

## Appendix 2

REFERENCE	RECOMMENDED CHANGES AND REASONS THEREFOR
<p><b>Part Two – Article 4 – The Full Council</b> Paragraph 4.04</p>	<p><i>Paragraph 4.04 insert the following:</i> New paragraph</p> <p>"(o) To discharge all functions which must be reserved to Full Council as specified in the Gambling Act 2005, or any other ancillary regulations or legislative provisions amending, consolidating or replacing the same, including :- (a) approving and revising any Statement of Licensing Policy; (b) making a resolution not to issue any further premises licences for casinos in the Royal Borough in appropriate circumstances under Section 166 of the Act."</p> <p><b>Reason:</b> The Council needs additional terms of reference to enable it to carry out the additional functions transferred to it from the Magistrates' Court under the Gambling Act 2005. The Council must be able to approve the Gambling Policy and to make a resolution that there shall be no further premises for casinos in the Royal Borough in appropriate circumstances.</p>
<p><b>Part Two – Article 5 – Role and Functions of the Mayor</b> Paragraphs 5.01 - 5.05</p>	<p><i>Insert the following:</i></p> <p>5.01 "The Council will appoint the Mayor from amongst the Councillors <b>who are not members of the Executive</b>".</p> <p>5.02 "The Mayor may appoint a Councillor of the Royal Borough to be Deputy Mayor, <b>but not from the Executive...</b>"</p> <p><i>Delete paragraph 5.02 (c) from "PROVIDED THAT..." onwards.</i></p>

	<p><i>Delete paragraph 5.02(d)</i>  <i>Delete paragraphs 5.04 and 5.05</i></p> <p><b>Reason:</b>  Stating that the Mayor and Deputy Mayor can only be appointed from among non-Executive Members will remove the need to make provisions for a Deputy Mayor (ceremonial) and Deputy Mayor (vice-chairman).</p>
<p><b>Part Two – Article 6 – Overview and Scrutiny Committees</b>  Paragraph 6.05(b)</p>	<p>Overview and Scrutiny Committee on Cabinet and Corporate Services</p> <p><i>Insert the following:</i></p> <p>6.05(b) "1. business handled by the full Cabinet <b>which does not fall within the remit of another OSC.</b>"</p> <p><b>Reason:</b>  The Cabinet and Corporate Services OSC will be able to concentrate on areas that do not fall within the remit of another OSC. It will avoid duplication of scrutiny and any conflict, unless OSCs agree to a joint review. It will also assist in making scrutiny more transparent to members of the public.</p>
<p><b>Part Two – Article 9 – The Standards Committee</b>  Paragraph 9.01</p>	<p>Membership</p> <p>Add:</p> <p><b>"A person may not be appointed as an independent member of the Standards Committee or its sub-committees unless:</b></p> <p><b>(a) Applicants are invited to apply for appointment by an advertisement placed in one or more newspapers circulating in the</b></p>

**Royal Borough;**

- (b) The person has submitted an application to the Council;**
- (c) The person has not been a Councillor or officer of the Council in the five years immediately preceding the appointment;**
- (d) The person is not a close relative or close friend of a Councillor of the Council;**
- (e) The person is not a member or officer of another local authority;**
- (f) The person has the ability to consider and evaluate information and arguments and reach sound, justifiable and fair conclusions based on that information;**
- (g) The person has been interviewed by a sub-committee of the Administration Committee; and**
- (h) The appointment is approved by a majority of the whole Council.**

Terms of reference

Paragraph 9.02

Add:

- (h) To hear complaints against Councillors and co-optees referred back from the Standards Board for England.**
- (i) To hear complaints against Councillors and co-optees arising from alleged breaches of Codes and Protocols falling outside the jurisdiction**

