

EAST HERTS COUNCIL

COUNCIL 15 DECEMBER 2004

REPORT BY THE MONITORING OFFICER

10. AMENDMENTS TO THE CONSTITUTION

WARD(S) AFFECTED: ALL

'D' RECOMMENDATION – that (A) the amendments to the constitution, as detailed in the report now submitted, be approved,

(B) as a consequence of the decision at (A) above, the allocation of seats on Scrutiny Committees and the Development Control and Licensing Committees be as follows:

<u>Committee</u>	<u>Seats</u>	<u>Cons</u>	<u>Lib Dem</u>	<u>KAB</u>	<u>JW</u>	<u>BWJS</u>	<u>DRA</u>	<u>Total</u>
Policy Scrutiny	16	13	2	1	0	0	0	16
Performance Scrutiny	16	13	2	0	1	0	0	16
Call-In Scrutiny	12	10	1	0	0	0	1	12
Development Control	25	20	2	1	1	1	0	25
Licensing	15	12	1	0	0	1	1	15
Total	84	68	8	2	2	2	2	84

(C) Members be appointed to the Committees in (B) above, in accordance with the wishes of the political groups to whom seats have been allocated.

1.0 Purpose/Summary of Report

1.1 Council is invited to consider amendments to the Constitution relation to the Licensing Act 2003 and the Anti-Social Behaviour Act 2003. Council is required to monitor and evaluate the operation of the Constitution. The Monitoring Officer monitors and reviews the Constitution on a regular basis. Recommended changes are included in the report.

2.0 Contribution to the Council's Corporate Objectives

2.1 The proposals contribute to the Council's corporate priority to improve the health and sustainability of the organisation by advancing the target of ensuring the highest standard of corporate governance.

3.0 Background

3.1 The current version of the Constitution was approved by the Council on 12 May 2004.

3.2 To take account of the new powers under the Anti-Social Behaviour Act 2003 and the Licensing Act 2003, it is proposed that the following amendments be made to the Constitution:

3.2.1 The Assistant Director (Regulatory Services) and the Assistant Director (Direct and Contract Services) be given authority to authorise officers to issue graffiti penalty notices, graffiti removal notices and exercise other appropriate powers under the Anti-Social Behaviours Act 2003. The Assistant Director (Development Control) be given authority to authorise officers to exercise powers and duties relating to high hedges under the 2003 Act.

3.2.2 The Assistant Director (Law and Control), Assistant Director (Policy and Performance), Head of Housing and Community Planning and Community Safety Manager be authorised to exercise powers under the Anti-Social Behaviour Act 2003 including consent to closing orders.

3.2.3 The Executive Director (Head of Paid Service) be authorised to make closure of noisy premises orders.

3.2.4 It is proposed that the membership of the Licensing Committee be amended to 15 Members rather than 17 Members in accordance with Section 6 of the Licensing Act 2003. The Committee would appoint a sub-committee to consider licensing applications, consisting of 3 Members, drawn from the Licensing Committee. The

Licensing Committee would have responsibility for all licensing matters.

- 3.2.5 It is also proposed that the officer delegation scheme should be amended to permit the authorised officer the authority to grant applications and licences under the Licensing Act 2003 where there are no objections, dispute or difficulty and to add the Licensing Act 2003 to the list of Acts of Parliament giving relevant officers powers and duties.

4.0 Report

- 4.1 In respect of the new licensing provisions, the proposed amendments are set out in appendix 'A10', (pages 129 – 130).

5.0 Consultation

- 5.1 Consultation has taken place amongst Members, Executive Directors and Assistant Directors.

