

LONDON BOROUGH OF CROYDON

REPORT:	LICENSING COMMITTEE	
DATE OF DECISION	18 November 2024	
REPORT TITLE:	LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005 AND GAMBLING ACT 2005 (PROCEEDINGS OF LICENSING COMMITTEES & SUB-COMMITTEES) (PREMISES LICENSES AND PROVISIONAL STATEMENTS) (ENGLAND AND WALES) REGULATIONS 2007 PROCEDURES FOR LICENSING SUB-COMMITTEE HEARINGS	
CORPORATE DIRECTOR / DIRECTOR:	Nick Hibberd, Corporate Director Sustainable Communities, Regeneration and Economic Recovery	
LEAD OFFICER:	Michael Goddard Head of Environmental Health Trading Standards and Licensing	
LEAD MEMBER:	Councillor Scott Roche Cabinet Member for Streets & Environment	
AUTHORITY TO TAKE DECISION:	Licensing Committee is responsible for reviewing and adopting Protocols which set out the procedures under which hearings for Licensing Act 2003 and Gambling Act 2005 matters are to be considered and determined. (Article 15 Part 2 of the Constitution read with Part 3 (Licensing Committee functions) and as set out in Parts 5F and Part 5G to the Constitution.	
KEY DECISION?	No	REASON: N/A
CONTAINS EXEMPT INFORMATION?	NO	N/A
WARDS AFFECTED:	All	

1. SUMMARY OF REPORT

- 1.1 This Report provides an update to Members following a recent High Court decision which confirms that remote hearings for matters under the Licensing Act 2003 remain permissible. The report requests Members to consider the outcome of a review of the current protocols which apply to hearings under the Licensing Act 2003 (Part 5F Protocol for Licensing Hearings under the Licensing Act 2003) and Gambling Act 2005 (Part 5G Protocol for Licensing Hearings Under the Gambling Act 2005) and recommends the adoption of minor amendments to the protocols to reflect recommendations arising from the recent high court decision and to reflect legislative changes. There are also suggested amendments to the protocols to reflect changes to the composition of the Committee as appointed by Full Council and to facilitate hearings, including those which are undertaken remotely.

2 RECOMMENDATIONS

For the reasons set out in the report and its appendices, the Licensing Committee is recommended to -

- 2.1** Approve the revisions to the protocol for Licensing Sub-Committee hearings under the Licensing Act 2003 as set out in full at Appendix 1 to this report for use in relation to Licensing Sub-Committee meetings.
- 2.2** Approve the revisions to the protocol for Licensing Sub-Committee hearings under the Gambling Act 2005 as set out in full at Appendix 2 to this report for use in relation to Licensing Sub-Committee meetings under the Gambling Act 2005.
- 2.3** Note the outcome of the recent High Court decision in respect of remote licensing sub-committee hearings and the impact for the Licensing Authority.

3. REASONS FOR RECOMMENDATIONS

- 3.1** The recommendations are to amend the Protocols which apply to hearings before the Licensing Sub-Committee under the Licensing Act 2003 (Part 5F) and under the Gambling Act 2005 (Part 5G) to ensure that they remain appropriate and fit for purpose. The amendments include a recommendation to remove reference to Covid-19 related legislation which has been repealed and to make consequential amendments to the Protocols to ensure the smooth running of the hearings procedures.

4. BACKGROUND AND DETAILS

Case Law update:

- 4.1** Members will be aware that specific legislation was introduced during Covid which permitted meetings of the Council (held under the Local Government Act 1972) to take place remotely (online) to allow business to continue to be conducted during restrictions on movement and gathering of people. In addition to meetings of the Full Licensing Committee held during that time, the Licensing Sub-Committee hearings were also conducted remotely.
- 4.2** Members will also be aware that hearings before the Licensing Sub-Committee (which is the council's statutory committee for licensing and gambling related hearings) are governed by the provisions of the Licensing Act 2003 (and Gambling Act 2005 when hearing gambling matters) and the associated regulations which set out the manner in which the Council, when exercising licensing functions under that legislation, should proceed. There are, for example, specific provisions around who should be heard at such a hearing, the production of documents and evidence to the Sub-committee, the time frames within which certain types of hearings must be conducted and the time frames within which determinations and notifications need to take place.