	<p style="text-align: center;"><b>of the Standards Board for England.</b></p> <p>Add:</p> <p style="text-align: center;"><b>(m) The Chairman or Vice-Chairman of the Standards Committee are entitled to speak at meetings of the full Council during the presentation of the committee's annual report.</b></p> <p><b>Reasons:</b></p> <p>The additional wording to paragraph 9.01 would clarify the procedures for membership of and appointments to the Committee.</p> <p>The additions to the Committee's terms of reference in paragraph 9.02 would clarify the position regarding the relationship with the Standards Board. This change would also allow the independent Chairman or Vice-Chairman of the Standards Committee to address the Council on the annual report of the committee.</p>
<p><b>Part Three – A – Responsibility for Functions - Executive</b> Paragraph B1(c)</p>	<p>General responsibilities of the Cabinet</p> <p><i>Insert the following:</i></p> <p><b>ix. The setting up of a local authority trading company.</b></p> <p><b>Reason:</b> Authority to set up a trading company should rest with the Cabinet.</p>

<p>Paragraph D7</p>	<p>Cabinet Member for Finance and Property</p> <p><i>Insert the following and renumber subsequent paragraphs:</i></p> <p><b>xv. The power to grant leases and easements of a value between £100,000 and £249,999.</b></p> <p><b>Reason:</b> It has always been assumed that 'disposal' of property includes granting leases and deeds of easement. This addition to the Cabinet Member for Finance and Property's portfolio would make this explicit. The power to grant leases and easements below £100,000 is delegated to officers.</p>
<p>Paragraph 3.B.06 Audit Committee</p>	<p><i>Insert the following in paragraph (d):</i></p> <p><b>The Chairman or Vice-Chairman of the Audit Committee is entitled to speak at meetings of the full Council during the presentation of the committee's annual report.</b></p> <p><b>Reason:</b> This change would allow any future independent Chairman or Vice-Chairman of the Audit Committee to address the Council on the annual report of the committee.</p>
<p><b>Part Three - B - Responsibility for Functions - Non- Executive</b> Paragraph 3.B.01</p>	<p>Administration Committee</p> <p><i>Paragraph 10 ("in relation to other matters") to read:</i></p> <p><b>10.</b> to manage the appointment process for independent members of the Standards Committee <b>and make recommendations to full Council on the</b></p>

	<p style="text-align: center;"><b>appointment which must be approved by a majority of the whole Council.</b></p> <p><b>Reason:</b> To make it clear that the law requires the appointment of independent members to the Standards Committee to be made by a Council resolution which must be agreed by a majority of the whole Council.</p>
<p>Paragraph 3.B.09</p>	<p><b>Licensing Committee</b> <b>Add new paragraphs containing the following additional Terms of Reference:</b></p> <p>9</p> <ul style="list-style-type: none"> <li>(i) To discharge all licensing functions and such other matters which the Licensing Authority is empowered to discharge under the Gambling Act 2005 ("Act"), or any ancillary codes or regulations issued in relation to that Act and any statute, regulations and codes amending, consolidating or replacing them, but excluding any functions which must be reserved to Full Council. Specifically, but not exclusively to deal with the matters specified below:-</li> <li>(ii) To enable its Licensing Sub-Committee(s) to deal with all licensing functions under the Gambling Act 2005 or any statute amending or replacing the same;</li> <li>(iii) To delegate all functions and matters it is required to discharge under this Act to its Licensing Sub-Committees and to delegate to officers, apart from those functions which must be carried out by the Licensing Committee itself. It also reserves the power to discharge any such function permitted by the Act to itself where the Chairman of the Committee considers the matter should be considered by the Licensing Committee as a whole;</li> <li>(iv) To determine, approve, review, amend, vary and replace the procedure for hearings for the Licensing Committee and its Sub-Committees;</li> </ul>

- (v) To consider any matter referred to it by any of its Sub-Committees;
- (vi) To discharge all licensing functions and other matters which cannot be discharged by its Licensing Sub-Committees or officers, including considering and making representations to the Council in relation to any review of the Council's Statement of Licensing Policy;
- (vii) To discharge any function under Section 154 of the Act or any statute amending or replacing the same;
- (viii) To discharge any function or matter more fully set out in the terms of reference of the Licensing Sub-Committee in relation to the Act and any ancillary legislation or codes;
- (ix) To consider and deal with such other matters it is empowered to discharge by law;
- (x) To set and revise fees under Section 212 of the Act;
- (xi) To determine and deal with Small Society Lottery Registrations.

