

**CABINET REPORT**

**8 SEPTEMBER 2010**

**UPDATING THE CONSTITUTION**

**Report of the Chief Executive and Chief Solicitor**

**1. PURPOSE OF THE REPORT**

- 1.1 To propose further amendments to the Constitution.

**2. DESCRIPTION OF THE DECISION**

- 2.1 That Council be recommended to note and endorse as appropriate:-

- (a) the amendments to the terms of reference of the Scrutiny Committees and the Audit and Governance Committee;
- (b) that the Director of Human Resources and Organisational Development in consultation with the Director of Financial Resources, be granted delegated powers to consider and, where appropriate, approve all future requests for flexible retirement where it is considered to be in the employer's interest to approve the request, subject to such decision being reported to Personnel Committee for information and subject also to the right of appeal to the Personnel Committee against any such refusals being conferred upon the employee;
- (c) to give notice of its intention to apply Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009 in its area and that it is intended such restrictions shall come into force on the date that is two months after the date on which the resolution is passed (to regulate further sex establishments); and that the delegated powers of the Executive Director of City Services be revised to reflect new legislative requirements as set out in the report to the Licensing Committee of 6 September 2010 appended hereto;
- (d) the Protocol for Members in relation to licensing matters be amended as set out in the report to Licensing Committee of 6 September 2010 appended hereto;
- (e) the arrangements for the transfer of delegated powers and the position of Monitoring Officer set out in paragraph 4.5.1 of the report, to give effect to the Council's revised management structure.

### 3. INTRODUCTION AND BACKGROUND

- 3.1 It is necessary to amend the Council's Constitution from time to time in order to ensure that the document remains up to date and reflects new legislative requirements and current practice within the Council.
- 3.2 This report deals with changes in the terms of reference of the Scrutiny Committees, changes in relation to flexible retirements, (a Council function exercised by Personnel Committee) and other amendments required to reflect the new establishment structure, licensing and other miscellaneous issues.

### 4. CURRENT POSITION

#### 4.1 Amendments to the terms of reference of Scrutiny Committees (Article 6 of the Constitution)

##### Proposals

- 4.1.1 In light of the completion of a successful year using the new arrangements and being strategically aligned to priorities, it is proposed to further strengthen the additional Scrutiny Committee by repositioning the Sustainable Communities Scrutiny Committee to have a much more themed and outward focused approach.
- 4.1.2 The proposed remit includes the topic areas covered within the original remit, and has a particular regard to the sustainability of these initiatives in the future but goes further in enabling the Scrutiny Committee to take wide, and outward facing approach to specific, tangible issues.
- 4.1.3 The Sustainable Communities Scrutiny Committee's proposed new remit is as follows:

General Scope	Remit
Creating Community	Building Partnerships, Civic Engagement, Justice & Equity, Mediation, Culture, Heritage
Protecting Natural Resources	Water, Energy, Air & Climate, Biodiversity, Land and Ecosystems
Governing Sustainability	Public/Private Partnerships, Community Relations
Living Sustainably	Lifestyles, Recreation, Sport, Play, Responsible Buying and Consumption, Healthy Homes & Property

Sustainable Communities	<u>Add</u> Leisure Facilities	Currently not specifically included and would be covered by the new broad remit.
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Sustainable Communities	<u>Add</u> Community Development & Compact	Currently not included and would contribute to more than one of the new overarching themes
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- 4.1.4 In addition to the suggested improvement and strengthening of the Sustainable Communities Scrutiny Committee, a small number of additions are required to the existing remits as follows:-

<b>Scrutiny Committee</b>	<b>Amendment</b>	<b>Comment</b>
Prosperity and Economic Development	<u>Add</u> Port (Operational and Non-Operational)	Currently not included in remits.
Community & Safer City	Food Law Enforcement	This Article 4 Plan relates to ensuring that the local authority enforcement activity and monitoring of food businesses is carried out correctly and is currently within the remit of Health and Wellbeing Committee
Environmental and Attractive City	<u>Add</u> Flood risk	Accords with Pitt review recommendations