- 4.3 Croydon have utilised remote licensing sub-committee meetings since Covid and have consistently found greater participation from members of the public and engagement in local democracy as part of the hearings in raising concerns and participating in licensing hearings because of the ease of joining a remote meeting rather than having to travel in to the council buildings to do so. The Licensing Committee has adopted specific procedures for both in person and remote hearings which are included as annexes to the Licensing Hearings Protocol (and Gambling Hearings Protocol) within the Constitution and are shared with parties prior to any remote hearing.
- 4.4 On 11th July 2024, the High Court handed down judgement in a challenge to the lawfulness of remote Licensing Sub-Committee hearings under the Licensing Act 2003 and ruled that they are lawful. (And reiterated that they are not conducted under or governed by the Local Government Act 1972 as other local authority meetings are).
- 4.5 In summary, the Appellant – the owner of South London nightclub, Silks – held a premises licence which was revoked in late 2022, following an application for summary review by the Metropolitan Police. As it had done consistently since the onset of the pandemic, the hearing before the London Borough of Lewisham’s Licensing Committee took place remotely, using Microsoft Teams. The Appellant appealed against the revocation. Among its grounds of appeal was a challenge to the use of a remote hearing procedure.
- 4.6 That issue was considered as a preliminary issue by DJ Abdel Sayed sitting at Bromley Magistrates’ Court, who ruled that remote hearings were permitted under the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005. The Appellant appealed against the District Judge’s ruling to the High Court. The appeal was heard by Chamberlain J in May 2024.
- 4.7 In dismissing the appeal, the judge held that remote hearings are lawful:
- In the absence of an express statutory definition of “hearing” in either the Act or the Regulations, in principle the term “hearing” could be applied both to an in-person hearing and a remote hearing using video conferencing technology [44].
 - Although the Regulations require a hearing to be held in a “place”, that word is not defined either and nor is it accompanied by words connoting a single geographical location (unlike the provisions for ordinary local authority meetings held under the Local Government Act 1972). Without such qualifying language, an online platform could properly be described as a “place” [45].
 - Section 9(3) of the Act and Regulation 21 of the Regulations– which permit a licensing committee to regulate its own procedure – reflect an intention to confer maximum procedural flexibility, subject to any contrary provision in the Regulations. Therefore the question for the court was not whether remote hearings were permitted but whether they were expressly prohibited. In the court’s judgment, there was no clear indication in the Regulations that remote hearings were precluded [47].
 - A licensing authority is obliged to act fairly and in accordance with procedural rights to a fair hearing under Article 6 ECHR. This requires the licensing authority to consider whether a remote hearing can be held in a way which is fair to all parties: where it would not be, it is obliged to consider alternative arrangements [48].
 - The fact that express provision for remote hearings had been made in Wales did not affect the interpretation of the Act and Regulations insofar as they apply to England. The Welsh provisions simply show how one would draft a provision if the legislator’s

intention was to put beyond doubt the question whether “hearing” includes a remote hearing [42].

- 4.8 The ruling means that all licensing authorities in England and Wales are authorised to hold licensing hearings remotely – either fully remotely or a hybrid procedure (with some participants attending a physical location and others joining through video conferencing technology).
- 4.9 Although the judgment clearly establishes the principle that remote hearings are lawful, it contains only limited guidance on the practicalities of holding a remote hearing. What is clear, however, from the court’s reference to procedural fairness, is that authorities should have a written protocol, setting out:
- criteria for holding an in-person hearing, fully remote hearing or hybrid procedure
 - what constitutes valid attendance by members of the committee, parties to the hearing, officers and members of the public
 - how access to the hearing by members of the public will be ensured
 - additional measures to ensure that a remote hearing will not result in unfairness any party to the hearing