**Reason:**

The Licensing Committee needs additional terms of reference to enable it to carry out the additional functions transferred to it from the Magistrates' Court under the Gambling Act 2005.

**Add a new paragraph containing the following additional Terms of Reference:**

	<p>10. To consider, approve and monitor the efficiency and effectiveness of the Council's enforcement activities in relation to the Licensing Act 2003 and the Gambling Act 2005.</p> <p><b>Reason:</b> Under the Licensing Act 2003 and the Gambling Act 2005 the Licensing Authority is theoretically a separate body to the Council. Under the current wording of the Constitution any Performance Indicators of the Licensing Team would impliedly be reported to the Regulation and Enforcement Review Committee. However, as this is a Council Committee rather than a Committee of the Licensing Authority it is appropriate that the Licensing Committee takes on the responsibility of monitoring the efficiency and effectiveness of the Licensing Authority's enforcement and administration activities. The functions of the Licensing Authority are (subject to a few exceptions) discharged by the Licensing Committee and delegated to its Sub-Committees and to officers, and the terms of reference of the Licensing Committee needs to be amended to expressly allow the Licensing Committee to monitor the efficiency and effectiveness of the Authority's officers under both these Acts.</p>
Paragraph 3.B.10	<p><b>Licensing Sub-Committee</b> <b>Add a new paragraph containing the following additional Terms of Reference:</b></p> <p>13 (i) To discharge all licensing functions and such other matters which the Licensing Authority is empowered to discharge under the Gambling Act 2005 ("Act"), or any ancillary codes or regulations issued in relation to that Act and any statute, regulations and codes amending, consolidating or replacing them, but excluding any functions which must be carried out by Full Council, the Licensing Committee or officers. Specifically, but not exclusively to deal with the matters specified below:-</p>



	<ul style="list-style-type: none"> <li>(ii) To determine applications for the grant, variation, refusal, revocation, transfer, review of any premises licence, permit, consent, notification or certificates where representations have been made or where it is required to do so under the Act for casinos, betting, race tracks, bingo, adult gaming and family entertainment centres, club gaming permits and machines, for specified lotteries and small societies, gaming and gaming machines, including temporary use notices and provisional statements and any other type of application made to the Licensing Authority under the Act;</li> <li>(iii) To determine whether a representation, complaint, objection or an application for review is irrelevant, frivolous or vexatious in appropriate circumstances or where it is referred to it by officers;</li> <li>(iv) To discharge any functions or matters it is required to deal with under Section 154 of the Act or any statute amending or replacing the same;</li> <li>(v) To decide whether to object to a licensing application made under the Act where the Council is a consultee and not the relevant authority making the application.</li> <li>(vi) To adjourn hearings where it is appropriate to do so;</li> <li>(vii) To vary the procedure for the determination of all types of licensing applications where it is appropriate to do so;</li> <li>(viii) To consider any matter referred to it by any other Licensing Sub-Committee;</li> <li>(ix) To consider and deal with such other matters it is empowered to discharge by law and to delegate such matters to officers where appropriate and permissible;</li> <li>(x) To defend, settle or participate in any legal proceedings or procedures in relation</li> </ul>
--	--

	<p>to all types of gambling applications where permissible to do so, including the settlement of any appeal proceedings in consultation with the Chairman of the relevant Sub-Committee;</p> <p>(xi) Determining applications where the Gambling Commission has made representations;</p> <p>(xii) To determine and deal with Small Society Lottery Registrations.</p> <p><b>Reason:</b> The Licensing Sub-Committees needs additional terms of reference to enable them to carry out the additional functions transferred to it from the Magistrates' Court under the Gambling Act 2005.</p>
Paragraph 3.B.11	<p>Licensing Panel</p> <p>Delete paragraph.</p> <p><b>Reason:</b> The Licensing Panel can be wound-up as any remaining functions not covered by the by the Licensing Committee are being transferred to the Regulation and Enforcement Review Committee.</p>
Paragraph 3.B.12	<p>Major Planning Development Committee</p> <p>Add new paragraph 4 to terms of reference:</p> <p>4. <b>Any other applications which in the opinion of the Executive Director for Planning and Conservation should be considered by the Committee.</b></p>

