sub-Committee**, to consider and determine applications and/or matters that by law or in accordance with the Council's adopted Policies or this Constitution require a hearing to be conducted.
- 2.4.** It is proposed that the new Licensing and Regulatory Committee will establish a standing Sub-Committee to be known as the **Licensing Sub-Committee**, to consider and determine any applications and or/ matters that by law or in accordance with the Council's adopted Licensing Policy and Gambling Statement of Principles or this Constitution require a hearing to be conducted.

- 2.5. A structure chart of the proposed new committees can be seen at Appendix 1 to this report.
- 2.6. Proposed Terms of Reference for the new Committee and its two Sub-Committees are set out at Appendix 2 to this report.
- 2.7. The proposed Scheme of Delegation for the licensing functions is set out at Appendix 3 to this report.
- 2.8. Attached at Appendix 4 is the proposed Hearing Procedure Rules for hearings conducted before the Licensing Sub-Committee. Whilst written for the Licensing Sub-Committee, they can be easily adapted for any licensing hearing. Following current common practice it is proposed to extract the Rules relating to "At Hearing" into a "tick box" list for the Chair to enable an easy single glance to ascertain where the procedure is at any stage of the hearing.

3. Background

- 3.1. Composition of the licensing committees. The Local Government and Housing Act 1989 has introduced a requirement that appointments by 'relevant authorities' (and committees of relevant authorities) to committees, sub-committees and other bodies achieve a political balance.

The provisions of the 1989 Act apply to -

- Ordinary committees and Sub-Committees, and
- Advisory committees and sub-committee.

Ordinary committees are later defined to include a Council's social services committee and all others appointed under section 102(1)(a) of the Local Government Act 1972, which section provides for appointments pursuant to arrangements under s.101 of the same Act.

The licensing committee is appointed under the Licensing Act 2003 and not under the general powers of the Local Government Act 1972 and so are more akin in nature of social service committees, which are appointed pursuant to a separate enactment. This interpretation is reinforced by the consequential amendments enacted as part of the Licensing Act 2003, which add a new subsection to s.101 of the Local Government Act 1972 to the effect that the section does not apply to any function under the Licensing Act 2003. There are no consequential amendments to Schedule 1 of the Local Government and Housing Act 1989. For these reasons, there is no legal requirement of political balance on licensing committees. However good practice dictates that licensing committees reflect the political make-up of the authority on their licensing committees as a matter of good governance.

- 3.2. It is proposed that because of their size (3 Members) and frequency, the Regulatory Committee and the Licensing Sub-Committee operate without

political balance.

4. Consultations undertaken

- 4.1.** Licensing Professionals across all the Somerset Districts, LGR Governance Workstream and the Legal Sub-Workstream together with the joint Leads for the Service Alignment Workstream and the S151 Officer
- 4.2.** The constitution documents for the licensing function at Buckinghamshire and Dorset Unitary Councils' have been taken into consideration in the creation of the proposed Constitution documents for the licensing function for the new Somerset Council.

5. Implications

- 5.1.** Details of the scheme for licensing functions for Somerset Council and how it will operate will need to be in place at vesting day. Members of the proposed Licensing and Regulation Committee will require training ahead of vesting day as without it, they will be unable to sit on the new Committee and Sub-Committees.
- 5.2.** Without a scheme for licensing functions, any decisions purporting to be taken, will be unlawful and open to legal challenge.

6. Background papers

- 6.1.** None

Note For sight of individual background papers please contact the report author

Appendices:

Appendix 1: Structure Chart – Proposed Committee Structure

Appendix 2: Proposed Terms of Reference (TOR)

- Licensing and Regulatory Committee
- Regulatory Sub-Committee
- Licensing Sub-Committee
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Appendix 2: Proposed Scheme of Delegation for Licensing Functions

Appendix 3: Licensing Sub-Committee Hearing Procedure