- 4.1.5 The Scrutiny Committees' approach was broadened to address wider city issues and to meet the commitments of the Council and its partners to achieving improvement. The thematic approach has assisted the Committees' focus on detailed scrutiny, LAA priorities and the Sunderland Strategy. In this way scrutiny is beginning to play a much more active role in scrutinising the contribution of the Council, external organisations and partners to service delivery and shared objectives.
- 4.1.6 The new remits established at the beginning of the municipal year 200/10 have worked well and allowed scrutiny to meet the challenges facing it in a way that would raise overview and scrutiny in Sunderland to best practice levels.
- 4.1.7 The improvements proposed in this report are intended to strengthen further the operation of scrutiny and to keep scrutiny at the forefront of innovative practice generally and to support initiatives around creating sustainable communities.
- 4.1.8 These proposed amendments have been considered at an informal meeting of Scrutiny Chairs and Vice-Chairs and will be reported to Management Scrutiny Committee on 23 September for formal endorsement.

- 4.1.9 In addition it is proposed that the Audit and Governance Committee will undertake a monitoring role of the Council's activities under the Regulations of Investigatory Powers Act 2000 (RIPA) as set out in detail in another report on this agenda.

## 4.2 **Flexible Retirement Policy**

- 4.2.1 In November 2009, Members considered a report in order to establish a Council policy in respect of Flexible Retirement. The approved policy is outlined below:-

Stage 1 – Establishment of a Business Case taking account of the following:

- A minimum reduction in salary or hours of the individual employee of 25% is required and changes to contract terms and conditions will be a permanent change.
- Employees must have 26 weeks continuous service with Sunderland City Council.
- Applications will only be considered where the full release of pension benefits is being requested.
- Any waiving of actuarial reductions in pension benefits will be considered on an individual basis, and only approved where it is in the Council's interest to do so, taking into account the overall business case.

Stage 2 – Consideration by Personnel Committee

- Applications will only be approved where it is in the Council's interests to do so.

- 4.2.2 It is proposed that this policy be amended in relation to Stage 2 only. The proposed amendment is outlined below:-

Stage 2 – Consideration by the Director of HR & OD in consultation with the Director of Financial Resources

- Applications will only be approved where it is in the Council's interests to do so.

4.2.3 It is proposed to amend the policy in relation to Stage 2 due to the anticipated increase in the number of applications for flexible retirement, as a consequence of the current need to generate efficiency savings in response to reductions in public sector funding. By delegating the approval of all future requests, where it can be established it is in the Council's interest to approve the request, the Council can start to realise efficiencies more quickly, as requests can be considered as and when they are submitted. Currently if an application is received after the deadline for a Personnel Committee agenda the request cannot be considered until the next meeting of Personnel Committee. During this period the Council could have considered the request and if appropriate to approve, could have realised efficiencies following the request much sooner. This is also beneficial for the employee as they can start their new working pattern earlier and achieve better work life balance earlier. Indeed, many of the requests received to date have indicated that employees wish to start their new working arrangements as quickly as possible.

4.2.4 The Personnel Committee recommended that the Director of Human Resources and Organisational Development in consultation with the Director of Financial Resources, be granted delegated powers to consider and, where appropriate, approve all future requests for flexible retirement where it is considered to be in the employer's interest to approve the request, subject to such decision being reported to Personnel Committee for information and subject also to the right of appeal to the Personnel Committee against any such refusals being conferred upon the employee.

#### 4.3 **Revision of the delegated powers of the Executive Director of City Services**

4.3.1 The delegations are necessary to reflect changes to the Licensing Act 2003 and to extend the powers available to environmental protection enforcement officers under the Town and Country Planning Act 1990 and the Environment Act 1995.

#### 4.4 **Amendment of the Protocol for Members in relation to licensing matters**

This amendment relates to change of status of Ward Members to that of an "interested party" for the purposes of the Licensing Act 2003.