	<p><b>Reason:</b> An additional term of reference for the Major Planning Development Committee to allow the Executive Director for Planning and Conservation to refer other planning applications to the Committee.</p>
Paragraph 3.B.13	<p>Regulation and Enforcement Review Committee</p> <p>Add the following to Paragraph 15 of the Terms of Reference:</p> <ul style="list-style-type: none"> <li>• Special Treatment;</li> <li>• Exhibition;</li> <li>• Sex shops, sex encounter and sex establishments;</li> </ul> <p><b>Reason:</b> Any licence applications formerly covered by the Licensing Panels, which have not been subsumed by the Licensing Act 2003 are being transferred to the Regulation and Enforcement Review Committee. The additional terms of reference above will be needed to cover the following licence applications and hearings :-</p> <ul style="list-style-type: none"> <li>• Special Treatment;</li> <li>• Exhibition;</li> <li>• Sex shops, sex encounter and sex establishments;</li> </ul>
<p><b>Part Three – C – Responsibility for Functions - Officers</b></p>	<p>All Executive Directors and Directors General</p> <p>Amend as follows:</p> <p><b>12.</b> To provide a remedy under the Council’s complaints scheme, including a payment or other benefit <del>over £500 (and any payment or benefit of a higher sum/value shall only be agreed following consultation with the relevant Cabinet Member).</del> <b>(any payment or benefit of a sum/value of more than £500</b></p>

	<p><b>shall be subject either to approval by the Administration Committee or agreed following consultation with the Chairman of the Administration Committee).</b></p> <p><b>Reason:</b> By law, payment of such compensation is a Council-side responsibility. Authority for payments up to £500 should be delegated to officers, with payments above this amount to be approved by the Administration Committee or in consultation with its Chairman.</p>
	<p>All Executive Directors and Directors Legal procedures</p> <p>Add paragraph:</p> <p><b>20. To take enforcement action including the issuing of fixed penalty notices.</b></p> <p style="text-align: right;"><b>Council and Executive</b></p> <p><b>Reason:</b> To make it clear that officers can take enforcement action.</p>
	<p>Director of Law and Administration</p> <p>Add paragraph:</p> <p>14. <b>To approve the persons designated for the purposes of Part Two of the Regulation of Investigatory powers Act 2000 to grant authorisations for the carrying out of directed surveillance.</b></p>

	<p><b>Reason:</b> To comply with Part Two of the Regulation of Investigatory powers Act 2000.</p>
	<p><b>Head of Licensing and Business Improvement</b></p> <p>Add the following paragraph to the delegated functions: Paragraph 2(a) – insert the following new paragraphs at the end of paragraph 2(a) :-</p> <p>(i). The Head of Licensing and Business Improvement can determine opposed applications for the grant, renewal, transfer and variation of special treatment, sex shops, sex encounter and sex establishment, exhibition licences or such other applications in relation to these matters in the following circumstances:</p> <ul style="list-style-type: none"> <li>i       Where the Chairman of the Regulation and Enforcement Review Committee has not asked for the matter to be determined by that Committee.</li> <li>ii       Where no other Member of the Council has asked for the matter to be determined by the Regulation and Enforcement Review Committee.</li> <li>iii       Where there are not four or more valid objections received by the end of the relevant statutory consultation period.</li> </ul> <p>(ii) The Head of Licensing and Business Improvement has the discretion to refer any opposed special treatment, sex shop, sex encounter and sex establishment, and exhibition licence application which can be determined by delegated authority, to the Regulation and Enforcement Review Committee, where he considers it appropriate to do so.</p>

