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| Meeting Date | 19 May 2010 |
| Report Title | Establishment of Committees and their terms of reference |
| Portfolio Holder | Leader |
| SMT Lead | Director of Corporate Services |
| Head of Service | Interim Head of Legal |
| Lead Officer | Democratic and Electoral Services Manager |
| Key Decision | No |
| Classification | Open |
| Forward Plan | Reference number: |

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| Recommendations | 1. That a Licensing Act 2003 Committee be established with terms of reference as set out in paragraph 2.4 and that members agree the size of the committee at 15 members, as set out in the political balance calculations. |
| | 2. That the Committees set out in paragraph 2.2 of this report be established for the municipal year 2010/11, with the terms of reference as set out in Part 3 section 2 of the Constitution, subject to any amendments. |
| | 3. That a "General Licensing Committee" be established, with 10 members, to deal with non-Licensing Act 2003 functions. |
| | 4. That amendments to the Constitution resulting from the revised establishment of Committees are agreed as set out in paragraphs 2.2 and 2.4. |
| | 5. That it be noted that the Terms of Reference and Rules of Procedure for the Standards Committee need to be reviewed to include the local filter and that a report be considered by the Standards Committee on 14th July with a view to the amendments being submitted to Council on 21st July for approval. |

Purpose of Report and Executive Summary

- 1.1 The Executive are asked to recommend to Council the Committee structure and terms of reference for Committees for the municipal year 2010/11.

2 Background

- 2.1 The Council must establish:
- (a) At least one Overview and Scrutiny Committee
 - (b) The Standards Committee
 - (c) A Committee under the Licensing Act 2003

And may establish other committees.

2.2 Part 3 of Swale Borough Council's Constitution makes provision for the following Committees and their terms of reference set out in the Constitution:

- Policy Overview Committee
- Scrutiny Committee
- Standards Committee
- Planning Committee
- Licensing Committee and a Licensing Sub-Committee (now Licensing Act 2003 Committee and Licensing Committee)
- Hackney Carriage and Private Hire Vehicles Committee
- Audit Committee
- General Purposes Committee
- Appointments Committee
- Emergency Committee

2.3 Licensing Committees

2.3.1 Under the terms of the Licensing Act 2003 the Council is required to establish a Licensing Committee comprising between 10 and 15 Members, with the responsibility to undertake all the functions of the licensing authority, except:

- (a) approving the Authority's Licensing Statement under Section 5 of the Act;
- (b) referring licensing matters to another Committee under Section 7(5) of the Act;
- (c) under Section 7(9) of the Act, where the Licensing Committee is unable to discharge its functions because of the number of its members who are unable to take part in the consideration of any matter or vote, in which case the Committee must refer the matter to the Council.

2.3.2. This committee also has the responsibility to undertake all the functions of the licensing authority under Part 8 of the Gambling Act 2005, except:

- (a) approving the Authority's licensing policy under Section 349 of the Act;
- (b) deciding not to issue casino licences under Section 166 of the Act;
- (c) under Section 7(9) of the 2003 Act as applied by the Gambling Act 2005, where the Licensing Committee is unable to discharge its functions because of the number of its members who are unable to take part in the consideration of any matter or vote, in which case the Committee must refer the matter to Council.

- 2.3.3. The Licensing Committee currently comprises of 15 members, appointed in accordance with political proportionality. This is the maximum size allowable and assists with the formation of sub-committees to hear applications as any three members could be drawn from the Licensing Committee to sit as the Licensing Sub-Committee.
- 2.3.4. Schedule 6 (Minor and Consequential Amendments) of the Licensing Act 2003 amends section 101 of the Local Government Act 1972. The effect of this amendment is that nothing in Section 101 applies in relation to any function under the Licensing Act 2003 of a Licensing Authority. The requirement for the Licensing Act 2003 Committee to be politically balanced does not apply, but is recommended.
- 2.3.5. The wording of the Licensing Act 2003 indicates that the committee discharging those functions should only deal with those functions and related matters. This is supported by views expressed by the DCMS and LACORS.
- 2.3.6. It is therefore proposed that the authority establishes a Licensing Act 2003 Committee and ad hoc licensing sub-committees to carry out licensing functions as set out by the 2003 Act and that non-Licensing Act 2003 matters are dealt with by either:-
- The Hackney Carriage and Private Hire Vehicles Committee or
 - A Licensing Committee made up of the same members as the Licensing Act 2003 Committee.
- 2.3.7. The following terms of reference would be appropriate for the Committee dealing with Licensing Act 2003 matters:
1. To review and make recommendations to Council upon policies in relation to licensing matters under the Licensing Act 2003 and the statement of licensing policy.
 2. To discharge the Council's functions as a Licensing Authority under the Licensing Act 2003, within agreed policy.
 3. To review and make recommendations to Council upon policies in relation to licensing matters under the Gambling Act 2005 and the statement principles.
 4. To discharge the Council's functions as a Licensing Authority under the Gambling Act 2005, within agreed policy.
 5. To arrange for the discharge of any of the licensing functions exercisable by the Committee to an Officer of the Licensing Authority subject to the limitations set out in Section 10(4) of the Licensing Act 2003 and Section 154 of the Gambling Act 2005.

6. To discharge any other Council function which relates to a matter which is a licensing function under the Licensing Act 2003 or the Gambling Act 2005, but which is not a licensing function (i.e. street trading) after consideration of a report from the Licensing Section.

2.4. Standards Committee

2.4.1 Terms of Reference and Rules of Procedure of the Standards Committee should be reviewed to incorporate best practice and to take into account the duties and obligations imposed on the Committee and the Monitoring Officer by Section 185 of the Local Government and Public Involvement in Health Act 2007. This is commonly referred to as the "local filter".

3 Proposal

3.1 It is proposed that the Licensing Act 2003 Committee should be established to discharge the functions of the Licensing Act 2003. Non Licensing Act 2003 functions should be carried out by the "General Licensing Committee".

4 Alternative Options

4.1 That the non Licensing Act 2003 functions are transferred to the Hackney Carriage and Private Hire Vehicles Committee.

5 Consultation Undertaken or Proposed

5.1 The Licensing Committee considered a report proposing a new Licensing Act 2003 Committee on 16 March 2010 and resolved to recommend to Council that a Licensing Act 2003 Committee be established.

6 Implications

| Issue | Implications |
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| Corporate Plan | Becoming a high performing organisation |
| Financial, Resource and Property | The cost of servicing the Council's committees will be met within existing budgets. The establishment of any additional Committees would have financial and human resource implications. |
| Legal and Statutory | The report has been prepared in consultation with the Interim Head of Legal and the relevant legislation has been included in the body of the report. |
| Crime and Disorder | None identified at this time. |
| Risk Management and Health and | None identified at this time. |

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| Safety | |
| Equality and Diversity | None identified at this time. |
| Sustainability | None identified at this time. |

7 Appendices

7.1 None

8 Background Papers

8.1 Swale Borough Council Constitution