#### 4.5 **Transfer of delegated powers of the Chief Solicitor**

4.5.1 It is necessary to transfer powers currently delegated to the Chief Solicitor under the Constitution and all other ad hoc delegations in relation to specific matters which remain extant, to the Head of Law and Governance with effect from 1 October 2010 to reflect the Council's revised establishment structure. The Head of Law and Governance is also designated as Monitoring Officer for the purposes of Article 12 of the Constitution.

- 4.5.2 It will be also necessary to transfer the relevant powers currently delegated to the Director of Financial Resources under the Constitution to the new Executive Director of Commercial and Corporate Services to take effect when the new appointee takes up that position. This will be the subject of a further report.

## **5. REASONS FOR DECISION**

- 5.1 It is necessary to revise and update the Constitution for the detailed reasons set out in the report.

## **6. ALTERNATIVE OPTIONS**

- 6.1 Accordingly no alternative options are submitted for consideration.

## **7. BACKGROUND PAPERS**

Sunderland City Council Constitution.

**LICENSING COMMITTEE  
2010**

**6TH SEPTEMBER**

**LICENSING – AMENDMENTS TO CONSTITUTION – DELEGATIONS OF  
FUNCTIONS**

**Report of Chief Solicitor and Executive Director of City Services**

**1. Purpose of Report**

- 1.1 To update and amend the Delegation Scheme and Protocol to take account of recent changes made to the Licensing Act 2003 and adopt the new powers inserted into the Local Government (Miscellaneous Provisions) Act 1982 and to extend the powers available to Environmental Protection Enforcement Officers under the Town and Country Planning Act 1990 and Environment Act 1995.
- 1.2 These proposals are also contained in an overarching report on amendments to the Constitution to be considered by Cabinet on 8th September and Council on 29th September, 2010.

**2. Description of Decision (Recommendations)**

That the Council be recommended to resolve to:-

- Give notice of its intention to apply Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended by Section 27 of the Policing and Crime Act 2009) in its area and that it is intended such restrictions shall come into force on the date that is two months after the date on which this resolution is passed.
- That the delegations to the Executive Director of City Services be amended to reflect the recent changes made to the Licensing Act 2003 and to extend the powers available to Environmental Protection Enforcement Officers under the Town and Country Planning Act 1990 and Environment Act 1995. (Appendix 1)
- Amend the Protocol for Members in relation to Licensing and Gambling matters to reflect the change of status of Ward Members to one of an "interested party" for the purposes of Licensing Act 2003 applications. (Appendix 2)



### **3. Introduction/Background**

#### Sex Establishments

- 3.1 The law has changed in respect of lap dancing and local authorities now have discretion to include such activities under the category of "sex establishments" under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. A new category of sex establishment is introduced – namely a "sexual entertainment venue" – to include venues where entertainment such as lap dancing and pole dancing, is provided. In areas where these new provisions are adopted, existing establishments have until 6th April 2011 to apply for a new Sex Establishment Licence to be able to continue to operate lawfully. The change will allow local people for the first time to oppose an application for such a club on the basis it would be inappropriate for their area. In order to acquire these new licensing powers, the Council need to adopt Schedule 3 of the 1982 Act (as amended). If the Council does not pass a resolution to adopt the new powers before 6th April 2011, it is required to consult local people as soon as practicable thereafter about whether it should make such a condition.

#### Licensing Act 2003 and extensions of powers to Environmental Protection Officers

- 3.2 Changes have been made to the Licensing Act 2003 by the introduction of a simplified process for minor variations to premises licences and club premises and the removal of the requirement for a Designated Premises Supervisor and Personal Licence Holder at community premises. The intention behind the changes is to speed up and simplify the licensing process. Small variations that will not impact adversely on the licensing objectives will no longer be required to be advertised or served on responsible authorities. Applicants will, however, still have to display a notice at the premises. Similarly, there has been a relaxation of the rules relating to the supply of alcohol at community premises like church or village halls.

The changes requested to the Delegation Scheme reflect the changes and the necessity to delegate non-contentious licensing functions to officers to enable them to be dealt with in a timely manner. All contentious matters will still remain exclusively within the remit of Members to decide. The existing delegations to the Executive Director of City Services under paragraph 8.6 have been consolidated and re-organised incorporating the new changes in paragraphs 8.6 to 8.37. Gambling and licensable activities under the Licensing Act 2003 have been added to the enforcement areas included in the former paragraphs 8.7 and 8.38.