Review of Licensing and Gambling Protocols:

- 4.10 In light of the above referenced Judgement, a review of both Part 5F and 5G have taken place to ensure that they remain appropriate for use and continue to facilitate hearings before the Licensing Sub-Committee in accordance with the relevant legislative provisions.
- 4.11 There are only minor amendments recommended to each of the protocols as set out below at paragraphs 3.13 and 3.14 respectively, predominantly to reflect legislative requirements and the removal of reference in the protocols to Covid related legislation which has been repealed since the protocols were last reviewed by the Committee.
- 4.12 Whilst the protocols seek to provide a standard process, the Chair of a Licensing Sub-Committee is authorised to vary the procedure which applies to an individual Licensing Sub-Committee hearing under the Licensing Act 2003 or under the Gambling Act 2005 if the Chair considers that this would facilitate the proper consideration of the application or notice before the Licensing Sub-Committee. In addition, the Licensing Sub-Committee may waive, vary or modify any part of Part 5F protocol in relation to a particular case if it considers that this is necessary to ensure fairness to the Parties and/or proper consideration of the application in question, provided always that this does not result in any contravention of the Licensing Act 2003 (Hearings) Regulations 2005. The same provision is made in respect of Part 5G, provided always that this does not result in any contravention of the Gambling Act 2005 (Proceedings of Licensing Committees & Sub-Committees) (Premises Licenses And Provisional Statements) (England And Wales) Regulations 2007
- 4.13 The following minor amendments/updates to Part 5F Protocol are recommended:

- Amending the wording relating to when the Protocol was first adopted and most recently updated and adding reference to Part 3 as well as Article 15 of the Constitution in that section
- updates to officer titles throughout
- Correcting formatting and typographical errors
- removal of reference to reserve members as reserve members are no longer appointed to the committee by Full Council
- including the words “where feasible” in para 4.5 as it relates to political balance of the licensing Sub-committee. It is not a statutory requirement that political balance rules are applied to the Sub-Committee, although they are usually observed. The Sub-Committee is not established under the Local Government Act 1972 but under the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005.
- Including wording at 5.2 to address the assumption that hearings will normally be online for the sub-committee but that parties can make a request that the hearing should be in person if they consider it is appropriate to do so and suggesting that this be raised a minimum of 12 working days before the proposed hearing so that arrangements can be made to hold the hearing in person if needed.
- 10.3 – indicating that where parties to a hearing contact a licensing sub-committee member, they will be directed to licensing officers to reflect current advice given to members in this regard.
- A change in emphasis in 12.1 to say that normally notification of the outcome will be made within 5 working days following conclusion of the hearing unless another time frame is specified in the regulations
- A caveat to the wording in 12.4 to say that the police will receive notification where it is provided for by the Act, even if they haven’t made a representation. At the moment it is framed as if they get a copy of the outcome regardless of whether they are required to receive it under the Act (such as for personal license hearings) and regardless of whether they are a party or not, which is an unnecessary additional administrative burden
- At note (1) of Annex 1 – to include the wording “in person” in the first line.
- At note (1) of Annex 2 - to include the wording “remote” in the first line
- to remove reference in Annex 2 note (3), to the coronavirus regulations which have been repealed.

4.14 The following minor amendments/updates are recommended in respect of Part 5G Protocol:

- to update officer titles throughout
- to correct typographical errors and formatting throughout
- Amending the wording relating to when the Protocol was first adopted and most recently updated and adding reference to Part 3 as well as Article 15 of the Constitution in that section
- removal of reference to reserve members as reserve members are no longer appointed to the committee by Full Council
- including the words “where feasible” in para 4.5 as it relates to political balance of the Sub-committee. It is not a statutory requirement that political balance rules are applied to the Sub-Committee, although they are usually observed. The Sub-Committee is not constituted under the Local Government Act 1972 but under the Gambling Act 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees & Sub-Committees) (Premises Licenses And Provisional Statements) (England And Wales) Regulations 2007.