	<p><b>Reason:</b>  Additional delegations are needed to enable the Head of Licensing and Business Improvement to carry out all the functions he is required to discharge under the Gambling Act 2005, including making representations as a Responsible Authority.</p> <p>Further it is proposed that the Head of Licensing and Business Improvement shall have delegated powers to determine special treatment, sex shops, sex encounter and sex establishments, and exhibition licences in limited cases, rather than the applications having to be determined by the Regulation and Enforcement Review Committee.</p>
	<p>Head of Licensing and Business Improvement</p> <p>Add the following paragraph to the delegated functions:</p> <p><b>Paragraph 2 – add new paragraph (h)</b></p> <p>(h)</p> <ul style="list-style-type: none"> <li>i To discharge all licensing functions and such other matters an officer is empowered to discharge under the Gambling Act 2005 (“Act”), or any ancillary codes or regulations issued in relation to that Act and any statute, regulations and codes amending, consolidating or replacing them. Specifically but not exclusively to:-</li> <li>ii Issue premises licences for casinos, betting, race tracks, bingo, adult gaming and family entertainment centres; issue permits for specified lotteries, gaming and gaming machines, premises gaming machine permits, club gaming permits and club machines permits, issue prize gaming permits, granting permits for gaming machines at unlicensed</li> </ul>

	<p>family entertainment centres, receiving occasional use notices and receiving and endorsing temporary use notices, issue provisional statements, register small societies, receiving notifications and dealing with such other types of licence, consents and functions permissible under the Act which are capable of being dealt with by officers including providing information to the Gambling Commission;</p> <ul style="list-style-type: none"> <li>iii Deal with applications for the grant, variation, conversion, surrender, reinstatement, review, revocation, provisional statements, notices, and any other types of applications made to the Licensing Authority under this Act;</li> <li>iv Determine whether a representation, complaint, objection or an application for review is irrelevant, frivolous or vexatious;</li> <li>v To deal with and determine all applications it is empowered to deal with under the Act where the parties agree a hearing is not necessary;</li> <li>vi Prepare, amend and maintain the Licensing Register;</li> <li>vii Carry out inspections and make recommendations where it is appropriate to do so;</li> <li>viii Take enforcement action;</li> <li>ix Deal with such other matters as may be delegated to them;</li> <li>x To make or provide representations or comments as a Responsible Authority in relation to all types of gambling applications where it is empowered to do so, including reviews and legal proceedings;</li> <li>xi Issue, object to, defend, settle or participate in any legal proceedings or</li> </ul>
--	---

procedures in relation to all types of gambling applications where permissible to do so, including the settlement of any appeal proceedings in consultation with the Chairman of the relevant Sub-Committee.

**Reason:**

Additional delegations are needed to enable the Head of Licensing and Business Improvement to carry out all the functions he is required to discharge under the Gambling Act 2005, including making representations as a Responsible Authority.

Further it is proposed that the Head of Licensing and Business Improvement shall have delegated powers to determine special treatment, sex shops, sex encounter and sex establishments, and exhibition licences in limited cases, rather than the applications having to be determined by the Regulation and Enforcement Review Committee.



	<p>Director of Environmental Health</p> <p><b>Insert the additional delegation as paragraph 11 to read:</b></p> <p>11. To discharge all licensing functions, duties, powers and such other matters an officer is empowered to discharge both generally and as a Responsible Authority under the Gambling Act 2005 or any ancillary codes or legislation and any statute or regulations amending, consolidating or replacing them, including making representations in respect of all gambling applications permissible under the Act and applying for or participating in any reviews and legal proceedings in relation thereto.</p> <p><b>Reason:</b> The Director will need an additional delegation to enable him/her to make representations under the Gambling Act 2005 as a Responsible Authority.</p>
	<p><b>Executive Director for Planning and Conservation</b></p> <p><b>Insert the additional delegation as paragraph 37 to read:</b></p> <p>37. To discharge all licensing functions, duties, powers and such other matters an officer is empowered to discharge both generally and as a Responsible Authority under the Gambling Act 2005 or any ancillary codes or legislation and any statute or regulations amending, consolidating or replacing them, including making representations in respect of all gambling applications permissible under the Act and applying for or participating in any reviews and legal proceedings in relation thereto.</p> <p><b>Reason:</b> The Director will need an additional delegation to enable him/her to make representations under the Gambling Act 2005 as a Responsible Authority.</p>