The delegations requested under the Town and Country Planning Act 1990 and the Environment Act 1995 are to enable Environmental Protection Officers to issue notices, request information, enter land and action offences committed in particular regarding fly tipping. (See paragraph 8.36 (s) and (ccc)).

## Protocol in relation to Licensing and Gambling matters

- 3.3 Members were advised by the Chief Solicitor on 28th January, 2010 that a Commencement Order had been made to bring into force on 28th January, 2010 provisions including making all Councillors 'interested parties' and able to make representations about any licensing applications under the 2003 Act. It does not limit Members to just making representations within their own wards, they can do so generally. The amendments to the Protocol for Members in Relation to Licensing and Gambling matters to reflect these changes are contained in paragraphs 5.52 and 9.2 set out in Appendix 2. The remainder of the Protocol remains unchanged.

## **4 Reasons for the Decision**

- 4.1 The Council, by making the decisions recommended, will enable local residents to have the opportunity to object to lap-dancing clubs on the basis such establishments would be inappropriate for their area. The other decisions will ensure that appropriate delegations are in place to enable the administration and approval of non-contentious licensing applications to be dealt with in a speedy and efficient manner. Finally, the changes to the Protocol will ensure that Members are aware of their change in status and the increased opportunity it gives them to make representations about licensing applications they believe will impact upon their constituents.

## **5 Alternative Options**

- 5.1 No alternative options are submitted for consideration as the proposals are considered to be the optimum course of action for the Council.

## **6 Relevant Consultations**

- 6.1 The Council must consider representations made in response before passing the resolution under the 1982 Act. Any representations will be considered by Licensing Committee and by full Council in November 2010.

## **7 Background Papers**

The Guidance issued under Section 182 of the Licensing Act 2003 published 28th January, 2010.

The Policing and Crime Act 2009 (Commencement No. 3) Order 2010. SI 2010 No. 125 – re members as interested parties.

The Policing and Crime Act 2009 (Commencement No. 4) Order 2010. SI 2010 No. 507 – re lap dancing as sex establishments.

The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 SI 2009 No. 1772.

The Licensing Act 2003 (Premises Licences and Club Premises Certificates (Miscellaneous Amendments)) Regulations 2009 SI 2009 1809.

## APPENDIX 2

Consolidated and re-organised changes to the delegated powers of the Executive Director of City Services incorporating the new statutory provisions in respect of licensing and gambling.

Paragraphs 8.1 to 8.5 remain the same.

### **Licensing Act 2003 – delegations**

- 8.6 To reject representations from interested parties if they are frivolous or vexatious.
- 8.7 Subject to consultation with appropriate officers or authorities, where no representations have been received or they have been withdrawn:-
  - (a) to grant a Premises Licence (s18);
  - (b) to grant a Provisional Statement (s31);
  - (c) to grant a variation of a Premises Licence (s34);
  - (d) to grant a Club Premises Certificate (s72);
  - (e) to grant a variation of a Club Premises Certificate (s85).
- 8.8 To issue a copy of a Premises Licence, Club Premises Certificate or Personal Licence and to certify it as a true copy (ss25, 79, 110 & 126).
- 8.9 Where no notice under s37(5) has been received or it has been withdrawn, to grant a variation of a Premises Licence to specify an individual as Premises Supervisor (s39).
- 8.10 Subject to consultation with appropriate officers or authorities to grant or reject an application for a minor variation of a Premises Licence (s41B).
- 8.11 Where no notice under s42(6) has been received or it has been withdrawn, to grant a transfer of a Premises Licence (s44).
- 8.12 To update a Premises Licence, Club Premises Certificate or Personal Licence (ss53, 93 & 134).
- 8.13 Subject to consultation with appropriate officers or authorities to grant or reject an application for a minor variation of a Club Premises Certificate (s85B).
- 8.14 To acknowledge receipt of a Temporary Event Notice (s102).
- 8.15 To issue a Counter Notice where the permitted limits for a Temporary Event Notice are exceeded (s107).