6.0 Legal Implications

- 6.1 The legal implications have been taken into account in amending the Constitution.
- 6.2 Where Members of the Council are divided into political groups, the provisions of the Local Government and Housing Act 1989, place a duty on the Council to review the allocation between those groups of seats on its Scrutiny Committees and Regulatory Committees according to certain principles. The aim is to ensure that the political composition of the Committees, etc, reflects the composition of the Council. The rules of the proportionality do not apply to the Executive.
- 6.3 There are two duly constituted political groups within East Herts Council. In addition, account must be taken of those Members, if any, who are not Members of political groups on the Council. Those Members are entitled to a proportion of seats in relation to their relative percentage size. It is for Council to appoint such Members to the seats allocated. Details of political group etc sizes are listed below:

Cons:	41	(82%)
Lib Dem:	5	(10%)

Councillors Atkins, Barnes, Sapsford and Warren are independent Members (2% each)

- 6.4 The recommendation at the head of this report identifies the need to allocate seats on the Council's Scrutiny and Regulatory Committees to political groups and non-aligned Members as required by legislation.
- 6.5 The Council is obliged to allocate seats to be occupied by its Members to the political groups into which it is divided. Political groups then nominate the Members of the Council whom they wish to see occupy those seats allocated to them. The nominees need not be a member of the political group which nominates them.
- 6.6 Council must appoint the nominees of the political groups to the seats allocated.
- 6.7 There is no provision within the Council's constitution for substitutes with the exception of the Local Joint Panel and Human Resources Sub-Committee.
- 6.8 Members of the Executive may not be appointed to serve on Scrutiny Committees.
- 6.9 The Licensing Committee need not be proportional if it only deals with duties under the Licensing Act 2003. However, as the Committee will have delegated powers in other areas, such as taxi licensing, it must be proportional.
- 7.0 Financial Implications
- 7.1 There are no financial implications.
- 8.0 Human Resource Implications
- 8.1 There are no implications.
- 9.0 Risk Management Implications
- 9.1 None.

Background Papers

The Constitution, relevant Regulation and Guidance.

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Appendix 'A10'

1. To exercise the powers and duties of the Council with regard to licensing matters under relevant legislation conferring powers and duties relating to the same upon the council and, in particular, to exercise and enforce the Council's local licensing powers.
2. Without prejudice to paragraph 1. to exercise the licensing, regulatory and registration powers and duties of the Council under the following enactments:
 - Animal Boarding Establishments Act 1963
 - Betting, Gaming and Lotteries Act 1963 to 1971
 - Breeding of Dogs Act 1973 and 1991
 - Caravan Sites and Control of Development Act 1960
 - Charities Act 1992 and 1993 (Charitable collections)
 - Cinemas Act 1985
 - Criminal Justice and Police Act 2001 – Sections 12 to 16 (Alcohol free areas)
 - Dangerous Wild Animals Act 1976
 - Game Licences Act 1860
 - Gaming Act 1968
 - Guard Dogs Act 1975
 - House-to-House Collections Act 1939
 - Late Night Refreshment Houses Act 1969
 - Licensing Act 1964
 - Licensing Act 2003
 - Local Government (Miscellaneous Provisions) Act 1976:
 - Part II (Hackney Carriages and Private Hire Vehicles)
 - Local Government (Miscellaneous Provisions) Act 1982:
 - Part I (Licensing of Public Entertainment)
 - Part II (Control of Sex Establishments)
 - Part VIII (Acupuncture, Tattooing etc)
 - Lotteries and Amusements Act 1976
 - Pet Animals Act 1951
 - Police, Factories etc (Miscellaneous Provisions) Act 1916 (Street Collections)
 - Private Hire Vehicles (Carriage of Guide Dogs etc) Act 2002
 - Private Places of Entertainment (Licensing) Act 1967
 - Riding Establishment Acts 1964 to 1970
 - Theatres Act 1968
 - Transport Act 1985 – Section 10 (Immediate hiring of taxis at separate fares)

- Town Police Clauses Acts 1874 and 1889 (Hackney Carriages)
- Zoo Licensing Act 1981

And so much of the above or any other relevant legislation as relates to the above powers, duties and functions of the Council.

Note

The Licensing Committee may appoint such sub-committees as it considers necessary to discharge on its behalf, any of the powers and duties specified by the Committee.

The following Sub-Committees are approved for the current Municipal Year:

Licensing Sub-Committee.