	<p><b>Executive Director for Family and Children’s Services</b></p> <p><b>Insert the additional delegation as paragraph 26 to read:</b></p> <p><b>Protection of children and other vulnerable persons</b></p> <p>26. To discharge all licensing functions, duties, powers and such other matters an officer is empowered to discharge both generally and as a Responsible Authority under the Gambling Act 2005 or any ancillary codes or legislation and any statute or regulations amending, consolidating or replacing them, including making representations in respect of all gambling applications permissible under the Act and applying for or participating in any reviews and legal proceedings in relation thereto.</p> <p><b>Reason:</b> The Director will need an additional delegation to enable him/her to make representations under the Gambling Act 2005 as a Responsible Authority.</p>
<p><b>Part Four – A – Council Standing Orders</b> Paragraph 11</p>	<p>Chairman of meeting</p> <p>Delete words in brackets to be consistent with changes recommended to page 24 above.</p> <p>11.02 If the Mayor is absent from a meeting of the Council, the Deputy Mayor (<del>vice-chairman</del>) shall preside and shall be deemed to have been so chosen unless any</p>

	<p>member present shall object.</p> <p>11.03 If the Mayor and Deputy Mayor (<del>vice-chairman</del>) are so absent, or the Deputy Mayor (<del>vice-chairman</del>) being present does not take the chair...</p> <p><b>Reason:</b> The proposed change to page 24 (above) would make the term "Deputy Mayor (vice-chairman)" redundant.</p>
	<p><b>Add 12.04:</b></p> <p><b>"The Chairman or Vice-Chairman of the Standards Committee and Audit Committee are entitled to speak at meetings of the full Council during the presentation of the committees' annual reports."</b></p> <p><b>Reason:</b> This change would allow the independent Chairman or Vice-Chairman of the Standards Committee and any future independent Chairman or Vice-Chairman of the Audit Committee to address the Council on the annual report of the committee.</p>
<p><b>Part Four B – Hearing Procedure Rules</b></p>	<p>Delete entire section on procedure rules.</p> <p><b>Reason:</b> It is considered that the constitution is not the right document to contain hearing procedure rules. The hearing procedure rules currently in the constitution relate to meetings of the Licensing Committee, Regulation and Enforcement Review Committee and the Tables and Chairs Sub-Committee. Procedure rules also exist for the Appeals Panel, Standards Committee and Planning Services Committee but these are not currently included in the constitution. Procedure rules should rest with the relevant committee/panel; it is recommended therefore that this section be deleted.</p>

<p><b>Part Four -C- Access to Information Procedure Rules</b></p>	<p>Delete current Procedure Rules and replace with revised Procedure Rules attached as <b>Appendix 3 to this report.</b></p> <p><b>Reason:</b> Recent changes to the Access to Information provisions have been taken on board in the Constitution.</p>
<p><b>Part Four - F - Procurement Procedure Rules and Contract Regulations</b></p>	<p>Delete current Procedure Rules and replace with revised Procedure Rules attached as <b>Appendix 4 to this report.</b></p> <p><b>Reason:</b> The Contract Regulations have been reviewed and updated. The last time they were fully reviewed was in September 2002 and minor amendments are now needed to reflect the proposed change to the key decision threshold and legislative changes brought about by the new procurement directive relating to framework or consortium agreements.</p> <p>The overall format of a short set of Contract Regulations, complimented by a more detailed officers procurement guide has been retained in accordance with the best practice guidance issued by the London Centre of Excellence for procurement.</p>

	<p>Consequent changes have also been made to Part Three A, concerning Executive functions, and Part Three C, Scheme of Delegation, to bring the amounts into line with the new contract regulations.</p>
--	--