- 8.16 Where no Objection Notice has been received, to grant or renew a Personal Licence (ss120, 121).

### **Gambling Act 2005**

- 8.17 To reject representations from interested parties if they are frivolous or vexatious.
- 8.18 Subject to consultation with appropriate officers or authorities, where no representations have been received or they have been withdrawn:-
- (a) to grant a Premises Licence;
  - (b) to grant a Variation of a Premises Licence;
  - (c) to grant a transfer of a Premises Licence;
  - (d) to grant a Provisional Statement.
- 8.19 To update a Premises Licence (s186).
- 8.20 To issue a copy of a Premises Licence and certify it as a true copy (s190).
- 8.21 To revoke a Premises Licence upon non-payment of the annual fee (s193).
- 8.22 To apply for the review of a Premises Licence (s197) (in Executive Director of City Services' capacity as responsible for pollution and health).
- 8.23 To initiate a review of a Premises Licence (s200) (in Executive Director of City Services' capacity as responsible for licensing authority).
- 8.24 To set fees under Part 8 of the Gambling Act 2005 (s212).
- 8.25 To acknowledge a Temporary Use Notice (s220).
- 8.26 To propose modification of a Temporary Use Notice (s223).
- 8.27 To endorse a Temporary Use Notice (s227).
- 8.28 To grant or renew applications for Family Entertainment Centre Gaming Machine Permits under Schedule 10 of the Gambling Act 2005 (s247).
- 8.29 To register small society lotteries under Schedule 11 of the Gambling Act 2005 (s258).
- 8.30 To grant or renew applications for Club Gaming Permits and Club Machine Permits under Section 12 of the Gambling Act 2005 (s274).

- 8.31 To grant or renew applications for Licensed Premises Gaming Machine Permits in respect of premises licensed for the sale of alcohol for consumption on the premises under Schedule 13 of the Gambling Act 2005 (s283).
- 8.32 To grant or renew applications for Prize Gaming Permits under Schedule 14 of the Gambling Act 2005 (s289).
- 8.33 To authorise officers of the Council under s304 of the Gambling Act 2005.

### **Miscellaneous**

- 8.34 Subject to consultation with appropriate officers and authorities, where no representations have been received or they have been withdrawn:-
- (a) to grant applications for consent for the holding of displays of hypnotism;
  - (b) to grant renewal and transfers of sex establishment licences under Part II of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982;
  - (c) to grant street trading consents for traders who wish to trade for a period of up to one calendar month under Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982;
  - (d) to renew street trading consents under Part III and Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982;
  - (e) to authorise street collections taking place on any day of the week and location within the authority's area, under the Police, Factories etc (Miscellaneous Provisions) Act 1916, subject to there being no objections received from Northumbria Police or the Deputy Chief Executive;
  - (f) to authorise House to House Collections under the House to House Collections Act 1939;
- 8.35 To licence and renew hackney carriage and private hire vehicle licences where the vehicle is suitable in type, size, design, age and is mechanically safe and comfortable.
- 8.36 Current paragraph 8.7 to be re-numbered as paragraph 8.36 with the following additions after the word "Tattooists":
- Gambling.
  - Licensable activities under the Licensing Act 2003.

and after the words “(v)(v) Zoo Licensing Act 1981:

(w)(w) Environmental Protection Act 1995 (Sections 108 to 110)

(x)(x) Town and Country Planning Act 1990 (Sections 215 to 219).

Thereafter the current delegated powers contained in paragraphs 8.8 to 8.52 are unamended but will be re-numbered accordingly.

## **APPENDIX 3**

Changes to Protocol.

5.52A (e) a Member of the relevant licensing authority.

In respect of all Licensing Act 2003 applications, Councillors are interested parties and able to make representations. Members are able to make representations on any application.

9.2 Under the Licensing Act 2003 and the Gambling Act 2005, Ward Members are "interested parties" and can make representations as such.