



**Belfast City Council**

<b>Report to:</b>	Strategic Policy & Resources Committee
<b>Subject:</b>	<b>Application of Delegated Powers to the Licensing Committee</b>
<b>Date:</b>	20 <sup>th</sup> June, 2008
<b>Reporting Officer:</b>	Liam Steele, Head of Committee & Members' Services
<b>Contact Officer:</b>	Stephen McCrory, Principal Committee Administrator

**Relevant Background Information**

Members will recall that, as part of the Council's review of governance in June, 2007, a Licensing Committee was established to:

1. bring about sustainable decision-making in regard to the grant, transfer or variation of Entertainments Licences and Amusements Permits in a more efficient time frame;
2. address the concerns of the public in respect of licensing issues in a more timely manner;
3. assist Members in producing more robust decisions which were legally defensible;
4. reduce the time taken to arrive at a corporate decision in regard to licences and permits; and
5. ensure that all parties could expect a full and proper hearing as provided for by the Human Rights Act 1998.

In order to assist the Committee in these aims, the Council granted delegated authority for determining matters in relation to:

- (i) the grant, renewal, transfer, variation, suspension and revocation of Entertainments Licences and the grant, renewal, transfer, variation and revocation of Licences for Sex Establishments;
- (ii) the grant of Amusements Permits and Pleasure Permits and for the Registration of Societies in relation to the running of Lotteries;
- (iii) the designation of streets or parts thereof for the purpose of street trading and the grant, renewal, transfer, variation and revocation of stationary, mobile and temporary street trading licenses and the

setting of Licence fees

- (iv) the administration of the provisions of the Licensing (Northern Ireland) Order 1996 and Registration of Clubs (Northern Ireland) Order 1996 which relate to entertainments and liquor licensing in licensed premises and registered clubs; and
- (v) such other licensing matters as the Director of Health & Environmental Services considers appropriate to be addressed by the Committee.

In addition, the Director of Health and Environmental Services has delegated power in relation to the issue (but not refusal) of permits and licences where no adverse representations have been made and the Police Service of Northern Ireland has not offered any objections to the application. The Director, in consultation with the Director of Legal Services, also has the option of referring back for further consideration any decision made by the Committee. This power is supposed to be employed in situations where relevant information, which it is considered would have impacted on the Committee's decision had it been known at the time or where legal advice can demonstrate that a decision taken is likely to be overturned on appeal, becomes available after the Committee has made a decision.

At the Strategic Policy & Resources Committee meeting on 23<sup>rd</sup> May and again at the Council meeting on 2<sup>nd</sup> June, a degree of concern was expressed by a number of Members at the use of the Licensing Committee's delegated authority. The Committee requested that a report on these matters be submitted for consideration at its meeting on 20<sup>th</sup> June.

### **Key Issues**

In considering the matter, there would appear to be three main options open to the Committee. The first option is to continue as at present with full delegated authority on licensing matters, the second is to remove all delegated authority and subject all Committee decisions to Council ratification and the third is to restrict the type and/or extent of the delegated authority which the Committee may exercise.

#### Option 1 – Maintain full delegated authority

The Licensing Committee has been operating effectively for almost one year. It should be borne in mind that 18 applications for entertainments licences have been considered by the Committee since June 2007. The decisions arrived at were agreed unanimously in all cases. With regard to the issue of Amusements permits, only one of the three decided upon was put to a vote, where 8 members voted for and 7 against. Accordingly, there has been a disagreement at Committee on one occasion only in almost an entire year of operation.

Given the quasi judicial nature of the work of the Committee, a representative of the Director of Legal Services is in attendance at all meetings to offer legal advice and direction in order to protect the Council and the individual Members of the Committee. In addition, the Committee, in its early days of operation, established, in conjunction with the officers of the Health & Environmental Services and Legal Services Departments, an information booklet for the Members of the Committee to guide them in the application of their delegated authority.

The Licensing Committee, under its delegated authority, hears deputations from applicants, objectors and the Police in relation to licence applications. The Committee is able to take its decisions without reference to the full Council and this means that the persons forming the deputations have no right of appearance at the monthly Council meetings. If delegated authority were to be removed or restricted then the final decision-making body on applications will cease to be the Licensing Committee and will become the full Council and, accordingly, the applicants, objectors and Police will be able to appear at full Council. This was the practice in previous years and proved to be frustrating for all Members. One of the reasons for granting the delegated authority in the first place was to prevent this “doubling up” of the right of deputations to be heard.

The Director of Legal Services has also expressed his concern that a procedure whereby final decisions are taken at a full Council meeting when many Members voting may not be fully conversant and familiar with all the details of an application would potentially leave the Council open to legal challenge.

#### Option 2 – Remove all delegated authority

This would have the effect of making the Licensing Committee like most of the other Standing Committees where all decisions require to be ratified by the full Council. This would have the effect of slowing down the decision-making process and would restore the right of deputations to be heard at full Council.

While such a change would provide greater safeguards for the individual Members of the Committee and would ensure that the final decision reached on any application had the backing of the majority of Members of the Council, it is considered that this would be a backward step given that the exercise of delegated authority has in most cases not given any cause for concern. Again, the Director of Legal Services would reiterate the concerns expressed regarding the potential for leaving the Council in a vulnerable position.

#### Option 3 – Restrict the use of delegated authority

The Council’s Town Planning Committee operates a system of delegated authority when considering planning applications which applies only if the decision is unanimous. In other words, if only one Member of the Committee votes against a decision then the matter is referred to the full Council for ratification. A similar system could be introduced for the Licensing Committee so that, if it is decided that unanimous decisions are required before delegated authority is exercised then this will enable one Member to have any application for a licence to be referred to full Council, with the result that the Council meeting will be required if requested to hear deputations from the applicants, the objectors and the Police. However, the same difficulties which have been identified in relation to Option 2 would also apply in this case.

#### Conclusion

The Directors of Health & Environmental Services and Legal Services are of the opinion that any concerns which Members might have in relation to the propriety of the Council’s decision-making process can be dealt with by the development of more robust protocols in relation to the management of the Committee’s business without it being necessary to remove the delegated authority granted in June 2007. As noted above, the Director of Legal Services has concerns in relation to potential legal challenges against the Council in the event of a change in the current delegation arrangements, particularly in the context of the possible future transfer of responsibility for intoxicating liquor licensing to Local Government and the resulting increase in the level and complexity of licensing issues which the Council would be required to deal with.

<b>Resource Implications</b>
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<u>Financial</u>
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There are no major financial implications for the Council.
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<b>Recommendations</b>
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That, in light of the information contained in the report, the Committee agrees to the adoption of Option 1 for the operation of the Licensing Committee, that is, the retention of full delegated authority.
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