- Including wording at 5.2 to address the assumption that hearings will normally be online/remote for the sub-committee but that parties can make a request that the hearing should be in person if they consider it is appropriate to do so and suggesting that this be raised a minimum of 12 working days before the proposed hearing so that arrangements can be made to hold the hearing in person if needed.
- Update 6.5 to reference that changes to time frame/ postponements of hearings are notified as soon as reasonably practicable as provided for in regulations (rather than forthwith).
- 10.2 – indicating that where parties to a hearing contact a licensing sub-committee member, they will be directed to licensing officers to reflect current advice given to members in this regard.
- A change in emphasis in 12.1 to say that normally notification of the outcome will be made within 5 working days following conclusion of the hearing unless another time frame is specified in the regulations.
- A caveat to the wording in 12.4 to say that the police will receive notification where it is provided for by the Act, even if they haven't made a representation. At the moment it is framed as if they get a copy of the outcome regardless of whether they are required to receive it under the Act and regardless of whether they are a party or not, which imposes an unnecessary administrative burden.
- At note (1) of Annex 1 – to include the wording “ in person” in the first line.
- At note (1) of Annex 2 - to include the wording “remote” in the first line
- to remove reference in Annex 2 note (3), to the coronavirus regulations which have been repealed

4.15 The Committee is recommended to adopt the Protocols, Part 5F (Appendix 1) and Part 5G (Appendix 2), as amended, for use by the Licensing Sub-Committee for all hearings scheduled and convened after the adoption date.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1 The Committee could decide not to make the recommended minor amendments to the Protocols, but it would mean that the Protocols do not fully reflect current legislative provisions and most recent case law regarding Licensing Sub-Committee hearings and are not updated to reflect matters such as current officer titles and current appointments by Full Council.

6. CONSULTATION

6.1 There are no consultation requirements associated with the report content.

7. CONTRIBUTION TO EXECUTIVE MAYOR'S BUSINESS PLAN

7.1 This report links to Outcome 2 of the Mayor's Business Plan 2022-2026 - Croydon is a place of opportunity for business, earning and learning

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

8.1.1 There are no direct financial implications arising from this report. The work associated with it is contained within the departmental budget. This decision will enable officers and Members to be efficient and focus limited resources appropriately in a timely manner.

8.1.2 Approved by: Zaber Ahmed, Head of Finance on behalf of the Director of Finance (08/11/2024).

8.2 LEGAL IMPLICATIONS

8.2.1 There are no additional legal implications arising from the recommendations beyond those set out in the body of the report.

Comments approved by the Head of Commercial, Housing and Litigation Law & Deputy Monitoring Officer, Kiri Bailey on behalf of the Director of Legal Services and Monitoring Officer. (Date 08/11/2024)

8.3 EQUALITIES IMPLICATIONS

8.3.1 The arrangements for the Licensing Sub-Committee Hearings (both in respect of Licensing hearings and Gambling hearings) seek to ensure that all applicants and other interested parties receive a fair hearing and that the process is accessible to all groups within the community. There are no substantive amendments proposed to the existing Protocols as detailed within the report and those amendments that are proposed arise predominantly either as a result of legislative changes (such as revocation of legislation or to mirror legislative provisions) or due to changes made for example to officer titles, appointments to Committees made by Full Council or to correct formatting or typographical errors.

8.3.2 Comments approved by Ken Orlukwu, Senior Equalities Officer, on behalf of Helen Reeves, Head of Strategy & Policy on DATE 08/11/2024.

OTHER IMPLICATIONS

8.4 None

9. APPENDICES

9.1 Appendix 1: Amended Part 5F: Protocol for Licensing Hearings under the Licensing Act 2003

Appendix 2: Amended Part 5G: Protocol for Licensing Hearings under the Gambling Act 2005

10. BACKGROUND DOCUMENTS

None

11. URGENCY

N/A